



# **SINDH PUBLIC PROCUREMENT RULES, 2010 (Revised 2013)**

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GOVERNMENT OF SINDH  
SERVICES, GENERAL, ADMINISTRATION AND  
COORDINATION DEPARTMENT  
(REGULATION WING)  
Karachi, dated 8<sup>th</sup> March, 2010

**NOTIFICATION**

Notification No: 2-30/2010/2010 - In exercise of the powers conferred by Section 26 of the Sindh Public Procurement Act, 2009, the Government of Sindh are pleased to make the following rules:

**1. Short title and commencement**

- (1) These rules shall be called the Sindh Public Procurement Rules, 2010.
- (2) