Tender Alert Pakistan

KPPRA Rules 2014

Official English Text — As Amended up to 17 August 2022

Official English text. The Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014, as amended up to 17 August 2022 — the Finance Department consolidated notification, typeset from the official text. Rules 7 and 15 are marked [Deleted] in the source itself. There are no schedules or annexures in this instrument. For any legal decision the official Gazette notification governs.

Source: Finance Department Notification No. SO(FR)/FD/9-7/2010/Vol-II, dated 3 February 2014, under section 36 of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No. XI of 2012). Consolidated text as amended up to 17 August 2022. Rules 1–55 + lettered rules; Rules 7 and 15 [Deleted]; no schedules or annexures.

Contents

1. 1. Short title and commencement
2. 2. Definitions
3. 3. Applicability of these rules
4. 4. Language
5. 5. Code of ethics and integrity pact
6. 6. [“Open competitive bidding as principal method of procurement”;]9
7. 6A. Single bid in goods
8. 7. [Deleted]17
9. 8. Pre-qualification of suppliers
10. 9. Open [“competitive bidding”]19 post-qualification
11. 10. Alternate methods for procurement of goods
12. 11. Method of advertisement
13. 12. Bid security
14. 13. [“Goods warranty
15. 14. [“Open competitive bidding as principal method of procurement.”;] 26 (1) Save as otherwise provided hereinafter and subject to the provisions of rule [“18”] , the procuring entity shall use open competitive bidding as the principal method of procurement for the procurement of [“works”]28 over the value of Rs. [500,000/ rupees five hundred thousand.]29
16. 14A. Single bid in works and non-consulting services
17. 15. [Deleted]33
18. 16. Pre-qualification of contractors
19. 17. Open tendering post-qualification of contractors
20. 18. Alternate methods for procurement of works, and non-consulting services
21. 19. Method of advertisement
22. 20. Bid security
23. 21. Performance guarantee
24. 22. Application of consultancy services rules
25. 23. Systems for selection of consultants
26. 23A. Single bid in consultancy services
27. 24. Criteria for eligibility of consultants
28. 25. Expression of Interest (EOI)
29. 26. Criteria for short-listing of consultants

30. 27. Request for Proposals (RFP)
31. 28. Selection process of individual consultants
32. 29. Professional liability of consultants
33. 30. Procurement planning
34. 31. [“Limitation on splitting or regrouping of proposed procurement
35. 31A. Framework Contract
36. 32. Procurement committees
37. 32A. Enlistment
38. 32B. Functions and responsibilities of procurement committees
39. 33. Bid solicitation documents
40. 34. Response time
41. 34A. Procurement under urgency situations
42. 35. Bid validity
43. 36. Pre-qualification process
44. 37. Submission of bids and bid opening
45. 37A. Registration with Khyber Pakhtunkhwa Revenue Authority
46. 37B. Unsolicited proposal
47. 38. Confidentiality
48. 39. Bid evaluation
49. 40. Discriminatory and difficult conditions
50. 41. [“International competitive bidding”]71
51. 41A. Procurement from multilateral or bilateral agencies
52. 42. Post bid negotiation
53. 42A. Provision for negotiations on price
54. 43. Disqualification of suppliers, contractors and consultants
55. 44. Blacklisting of suppliers, contractors and consultants
56. 45. Announcement of evaluation reports
57. 46. Approval of contract award
58. 47. Rejection of bids
59. 48. Re-bidding
60. 49. Payments
61. 49A. Community participation in procurement
62. 50. Entry into force of the procurement contract
63. 50A. Restriction on disposal of public assets to employees
64. 50B. Approval of disposal of public asset
65. 50C. Modes of disposal of public assets
66. 50D. Disposal proceedings

67. 51. Closing of contract
68. 52. Record of procurement proceedings
69. 53. Public access and transparency
70. 54. Mis-procurement
71. 55. Repeal

GOVERNMENT OF THE KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

NOTIFICATION

Peshawar, Dated the 3rd February 2014

No. SO (FR)/FD/9-7/2010/Vol-II.--In exercise of the powers conferred by section 36 of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No.XI of 2012), the Government of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

The Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014.

CHAPTER 1
GENERAL PROVISIONS

1. Short title and commencement

(1) These rules may be called the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014.

(2) These shall come into force at once.

2. Definitions

(1) In these rules, unless there is anything repugnant in the subject or context,- (a) “Act” means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012;

(b) “bid” means a technical proposal or a financial proposal or a technical and financial proposal submitted as a result of request for quotations, tender notice, request for proposal as the case may be;

(c) [“bid security/guarantee” means any shape of written guarantee from a scheduled bank, excluding microfinance and financial institutions submitted to the procuring entity, by a bidder with his bid;”;]1

(d) [Deleted]2

(e) [“contractor” means a person, firm, company or organization that undertakes to execute works or non-consulting services;”;]3

1 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

2 — Clause (d) “borrower” means procuring entity;” deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

3 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(f) “emergency” shall refer to situation that poses an immediate risk of loss, or has caused loss, or has high probability of escalating to cause immediate danger to health, life, property or environment as covered under the National Disaster Management Act, 2010 (Act No. XXIV of 2010) and shall include natural calamities, disasters, accidents, war and breakdown of operational equipment, plant, machinery or engineering infrastructures, which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to health, life, property or the environment;

(g) “grievance redressal mechanism” means the regulations/guidelines providing for grievance redressal process;

(h) “non -consulting services” means the provision of independent expert advice of a quality at least equal to the applicable professional standards in relation to acquisition of goods, services other than consulting services and works;

(i) “PEC” means Pakistan Engineering Council;

[(i-i) “performance guarantee” means the bank guarantee or any other financial guarantee approved by Board, from time to time, submitted by the bidder to secure obligations under the contract in accordance with the requirements set out in the bid solicitation documents;]4 [(i-ii) “procurement contract” –means an agreement enforceable by law, signed between the procuring entity and a contractor or supplier or consultant, as the case may be, resulting from any of procurement proceedings under the provisions of the Act and these rules”; and]5

(j) “professional engineering work” means providing professional advice and opinions, the making of measurements and layouts, the preparation of reports, computations, designs, drawings, plans, specifications and construction, inspection, and supervision of engineering works, in respect of:

(i) railways, aerodromes, bridges, tunnels and roads;

(ii) dams, canals, rivers, drains, harbors, lighthouses;

4 — New Clause “(i-i)” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

5 — New Clause “(i-ii)”inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(iii) works of an electrical, mechanical, hydraulic, communication, aeronautical, power engineering, geological or mining character;

(iv) water works, sewers, filtration, purification and incinerator works;

(v) residential and non-residential buildings including foundations framework and electrical and mechanical systems thereof; and

(vi) structures accessory to engineering works and intended to house them;

(k) “Province” means the Province of the Khyber Pakhtunkhwa;

(l) “Public Fund” means--

(i) Provincial Consolidated Fund;

(ii) foreign assistance;

(iii) all moneys standing in the Public Account; and

(iv) funds of enterprises wholly or partly owned or managed or controlled by Government;

(m) “repeat order” means a fresh contract or order given directly to the same contractor or consultant without going into the normal procurement process, in accordance with the specified conditions and limits contained in these rules;

(n) “request for proposal” means bidding document for soliciting technical and financial proposals for procurement of services;

(o) [“Supplier” means a person, firm, company or an organization that undertakes to supply goods and services related thereto, other than consulting services, required for the contract;”.]6

(p) “terms of reference” means defining and elaborating on the objectives and intended scope of services; [deleted]7

[“(p-i) “unsolicited proposal” means an unsolicited proposal as defined in the Khyber Pakhtunkhwa Public Private Partnership Act, 2014 (Khyber Pakhtunkhwa Act No. XX of 2014); and”.]8

6 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

7 — After semi-colon, the word “and” deleted, Vide Finance Department Notification No. SO (FR)/FD/ 9-7/ 2017/17449-Vol-I dated 08.02.2018.

(q) “value for money” means best returns for each rupee spent in terms of quality, timeliness, reliability, after sales service, up-grade ability, price, source, and the combination of whole-life cost and quality to meet the procuring entity’s requirements.

(2) Words, expressions and terms not specifically defined in these rules shall have the same meanings as attributed to them in relevant trade and industry practices.

3. Applicability of these rules

(1) These rules shall be applicable to all public procurements.

(2) Under following circumstances deviation from the requirements of advertisement and response time under these rules is permissible:

(a) in cases of emergency as provided in the National Disaster Management Act, 2010 (Act No. XXIV of 2010), subject to the condition,--

(i) that all such procurements along with its emergent nature has to be recorded by the Procuring Officer and approved by the technical head of the procuring entity under intimation to the Principal Accounting Officer, Secretary at Provincial or Deputy Commissioner at District level;

(ii) that these have to be immediately intimated to the Accountant General Office or District Accounts Office, as the case may be;

(iii) that quantities in all such procurements shall be limited to the assessed requirement of emergency only; and

(iv) that these shall be used only for procurements upto maximum for three months, which may be extended for such a period that Government may deem fit, depending on the nature of emergency;

(b) the procurement of sensitive nature and related to National Security:

> Provided that the direct sourcing of all such procurements shall be duly recorded; and

(c) the direct sourcing to a government organization for provision of works, goods or services under a cost plus or fixed contract provided that the Public Sector Organization shall not involve a

8 — New clause “(p-i)” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/ 2017/17449- Vol-I dated 08.02.2018.

private sector enterprise as a partner or in the form of a joint venture or a sub-contractor. The government organizations shall be totally government owned and controlled or semi-autonomous and autonomous agencies under the administrative control of Federal Government or Provincial Government.

4. Language

All documentation related to public procurements of entities shall be in English or Urdu.

5. Code of ethics and integrity pact

Procurement exceeding the prescribed limit shall be subject to an integrity pact, as specified by regulations/guidelines determined by Authority in consultation with procuring entities, between the procuring entity and the suppliers or contractors.

CHAPTER II
METHODS OF PROCUREMENT OF GOODS

6. ["Open competitive bidding as principal method of procurement";]9

(1) Save as otherwise provided hereinafter and subject to the provisions of rule 10, the procuring entity shall use open competitive bidding as the principal method of procurement for the procurement of goods over the value of Rs. [500,000 (rupees five hundred thousand).]10

(2) The following procedures shall be permissible for open [competitive bidding] , namely:

a) single stage, one envelope procedure.-- this method should be used where cost is the only determining factor. Each bid shall comprise one single envelope containing financial proposal or offer and required information in accordance with the bid solicitation documents. This shall be the standard method of procurement of goods for simple and routine nature and where no technical innovation is involved [and for this purpose the lowest evaluated responsive bid shall be considered for award of contract]12;

b) single stage, two envelops procedure.-- this method shall be used where bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation. Bid shall comprise a single package containing separate envelopes. Each envelope shall contain separately the financial proposal and

9 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

10 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

11 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

12 — Inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

technical proposal [the best evaluated responsive bid shall be considered for award of contract]13; [and]14

["(c) two stage two envelope bidding procedure.-The method shall be used for procurement where alternative technical proposals are possible, such as certain type of machinery or equipment or manufacturing plant.".]15

(3) In case of procurement of complex or specialized goods either of the two methods may be adopted,--

(a) pre-qualification of prospective bidders and invitation of bids from the pre-qualified bidders; and

(b) through single envelope two stage method post-qualification-

(i) in the first stage, each bid shall comprise of a single package containing envelope marked as technical proposal;

(ii) the technical proposals will be evaluated in accordance with the evaluation criteria set forth in the bid solicitation document. A list of qualified and unqualified bidders will be formulated at the end of first stage;

(iii) following approval of the results of first stage, financial proposals will be solicited from qualified bidders in the second stage. The bidders will be required to submit financial proposal in a single envelope or package clearly marked as financial proposal in bold and legible letters to avoid confusion; and

(iv) the lowest offer from the qualified bidder shall be accepted for award of the contract and will be the best evaluated bid.

6A. Single bid in goods

The single bid in goods may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of Government, for the time being

13 — Inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

14 — Added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

15 — New clause “(c)” added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

in force. The single bid shall be in conformity with best evaluated bid. The procuring entity shall make a decision with due diligence and in light of section 3 of the Act.”.]16

7. [Deleted]17

8. Pre-qualification of suppliers

(1) A procuring entity, in the first stage may pre-qualify bidders only in the following cases:

(a) where total worth of contract exceeds Rs. 10 million; and

(b) in cases of contracts for large and complex goods and related services, in which there are high costs of preparing detailed bids.

(2) The procuring entity may pre-qualify bidders by soliciting various details in accordance with sub-rule (1) of rule 8, and rule 36 of these rules.

(3) Pre-qualification of bidders shall be based entirely upon the capability, competence and resources of the bidders relevant to performance in the particular assignment, taking into account the following--

(a) legal status along with proof of registration with one of the Federal or Provincial Registration Acts;

(b) proof of being a taxpayer;

(c) organizational profile, relevant experience, past performance, list of clients and references;

(d) relevant experience and past performance;

(e) existing capabilities with respect to human resource, personnel, computing and engineering equipment, machinery and plant, as may be the case;

(f) financial position for the last three years including bank statements and audited reports by an external auditor;

(g) proof of possessing appropriate managerial capability; and

(h) any other factor that a procuring entity may deem relevant, depending on the nature and complexity of the contract but not inconsistent with these rules.

(4) [“The bid solicitation documents shall be issued to the qualified bidders.”.]18

16 — New Rule “6A” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

17 — Rule 7 deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

(5) For further process sub-rule (2) of rule 6 shall be followed.

9. Open [“competitive bidding”]19 post-qualification

(1) If bidding is not limited to pre-qualified firms, the procuring entity shall engage itself in post qualifying the bidders , in case of contracts of complex nature and valuing Rs. 15 million or above.

(2) Procuring entity shall specify the requirement of post-qualification in the solicitation documents. Post-qualification may be undertaken in accordance with the provision of these rules, regardless of the bidders being pre-qualified.

(3) This shall be done prior to recommending contract award; the procurement committee shall determine whether the bidder whose bid has been determined to offer the best evaluated bid has the capability and resources to effectively carry out the contract offered in the bid.

(4) In case the procurement committee is not satisfied with qualification based on the evaluation criteria resulting is not post-qualifying the best evaluated bid, it shall proceed to make a similar determination for the bidder offering the next best evaluated bid and shall go on with all the qualified and responsive bidders in accordance with their ranking in being best evaluated, till the criteria is satisfied or till all such bids are rejected.

10. Alternate methods for procurement of goods

A procurement entity may use the following alternative methods for procurement of goods, namely:

(a) procurement of goods upto Rs. [100,000/-]20 may be undertaken by obtaining a single quotation through direct sourcing.

(b) petty purchases between Rs. [100,000/- upto Rs. 500,000/-]21 shall be procured through alternate method only if the following conditions are met, namely:

(i) minimum of three quotations have been obtained:

> Provided that if despite soliciting, less than three quotations are received it would be acceptable;

(ii) request for quotation is sent to prospective bidders, simultaneously, with full contents and same information, which is duly acknowledged to be received;

18 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

19 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

20 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

21 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(iii) the closing time, date and address for submitting quotations has been clearly defined and adhered to;

(iv) the object of the procurement has standard specifications;

(v) in case, amount pertaining to applicable tax is not added in the quotation, comparison of price is made after adding amount of applicable tax; and

(vi) during comparison, each item should be compared to the corresponding respective specification and bid evaluated to the corresponding total cost of the bid;

(c) a procurement entity shall only engage in alternate method if the following conditions exist, namely:

(i) repeat orders within a period of six months:

> Provided that it does not exceed fifteen percent of the original contract value;

(ii) in case of procurement through government organizations, in accordance with provisions of rule-3(2)(c) of these rules;

(iii) where the procurement concerns the acquisition of spare parts or supplementary services from original manufacturer or supplier or sole distributor:

> Provided that the same are not available from alternative sources;

(iv) where the same goods are not available from alternative sources or only one contractor, manufacturer or supplier exists for the required procurement;

(v) where a change of contractor or supplier would ensue the procuring entity to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance, this shall be done with proper justification and recording of such reasons, provided that the contract or contracts do not exceed three years in duration;

(vi) where the price of goods is fixed by Government;

(vii) where the motor vehicles or machinery is purchased from local original manufacturers or their authorized agents at manufacturer’s price including transportation charges and other applicable taxes; and

(viii) in case of emergency as defined in these rules and procurement specified under sub-rule 3(2)(a) and 3(2)(b):

> Provided that the procurement entity shall specify appropriate forums vested with necessary authority to declare an emergency;

(d) a procuring entity may engage in negotiated tendering with one or more suppliers or contractors without prior publication of a procurement advertisement. This procedure shall be followed when--

(i) the supplies involved are manufactured purely for the purpose of supporting a specific piece of research or an experiment, a study or a particular development;

(ii) for technical or artistic reasons, or for reasons connected with protection of exclusive rights or intellectual property, the supplies may be manufactured or delivered only by a particular supplier; and

(iii) [Deleted]22

> Provided that any procuring entity desirous of using negotiated tendering as a method of procurement shall record its reasons and justifications in writing for resorting to negotiated tendering and shall place the same on record.

11. Method of advertisement

["(1) The procuring entity shall engage in open competitive bidding, if the cost of the object to be procured is more than the financial limit, which is applicable under rule 10. Purchases up to Rs. [5]23 million shall be posted on the procuring entity's website and Authority's website, respectively. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring entity.

(2) For all purchases, other than those being covered in rules 3, 10 and sub- rule (1) of rule 11 of these rules, shall be advertised in print media, appearing in at least one national English and one Urdu daily newspaper with nationwide circulation along with advertising the same on the procuring entity's website and Authority's website, respectively.".]24

(3) A procuring entity utilizing electronic media shall ensure that the information posted on the website is complete for the purposes for which it has been posted, and such information shall remain available on that website until the closing date for the submission of bids.

22 — Deleted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

23 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

24 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

12. Bid security

(1) The procuring entity may require the bidders to furnish bid security of up to two per cent in case of procurement of goods, if required.

(2) In cases, where procurement is of complex nature, bid security up to 5 percent can be applied.

(3) Bid security shall be kept sealed in the financial proposal. In case of two stage two envelopes the bidder shall, in addition, keep an affidavit in the technical proposal stating that a bid security amounting to 2,3,4 or 5 percent, as may be the case without indicating the figure in the letter, has been placed in the financial proposal or bid. Otherwise the technical proposal will be considered non-responsive and will be returned to the bidder after being examined by the procurement committee.

13. [“Goods warranty

Where possible, the procuring entity shall ask for a warranty from the supplier or contractor, as the case may be, for replacement or repair of the goods procured falling in the warranty period and in line with independently verifiable industry practices for that particular object of procurement.”.]25

CHAPTER III
PROCUREMENT OF WORKS AND NON-CONSULTING SERVICES.

14. [“Open competitive bidding as principal method of procurement.”;] 26 (1) Save as otherwise provided hereinafter and subject to the provisions of rule [“18”] , the procuring entity shall use open competitive bidding as the principal method of procurement for the procurement of [“works”]28 over the value of Rs. [500,000/ rupees five hundred thousand.]29

(2) the following procedures shall be adopted for open competitive bidding:

(a) single stage – one envelope bidding,--the bid shall comprise of one envelope containing financial bid. All bids received shall be opened and evaluated in the manner prescribed in the bidding document. This shall be the default method of open competitive bidding;

(b) single stage – two envelope bidding,--

25 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

26 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

27 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

28 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

29 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(i) this method shall apply to large and complex contracts;

(ii) [Deleted]30

(iii) each bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the technical proposal and the financial proposal;

(iv) the envelopes shall be marked as technical proposal and financial proposal in bold and legible letters to avoid confusion;

(v) the envelope marked as technical proposal shall contain:

(a) the experience and past performance in the execution of similar contracts;

(b) the capabilities with respect to personnel and construction equipments;

(c) the financial status and capacity; and

(d) any other information asked for by the procuring entity in the notice inviting tenders;

(vi) the second envelope marked as financial proposal shall contain the price quoted by the bidders and be retained in the custody of the procuring entity without being opened;

(vii) the procuring entity shall evaluate the technical proposal on the basis of criteria specified in the ["bid solicitation"]31 documents without reference to the price and reject any proposal which does not conform to the specified requirements. During the technical evaluation, no amendment in the technical proposal shall be permitted. A list of technically qualified bidders shall be finalized in this manner;

(viii) after the evaluation and approval of the technical proposals the procuring entity, shall at a time within the bid validity period, publicly open the

30 — Deleted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

31 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

financial proposals of the technically accepted bids only. The financial proposals found technically non-responsive shall be returned un-opened to the respective bidders; and

(ix) the bid found to be the lowest evaluated bid shall be accepted;

(c) two stage - two envelope bidding,---this method shall be used for turnkey or large or complex contracts and ensures that all technical proposals conform to the same acceptable technical standards required by the procuring entity.

First stage:

(i) the bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;

(ii) the envelopes shall be marked as financial proposal and technical proposal in bold and legible letters to avoid confusion;

(iii) initially, only the envelope marked technical proposal shall be opened;

(iv) the envelope marked as financial proposal shall be retained in the custody of the procuring entity without being opened;

(v) the technical proposal shall be discussed with the bidders with reference to the procuring entity's technical requirements;

(vi) those bidders willing to meet the requirements of the procuring entity shall be allowed to revise their technical proposals following these discussions; and

(vii) bidders not willing to conform their technical proposals to the revised requirements of the procuring entity shall be allowed to withdraw their respective bids without forfeiture of their bid security.

second stage:

(i) after agreement between the procuring entity and the bidders on the technical requirements, bidders who are willing to conform to the revised technical specifications and whose bids have not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the technical requirement;

(ii) the revised technical proposal along with the original financial proposal and supplementary financial proposal shall be opened at a date, time and venue announced in advance by the procuring entity:

> Provided that in setting the date for the submission of the revised technical proposal and supplementary price proposal, a procuring entity shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and to prepare the required supplementary financial proposal; and

(iii) the procuring entity shall evaluate the whole proposal in accordance with the evaluation criteria and the bid found to be the lowest evaluated bid shall be accepted.

14A. Single bid in works and non-consulting services

The single bid in works and non-consulting services may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of Government, for the time being in force. The single bid shall be in conformity with best evaluated bid. The procuring entity shall make a decision with due diligence and in the light of section 3 of the Act.".]32

15. [Deleted]33

16. Pre-qualification of contractors

(1) A procuring entity, in the first stage shall pre-qualify bidders for specific contracts in cases where [deleted]34 a work irrespective of its worth is considered as complex.

32 — New Rule “14A” inserted, Vide Finance Department Notification No. SO (FR)/FD/ 9-7/2017/17449-Vol- I dated 08.02.2018.

33 — Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

34 — Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

(2) The procuring entity shall pre-qualify bidders by soliciting various details including but not limited to the following providing pass/fail thresholds, in accordance with the provisions of the Act and rules 17(1) and 34 of these rules.

(a) legal status along with proof of registration with PEC and enlistment with the concerned provincial Government PE;

(b) proof of valid or renewed relevant registration;

(c) proof of being a taxpayer;

(d) organizational profile, relevant experience, past performance, list of clients and references;

(e) existing capabilities with respect to technical personnel, computing and engineering equipment, machinery and plant as may be the case;

(f) financial position for the last three years including bank statements and audited reports by an external auditor; (g) proof of possessing appropriate managerial capability; and

(h) any other factor that a procuring entity may deem relevant, and is duly included in the bid solicitation documents, depending on the nature and complexity of the contract but not inconsistent with the Act and these rules.

(3) Bidding shall be limited to pre-qualified firms.

(4) Qualified bidders shall be issued the [“bid solicitation documents”]35.

(5) For further process sub-rule (2) of rule [“14”]36 shall be followed.

17. Open tendering post-qualification of contractors

(1) [deleted]37 the procuring entity may choose to call for bids with the condition of post-qualification provided in the bidding documents.

(2) The post-qualification criteria provided in the bidding documents shall be based on the evaluation of technical and financial worth i.e. works executed, indicating

35 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

36 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

37 — Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

value of works, list of technical and other staff, plant or equipment along with the make and financial capacity.

(3) Bidding documents shall be made available to all interested bidders.

(4) The qualification of the lowest evaluated responsive bidders shall be checked to ensure whether or not the bidder is qualified to perform the works.

(5) If the lowest evaluated responsive bidder is not found to be qualified on all the post-qualification criteria provided in the bidding documents, its bid shall be rejected.

(6) Credentials of the next lowest evaluated responsive bidders shall then be checked against all of the post-qualification criteria provided in the bidding documents, and the contract shall be awarded to the lowest evaluated responsive qualified bidder.

18. Alternate methods for procurement of works, and non-consulting services

A procurement entity may use the following alternative methods for procurement, namely:

(a) petty purchases,-- procurement of upto Rs. [100,000/-]38 may be undertaken by obtaining a single quotation through direct sourcing;

(b) request for quotations,-- procurement from Rs. [100,000/- upto Rs. 500,000/-]39 shall be procured through alternate method only if the following conditions are met, namely:

(i) minimum of three quotations have been obtained, provided that if despite soliciting, less than three quotations are received it would be acceptable;

(ii) request for quotation is sent to prospective bidders, simultaneously, with full contents and same information, which is duly acknowledged to be received;

(iii) the closing time, date and address for submitting quotations has been clearly defined and adhered to;

(iv) the object of the procurement has standard specifications;

(v) in case, amount pertaining to applicable tax is not added in the quotation, comparison of price is made after adding amount of applicable tax; and

38 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

39 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(vi) during comparison, each item should be compared to the corresponding respective specification and bid evaluated to the corresponding total cost of the bid;

(c) Direct contracting,-- a procurement agency shall only engage in alternate method if the following conditions exist, namely:

(i) where civil works are to be contracted and are a natural extension of an earlier or ongoing job and it can be ascertained that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality of works subject to limitation of repeat or variation order;

(ii) in case of procurement through government organizations, in accordance with provisions of rule-3(2)(c) of these rules;

(iii) where a change of contractor or supplier would oblige the procuring entity to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance, this shall be done with proper justification and recording of such reasons, provided that the contract or contracts do not exceed three years in duration;

(iv) in case of emergency as defined in these rules and procurement specified under sub-rule 3(2)(a) and 3(2)(b), provided that the procurement entity shall specify appropriate forum vested with necessary authority to declare an emergency;

(v) subject to the conditions of contract, a procuring entity may, [“issue”]40 a variation order to a contractor to include works which were outside the original scope of works to ensure interests of Government and for reasons of economy, compatibility and efficiency provided that: (a) the original contract is still in force;

(b) the procuring entity has satisfied itself for technical reasons that the placing of the variation order is cost effective;

(c) the value of variation order is not more than fifteen percent of the original contract; and

(d) there may be more than one variation orders as long as the total value of all the variation orders remains within 15 percent of the original contract.

40 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

19. Method of advertisement

["(1) The procuring entity shall engage in open competitive bidding if the cost of the object to be procured is more than the financial limit which is applicable under rule 18 of these rules. Procurement

from Rs. [500,000/- to Rs. 5 million]41 shall be posted on the procuring entity's website and Authority's website. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring entity.

(2) For all procurement, other than those being covered by rules 3, 18 and sub-rule (1) of rule 19 of these rules, shall be advertised in print media, appearing in at least one national English and one Urdu daily newspaper with nationwide circulation along with advertising the same on the procuring entity's website and Authority's website, respectively.".]42

(3) A procuring entity utilizing electronic media shall ensure that the information posted on the website is complete for the purposes for which it has been posted, and such information shall remain available on that website until the closing date for the submission of bids.

20. Bid security

(1) The procuring entity ["shall"]43 require the bidders to furnish bid security of two per cent in case of procurement of works, [deleted]44.

(2) The bid security shall be kept sealed in the financial proposal. In case of single stage two envelopes, the bidder shall in addition, place an affidavit in the technical proposal stating that a bid security amounting to 2 percent without indicating the figure in the letter, has been placed in the financial proposal or bid. Otherwise the technical proposal will be considered non-responsive and will be returned to the bidder after being examined by the procurement committee.

(3) The bid security will be returned to unsuccessful bidders after signing of the contract with the successful bidder.

(4) The bid security of the successful bidder will be retained in case no performance guarantee is required, however such a condition shall be mentioned in the bidding document. [In case performance guarantee is required, the bid security of two percent (2%), as specified in sub-rule (1), of the successful bidder, shall not be returned. The successful bidder shall be required to deposit eight (8%), of the cost of the contract in the shape of an irrevocable bank guarantee.]45

21. Performance guarantee

The procuring entity may ask for a performance guarantee from the contractor, which shall not exceed 10 percent of the bid value, as

41 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

42 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

43 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

44 — Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

45 — Substituted by the Finance Department Notification No. SO (FR)/FD/9-7/2011/Vol-II dated 11.08.2016.

would be specified in the standard bid solicitation documents or standard bidding document.

CHAPTER IV
PROCUREMENT OF CONSULTANCY SERVICES

22. Application of consultancy services rules

These rules shall apply only to consulting services which are of an intellectual and advisory nature and differ from the other types of services directly connected with the procurement of goods and works in which the physical component of the activity is the main function and often involves equipment-intensive assignments.

23. Systems for selection of consultants

The selection system shall be determined by the procuring entity prior to the commencement of the process of selection of prospective consultants. Procuring entity may utilize one of the following systems for selection of consultants, namely:

(a) quality based selection (QBS),-- this system will be used for highly specialized and complex assignments, where quality is the only factor taken into consideration;

(b) quality and cost based selection (QCBS),---this system will be used where high quality is the prime consideration while cost is a secondary consideration;

(c) least cost,--- this system will only be used for assignments of standard or routine nature, where well established practices and standards exist;

(d) single source or direct selection,---subject to approval by head of the procuring entity, a procuring entity may engage in single- source procurement-

(i) [the services are available only from a particular consultant, or a particular consultant has exclusive rights in respect of the services related to goods, works and no alternative or substitute exists;";]46

(ii) [the procuring entity having procured services from the consultant, determines that additional services must be procured from the same consultant for reasons of continuity of services or because of the need for compatibility of the existing services, taking into account the effectiveness of the

original procurements in meeting the needs of the procuring entity up to the limited size of the repeat order of the proposed procurement in relation to

46 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

the original procurement, the reasonableness of the price and the unsuitability of alternative to the services in question;"; and]47

(iii) in cases of emergency;

(iv) for very small assignments valuing upto Rs. 500,000/-; and

(v) where only one consultant is qualified or has experience of exceptional worth; [Deleted]48

(e) fixed budget-- this system shall be used only when the assignment is simple, can be precisely defined and when the budget is fixed. The request for proposals shall indicate the available budget. Proposals that exceed the indicated budget shall be rejected. The ranking shall be based only on evaluation of technical proposals of the qualified bidders[; and]49

["(f) Consultants' Qualifications Selection (CQS):

(i) Consultant Qualifications Selection is appropriate for small assignments valuing not more than 2.5 million or in urgent situations in which preparing and evaluating competitive proposals is not justified; and

(ii) the procuring entity shall request expressions of interest (REOI) with appropriate scope of services and a well- defined selection criterion. At least three qualified firms shall directly be requested to provide information about their relevant experience and qualifications. The firm with highest score in selection criteria shall be asked to submit a combined technical and financial proposal, in single envelope, and then invited to negotiate the contract. If negotiation fails, a firm, next in ranking, shall be invited for negotiation until an agreement is reached.".]50

23A. Single bid in consultancy services

The single bid in consultancy services may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of the Government for the time being in force. The single bid shall be in conformity with best evaluated bid. The procuring entity shall make a decision with due diligence and in the light of section 3 of the Act.".]51

47 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

48 — Deleted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

49 — Replaced, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

50 — New sub-clause Added, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

51 — New Rule “23A” inserted, Vide Finance Department Notification No. SO (FR)/FD/ 9-7/2017/17449-Vol- I dated 08.02.2018.

24. Criteria for eligibility of consultants

The procuring entity shall not hire a consultant for an assignment in which there is possibility of conflict of interest. If a consultant has been engaged by the procuring entity to provide goods or works for a project, it shall be disqualified from providing consulting services for the same project. Similarly, consultant should not be hired for any assignment which by its nature, may be in conflict with another assignment of the consultant.

25. Expression of Interest (EOI)

[“(1) A procuring entity may call for expression of interest which shall be advertised, giving to the bidders at least fifteen (15) days for national competition and thirty (30) days for international competition to submit their interest to provide consultancy services.”.]52

(2) The expression of interest shall contain at least the following information:

(a) the name and address of procuring entity;

(b) an appropriate description of the assignment providing scope of the intellectual and professional services required;

(c) deadline and place of the submission of expression of interest; and

(d) criteria for short-listing where required.

26. Criteria for short-listing of consultants

[“(1) Whenever short-listing is deemed necessary, the procuring entity shall pre-determine criteria for short-listing. Except for single source, there shall be minimum three (03) and maximum six (06) consultants, with highest ranking fair bids as defined under clause (c) of sub-section (1) of section 2 of the Act, in the short-list. However, if less than three candidates apply, their proposals may be considered on merit.”; and]

(2) The procuring entity while short-listing consultants may take the following factors into consideration, namely:

(a) qualification;

(b) general experience; or

(c) specific experience, particularly of the last five years; or

(d) any other factor that a procuring entity may deem relevant, not inconsistent with these rules.

(3) All applicants shall be informed whether or not they have been short- listed.

52 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

[“(4) The procuring entity may decide to include enlistment as a short-listing criteria in contracts less than rupees one hundred (100) million.”.]53

27. Request for Proposals (RFP)

(1) [“when a procuring entity calls for expression of interest it”]54 shall make available to all the short-listed consultants, together with the request for proposals, all information on the equal opportunity basis.

[“(1A) A procuring entity may call for request for proposal which shall be advertised, giving to the bidders at least fifteen (15) days for national competition and thirty (30) days for international competition to submit their proposals to provide consultancy services.”; and]55

[“(2) A procuring entity may call for request for proposal without calling expression of interest for seeking proposals from consultants whether shortlisted or enlisted or prequalified or not, which shall include the following, namely:

(a) letter of invitation (LOI),---the letter of invitation shall mention the name and address of the procuring entity and shall state the intention of the procuring entity to enter into a contract for provision of consulting services;

(b) instruction to consultants,---the instructions to consultants shall contain all necessary information that would help them prepare responsive proposals and shall bring as much transparency as possible to the selection system;

(c) terms of reference (TOR),---the terms of reference shall unambiguously define the objectives, goals and scope of the assignment besides conditions of contract. Terms of reference shall list the services and surveys necessary to carry out the assignment and expected outputs. It shall also include the evaluation criteria;

(d) evaluation criteria,---except as otherwise provided, the evaluation of proposals shall be carried out giving due consideration to quality and cost;

(e) type of contract,---the procuring entity, depending on the circumstances, may use one of the following types of contract, namely:

53 — New sub-rule “(4)” added, Vide Finance Department Notification No. SO (FR)/FD/ 9-7/2017/17449-Vol- I dated 08.02.2018.

54 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

55 — New sub-rule “(1A)” inserted, Vide Finance Department Notification No. SO (FR)/FD/ 9-7/2017/17449- Vol-I dated 08.02.2018.

(i) lump sum contract will be used mainly for assignments in which the content, duration of the services and the required output are unambiguously defined;

(ii) time based contract will be used when it is difficult to define the scope and the length of services;

(iii) hourly or daily rates will be used for small projects, especially when the assignment is for less than a month; and

(iv) any other, based on combination of the above and including out of pocket expenses, where required; and

(f) special provisions,---the procuring entity may specify any other requirement related to the assignment or contract etc, where required.”.]56

(3) The procuring entity will invite the prospective consultants to submit their technical and financial proposals in separately sealed envelopes. The procuring entity shall give deadline for submission of proposals. Consultants shall be given adequate time for preparing their proposals which shall not be less than [two weeks]57.

28. Selection process of individual consultants

(1) Individual consultants may not be required to submit proposals, and shall be selected based on their qualifications for the assignment.

(2) Individual consultants shall be selected by comparing the qualifications of at least three consultants among those who have expressed interest in the assignment or have been approached directly by the procuring agency. Individual consultants considered for the comparison of qualifications shall meet the minimum relevant qualifications, and the one selected to be employed by the procuring agency shall be the best qualified and shall be fully capable of carrying out the assignment.

(3) An individual consultant may be selected on a single-source basis (with due justification) in exceptional cases; such as the following--

(a) for a task that is a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively;

(b) in an emergency situation resulting from a natural disaster; and

(c) when the individual is the only consultant qualified for the assignment.

56 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

57 — Substituted by KPPRA Notification No. KPPRA/M&E/Estt:/1-3/2015-16 dated Dec 15, 2015.

(4) For key assignments, interviews may be set up, and invited candidates should be paid travel and subsistence, as needed. Capability of the candidates should be evaluated.

29. Professional liability of consultants

(1) The consultant selected and awarded a contract shall be liable for consequence of errors or omissions on its part. The extent of liability of the consultant should be incorporated in the contract and in no case should it be less than remunerations excluding the out of pocket expenses, nor should the liability exceed twice the remunerations.

(2) The procuring entity may demand insurance on part of the consultant to cover its liability as stated above, and necessary costs shall be borne by the consultant which shall be re-imbursed by the procuring entity as out of pocket expenses by the consultant.

(3) The consultant shall be held liable for all losses or damages and short comings in deliverance etc, suffered by the procuring entity as a result of mis-conduct or inadequate services in performing the consulting services.

CHAPTER V
MISCELLANEOUS PROVISIONS

30. Procurement planning

Each procuring entity shall plan its procurements with due consideration to transparency, economy, efficiency and timeliness, and shall ensure equal opportunities to all prospective bidders in accordance with section 22 of the Act.

31. [“Limitation on splitting or regrouping of proposed procurement

A procuring entity shall announce all proposed annual procurements on the Authority’s website and on their own website before the end of 31st July each year and shall proceed accordingly without any splitting or regrouping of the procurements so planned, unless the procuring entity is satisfied that-

(a) block acquisition of goods, services or works shall unnecessarily hold up available resources;

(b) technical reasons indicate that packaging shall improve manageability and quality; and

(c) the impact of weather, geographical spread on certain procurement, particularly in case of works contract, shall affect its execution with regard to quality and delivery schedule.”.]58

31A. Framework Contract

(1) The procuring entity may procure goods, services and works by entering into a framework contract through open competition, if the

58 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

required procurement object cannot be determined at the time of initial procurement process or advertisement and where economy of scale may incur better procurements.

(2) The duration for the framework contract shall be for one year, extendable to another year up-to a maximum of three years; provided that every extension shall be approved by a committee, notified by the Administrative Department, to determine competitiveness and assess value for money.”.]59

32. Procurement committees

(1) Each procuring entity shall constitute committees, in accordance with delegation of financial powers, separately for procurement of goods, works and services.

(2) The committees shall have a representative each from the accounts or finance or planning sections of the procuring entity apart from others.

(3) A technical member shall be inducted from the relevant line department of Government or hired in all procurements of works or in exceptional cases, provided that procurement is technical and complex in nature.

32A. Enlistment

(1) Each Department of Government shall constitute a sub- committee, consisting of five members with the chairperson, not below the rank of BPS- 19, for scrutinizing credentials, submitted to it by the prospective bidders, before referring to the Provincial Enlistment and Pre-registration Committee for enlistment or renewal, as the case may be.

(2) After scrutinizing, the sub-committee shall recommend to the Provincial Enlistment and Pre-registration Committee that the prospective bidder may be registered, renewed or rejected, as the case may be, and the Provincial Enlistment and Pre- registration Committee shall give its final decision of enlistment, registration and rejection, within five working days:

> Provided that the sub-committee, while recommending the rejection of a prospective bidder to the Provincial Enlistment and Pre-registration Committee shall also record reasons for such rejection.

(3) Subject to the approval of Government, the sub-committee shall determine the applicable fee for registration or renewal, from time to time. However, the period of such enlistment and pre-registrations shall be decided by the Provincial Enlistment and Pre-registration Committee.

(4) The criteria for enlistment of prospective bidders shall be based on evaluation of technical and financial capabilities of the bidders, as may be determined by the sub-committee, so constituted.

(5) The criteria and list of prospective bidders, so enlisted, shall be posted on the web sites of the Authority, Department of Government and Provincial Enlistment and Pre-registration Committee, as well as on a notice board placed in the respective procuring entity at an accessible site for public viewing.

59 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(6) The process of enlistment shall be open throughout the year and any prospective bidder shall be allowed to apply for enlistment, with sub-committee without any hindrance.

(7) Bidding shall be limited to enlisted bidders only.

(8) Enlistment shall not be deemed as pre-qualification or post- qualification.”.]60

32B. Functions and responsibilities of procurement committees

The following shall be the functions and responsibilities of the procurement committees:

(a) preparing bid solicitation documents and overseeing to ensure consistency of procurement proceedings with rules;

(b) carrying out technical as well as financial evaluation of the bids;

(c) preparing evaluation report as provided in these rules;

(d) making recommendations for the award of contract to the competent authority concerned;

(e) constitute sub-committees for technical evaluation; and

(f) perform any other function ancillary and incidental to the above.”.]61

33. Bid solicitation documents

[“(1) A procuring entity shall apply the standard bidding documents while preparing bid solicitation documents as are applicable and in accordance with the provision of the Act, these rules and regulations, for the time being in force.”; and]62

(2) In case of procurement of works, solicitation documents shall contain technical specifications, drawings and designs, bill of quantities and estimated costs whatever applicable, evaluation criteria, expected commencement of contract and time period for completion, bid validity, securities demanded, payment schedule, general and special conditions of contract [deleted].63

(3) In case of procurement of goods and services, including consulting services, the standard bidding document shall include scope of work and terms of reference, the evaluation criteria, the extent of bid validity, quantity, quality and specifications; qualification and experience of consultants, securities, approach and

60 — New Rule “32A” inserted, Vide Finance Department Notification No. SO (FR)/FD/ 9-7/2017/17449-Vol- I dated 08.02.2018.

61 — New Rule “32B” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

62 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

63 — Deleted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

methodology, work plan and delivery schedule, pre-shipment inspection where applicable, schedule of payments and general and special conditions of the contract.

(4) Apart from the above, any other document or information or detail that the procuring entity may deem necessary, shall be included in the solicitation documents, unambiguously.

(5) Solicitation documents shall be made available to the bidders from the date of their issuance to the closing date on submission of required fee by the prospective bidder whether in person or, if so requested through an authorized request in writing. In case the request is made through courier, it shall accompany a bank draft in favor of the procuring entity including the cost of return delivery.

(6) In case where the procuring entity deem necessary may, keep a time period ending earlier than the closing date of tender or bid, for obtaining bid solicitation documents, provided that it is not less than the minimum response time provided in rule 34.

(7) In case of modification of solicitation documents by the procuring entity in accordance with section 23(9) of the Act, it shall do so by issuing an addendum or corrigendum and intimate the bidders publicly or individually, in case it has issued the solicitation documents, 5 days before the closing date. In case, the changes are substantial, the time for submission may be extended proportionately, by issuing timely intimation to all bidders.

34. Response time

(1) The procuring entity may decide the response time for receipt of bids or proposals including proposals for pre-qualification from the date of publication of an advertisement or notice, keeping in view the contract's complexity, and urgency. However, under no circumstances the response time shall be less than fifteen days for national competitive bidding and thirty days for international competitive bidding from the date of publication of advertisement ["on Authority's website or notice in the national newspaper whichever is later, as the case may be."]64

(2) The response time shall be calculated from the date of first publication of the advertisement in a newspaper or posting on the ["Authority's web site, whichever is later, as the case may be."]65 (3) In situations where publication of such advertisements or notices has occurred in both electronic and print media, the response time shall be calculated from the day of its first publication in the newspapers ["whichever is later"]66.

34A. Procurement under urgency situations

(1) A procuring entity may engage in negotiation with one or more suppliers, contractors or consultants for procurement under urgency situations, without publication of a tender notice. This procedure shall only be

64 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

65 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

66 — Added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

adopted under extreme urgency brought about by events unforeseeable by the procuring entity, the time limits laid down for open competitive bidding cannot be met and the circumstances invoked to justify extreme urgency, must not be attributable to the procuring entity:

> Provided that any procuring entity, intending to use urgency provision as a method of procurement, shall record its reasons and justifications, in writing, and shall place the same on record with intimation to Administrative Secretary.".]67

35. Bid validity

(1) Bidders shall be required to submit bids valid for a period specified in the bid documents which shall be sufficient to enable a procuring entity to complete the evaluation and comparison of bids and obtain all necessary approval so that a contract can be awarded within that period.

(2) A procuring entity shall complete evaluation of bids and award of contract within the initial period of bid validity. An extension of bid validity, if justified by exceptional circumstances, shall be required in writing from all bidders before the expiry date. Bidders consenting to extend their bid validity period shall also correspondingly extend the validity of their bid security.

(3) A bidder not agreeing to extend its bid validity period may do so without having his bid security, forfeited and in this case its bid will no longer be considered in the evaluation proceedings.

(4) The bid security shall be forfeited if a bidder withdraws his bid, with in the validity period thereof or, in the case of a successful bidder, who repudiates the contract or fails to furnish performance security.

36. Pre-qualification process

(1) The procuring entity engaging in pre- qualification shall announce, in the pre-qualification documents, all information required for pre-qualification including instructions for preparation and submission of the pre- qualification documents, evaluation criteria, list of documentary evidence required of contractors or consultants to demonstrate their respective qualifications and any other information that the procuring entity deems necessary for pre-qualification.

(2) The procuring entity shall provide a set of pre-qualification documents to any contractor or consultant, on request and subject to payment of document fee if applicable, which shall not exceed cost of printing and providing the documents.

(3) The procuring entity shall promptly notify each contractor or consultant submitting an application to pre-qualify whether or not it has been pre-qualified and shall make available to any person directly involved in the pre-qualification process, upon request, the names of all contractors or consultants who have been pre-qualified. Only contractors or consultants who have been pre-qualified shall be entitled to participate.

67 — New Rule “34A” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(4) The procuring entity shall communicate on request, to those contractors or consultants who have not been pre-qualified the reasons for not pre-qualifying them.

37. Submission of bids and bid opening

(1) Bids shall be invited through a procuring officer of the procurement entity.

(2) A procuring entity shall require bidders to submit sealed written bids or in such other manner as may be prescribed in the solicitation documents. [“The procuring entity shall also specify the place for submission of such bids.”.]68

(3) The procuring entity shall issue the bidder with a receipt showing the date and time when the bid was received.

(4) No bids or tenders received after the prescribed time and date in the solicitation documents or in accordance with subsequent corrigendum, shall be entertained.

(5) The method for submission of bids shall be determined by the type, complexity and evaluation method of the procurement in accordance with these rules.

(6) All announcements pertaining to public procurement shall specify the last date for submission of bids as well as the public bid opening which shall be the same.

(7) The bids, technical or financial as the case may be, shall be opened at the prescribed time provided in the solicitation documents in the presence of the procurement committee and the bidders who choose to be present.

(8) The name of the bidder, bid modifications, discounts or withdrawals, presence of bid security or affidavit as the case may be and the total amount of each bid and any alternatives, if so permitted, shall be read out aloud and recorded, and a copy of the record shall be made available to any bidder on request.

(9) No bidder shall be allowed to withdraw his bid till award of the contract or till bid is valid, whichever is earlier.

(10) A procuring entity may ask bidder for clarification of the bid to assist in the evaluation. To avoid delays, the procuring entity may hold a pre-bid conference with the prospective bidders at least five working days before the last day for submission of bids if the procurement is of complex nature and high value.

37A. Registration with Khyber Pakhtunkhwa Revenue Authority

All bidders, for the purposes of works and consulting and non-consulting services shall be registered with the Khyber Pakhtunkhwa Revenue Authority, established under the Khyber Pakhtunkhwa Revenue Authority Act, 2022 (Khyber Pakhtunkhwa Act No. XVIII of 2022).”.]69

68 — Added, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

69 — Substituted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

37B. Unsolicited proposal

(1) In case of unsolicited proposal received for any engineering, procurement and construction project, the procuring entity shall technically and financially evaluate the proposal to ascertain its viability and after such process if the proposal is found viable, the procuring entity, with the approval of Government,-

(a) shall advertise the proposal for open competition without disclosing the name of the initiator of unsolicited proposal;

(b) shall conduct prequalification process;

(c) shall exempt the initiator of the unsolicited proposal from the prequalification;

(d) may award the contract to the initiator of the proposal, if no other bidder in response to the advertisement submits bid;

(e) shall give first right of refusal to the initiator, if he does not emerge as the lowest bidder, in case of bidding competition; and

(f) shall award five percent additional weightage to the initiator of the proposal from the combined score of technical and financial evaluation.

(2) Approval for the unsolicited proposal granted by Government, shall be published in the print media prior to the award of contract.".]70

38. Confidentiality

The procuring entity shall keep all information regarding the bid evaluation confidential until the time of the announcement of the evaluation report in accordance with the requirements of rule 45 of these rules.

39. Bid evaluation

(1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the bidding documents.

(2) For the purpose of comparison of bids quoted in different currencies, price shall be converted into a single currency specified in the bidding documents. The rate of exchange shall be the selling rate prevailing seven working days before the date of opening of the bids specified in the bidding documents, as notified by the state bank of Pakistan.

(3) A bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issuance of notice for invitation of bids.

40. Discriminatory and difficult conditions

Save as otherwise provided, no procuring entity shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.

70 — New Rules “37A & 37B” inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

41. [“International competitive bidding”]71

When, in the absence of domestic capacity, effective competition cannot be obtained unless special efforts are made to attract international competition, international competition may be solicited in accordance with the provisions of the Act complemented with the following provisions:

(a) the tender documents shall be in English language;

(b) the invitation to tender shall be in English language and shall be placed in a newspaper of sufficient circulation to attract foreign competition and may also be placed on international web pages famous for international bidding advertisement. In addition, a procuring entity may transmit such invitations to their embassies and trade representatives of potential supplier countries;

(c) the time allowed for submission of tenders shall be sufficient for the invitation to reach bids, depending on the complexity and nature of procurement and for enabling them to prepare and submit bids but in no case less than thirty days;

(d) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade;

(e) bidders shall be permitted to express their bids, as well as any bid and performance security documents to be presented by them in their respective home currencies or in a currency widely used in international trade and stated in the solicitation documents;

(f) general and special conditions of contract shall be of a kind generally used in international trade; and

(g) standard bidding documents (SBDs) for goods, works and services shall be used for international competitive bidding (ICB) as well.

41A. Procurement from multilateral or bilateral agencies

(1) The procuring entity may directly engage with multilateral or bilateral agencies, which are exceptionally qualified to provide technical assistance in their areas of expertise, for provision of goods or services. The multilateral or bilateral agencies shall, however, be engaged when there are capacity constraints and engaging them for provision of technical assistance is prudent in terms of time and value for money.

(2) The procuring entities may also agree with multilateral or bilateral agencies on special payment provisions, required according to multilateral or bilateral agency's charter.

(3) The multilateral or bilateral agencies shall, however, not receive any

71 — Substituted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

preferential treatment in a competitive process when applied as a bidder.".]72

42. Post bid negotiation

Procuring entity may negotiate with the highest ranked bidder regarding methodology, work plan, staffing and special conditions of the contract. In case of consulting services the procuring agency shall not permit substitution of key staff, unless both parties agree that undue delay in selection process makes such substitution unavoidable. Similarly, negotiations shall not seek changes in the rates quoted by the bidder. In case of failure of negotiations, the procuring agency may invite the second ranked bidder as per the evaluation report.

42A. Provision for negotiations on price

In case of single complying bid, the procuring entity may conclude the procurement contract through negotiation on quality upgrades, mode and schedule of delivery or cost reduction. In case the bid price is above engineer estimates or market analysis report, conducted by the procuring entity, after due diligence, in such eventuality, the successful bidder shall be asked to match that price in order to protect public interest and to ensure general principle of timelines for procurement as enunciated in section 3 of the Act.".]73

43. Disqualification of suppliers, contractors and consultants

The procuring entity shall disqualify a supplier or contractor or consultant if it finds, at any time, that the information submitted by him concerning his qualification as supplier or contractor was false and

materially inaccurate or incomplete. However, the bidder may have right to appeal against the decision in accordance with section 35 of the Act and grievances redressal mechanism framed under the Act.

44. Blacklisting of suppliers, contractors and consultants

(1) The procuring entity shall specify a mechanism and manner to permanently or temporarily bar, from participating in their respective procurement proceedings, suppliers contractors and consultants who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices or abandon the work prematurely resulting in loss to Government . Such barring action shall be duly publicized and communicated to the Authority, provided that any contractor or consultant who is to be blacklisted shall be accorded adequate opportunity of being heard in person.

(2) The bidder will have a right to complain to the administrative Secretary of the procuring entity or to file an appeal to the Authority in accordance with section 35 of the Act and regulations or guidelines to be framed under it.

[“Explanation.---“Corrupt and fraudulent practices” means either one or any combination of the practices given below: (i) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

72 — New Rule “41A” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

73 — New Rule “42A” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

(ii) “collusive practice” means any arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring entity to establish prices at artificial, non-competitive levels for any wrongful gain; impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;

(iii) “corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain; and

(iv) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(v) “obstructive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or

making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights provided for under these rules.".]74

45. Announcement of evaluation reports

Procuring entities shall announce the results of technical bid evaluation in the form of a report before opening of the financial bids, to all bidders. The procuring entity shall also announce the final results of a bid evaluation giving justification for acceptance or rejection of bids at least ten days prior to the award of a contract and place the same on its and Authority website.

46. Approval of contract award

(1) The procurement committee shall submit the bid evaluation report with its recommendations for award of contract, to the approving authority in accordance with the delegation of powers under the financial rules and the power of re-appropriation rules 2001, in an expeditious manner, so that the award can be notified before expiry of the bid validity period, without having to seek extension, in conformity with the provisions of section 31 of the Act and these rules.

(2) All contract awards shall be made public through publication on Authority website.

47. Rejection of bids

(1) The procuring entity may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring entity shall upon

74 — Explanation inserted, Vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449-Vol-I dated 08.02.2018.

request communicate to any contractor or consultant who submitted a bid or proposal, the grounds for rejection of all bids or proposals.

(2) The procuring entity shall incur no liability, solely by virtue of its invoking sub- rule (1) towards contractors or consultants who have submitted bids or proposals.

(3) Notice of the rejection of all bids or proposals shall be given promptly to all contractors or consultants that submitted bids or proposals.

48. Re-bidding

(1) If the procuring entity has rejected all bids under rule 47 it may call for a re-bidding.

(2) The procuring entity before invitation for re-bidding shall assess the reasons for rejection and may revise specifications, evaluation criteria or any other condition for bidders as it may deem necessary.

49. Payments

All procuring agencies shall make prompt payments to contractors and consultants against their invoices or running bills within the time given in the conditions of the contract.

49A. Community participation in procurement

Government may, in order to achieve certain specific social objects, call for the participation of the local community or philanthropic organizations to-

(a) perform civil works and the delivery of non-consulting services;

(b) increase the utilization of local know-how, goods, and materials; and

(c) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations; provided that these are acceptable to the Authority.".]75

50. Entry into force of the procurement contract

A procurement contract shall come into force- (a) where no formal signing of a contract is required, from the date the notice of the acceptance of the bid or purchase order has been given to the bidder whose bid has been accepted. Such notice of acceptance or purchase order shall be issued within 15 days thereof; or

(b) where the procuring entity requires signing of a written contract, from the date on which the signatures of both the procuring entity and the successful bidder are affixed to the written contract. Such affixing of signatures shall take place within 15 days after the letter of acceptance or award has been issued:

75 — New Rule "49A" inserted, Vide Finance Department Notification No. SO (FR)/FD/ 9-7/2017/17449-Vol- I dated 08.02.2018.

> Provided that where the coming into force of a contract is contingent upon fulfillment of a certain condition or conditions, the contract shall take effect from the date whereon such fulfillment takes place.

50A. Restriction on disposal of public assets to employees

The competent authority concerned shall not dispose-of any public assets to an employee of the procuring entity or a member of a board or committee of the entity.]76

50B. Approval of disposal of public asset

(1) Approval for the disposal of movable or immovable public assets shall be granted by the Competent Authority on the recommendation of respective Assets Disposal Committee.

(2) The competent authority concerned shall pay due regard to repair of goods, wherever practicable and economically viable, before disposing it of by tender. The competent authority concerned shall opt for disposal only after ascertaining the estimated reserve price, considering the market analysis with a view that the most advantageous returns can be obtained for the asset in order to maximize revenue accruing to Government.]77

50C. Modes of disposal of public assets

The modes of the disposal of public assets shall include, but not limited to the following, namely:

(a) sale of moveable and rental;

(b) lease out and hire-purchase;

(c) licenses and tenancies;

(d) franchise and auction (open ascending price auction and sealed bid auction);

(e) lay off intellectual or proprietary rights and goodwill; and

(f) transfer from one Government Department to another with or without financial adjustments.]78

50D. Disposal proceedings

(1) The head of procuring entity shall constitute an Assets Disposal Committee, for carrying out disposal of assets. The composition of the Assets Disposal Committee shall be odd in number and decision shall be made on simple majority basis.

(2) The procuring entity shall determine the baseline or reserve price of the

76 — New Rule “50A” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

77 — New Rule “50B” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

78 — New Rule “50C” inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

assets to be disposed of at the onset of the disposal process, keeping in view book value of the asset. The basis for valuation shall always be market value, taking into account that assets shall be sold on “as is, where is basis” without warranties.

(3) The procuring entity shall invite asset buyers to submit the offers through hoisting an auction or disposal notice on the website of the procuring entity and Authority respectively. The same shall also be advertised in print media, if reserve price of the assets, to be auctioned, exceeds rupees one million.

(4) The method of calculating response time shall be the same as that of procurement as defined in these rules.

(5) The solicitation documents shall contain details regarding eligibility requirements of bidders, description of the assets, their locations and conditions for sale, validity of the offer, bid security, evaluation criteria, reserve price of the asset, with taxes where applicable and the contract specimen, containing terms and conditions of the disposal contract along with general and specific conditions of the contract.

(6) The Asset Disposal Committee shall evaluate the bids in accordance with predefined criteria and in manner specified in the asset disposal documents.

(7) The Competent Authority, on recommendation of the Asset Disposal Committee, shall award the contract to the bidder with highest quoted bid.

(8) In case of bid tie, the procuring entity shall invite a revised bid from only those bidders who have quoted same rates and contract shall be awarded to the bidder quoting revised highest bid.

(9) A bid so revised as above, shall only contain a revised quoted rate or price and the bidder shall not be permitted to change the terms and conditions, technical details, documentation or any other aspects of their original bid.

(10) For open ascending price auction, the bidders shall be permitted for multiple bids and contract shall be awarded to the highest bidder on spot.

(11) In case the highest price bidder fails to sign the disposal contract, the procuring entity shall forfeit the bid security and may offer the next highest bidder for award of contract and so on, unless the quoted price is above reserved price.

(12) The procuring entity may negotiate for award of contract with successful bidder, including maximization of price, for the benefit of public exchequer.".]79

51. Closing of contract

(1) Except for defect liability or maintenance by the contractor or consultant, as specified in the conditions of contract, performance of the contract shall be deemed close on the issue of over all delivery certificate or taking over certificate which shall be issued within thirty days of final taking over of goods, or

79 — New Rule "50D" inserted, Vide Finance Department Notification No. SO (A)/FD/1-40/2022, dated 17.08.2022.

receiving the deliverables or completion of works enabling the contractor or consultant to submit final bill.

(2) In case of defect liability or maintenance period, defect liability certificate shall be issued within thirty days of the expiry of the said period enabling the contractor or consultant to submit the final bill. Except for unsettled claims, the bill shall be paid within the time given in the conditions of contract, which shall not exceed sixty days to close the contract.

(3) Relevant provision for closing of contract shall be a part of the bid solicitation document.

52. Record of procurement proceedings

(1) All procuring entities shall maintain a record of their respective procurement proceedings along with all associated documentation.

(2) Such maintenance of record shall be subject to the regulations framed in this regard from time to time.

53. Public access and transparency

As soon as a contract has been awarded, the procuring entity shall make all documents related to the evaluation of the bid and award of public contract:

> Provided that where the disclosure of any information related to the award of a contract is of proprietary nature or where the procuring entity is convinced that such disclosure shall be against

the public interest, it can withhold only such information from public disclosure subject to the prior approval of the administrative department.

54. Mis-procurement

Any breach of these rules shall account to mis-procurement and the person responsible for such breach shall be liable to be proceeded under the relevant law.

55. Repeal

The Khyber Pakhtunkhwa Procurement of Goods, Works and Services Rules, 2003 is hereby repealed.

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

— End —

This is the official English text of the KPPRA Rules 2014, as amended up to 17 August 2022. The official Gazette notification governs in case of any difference.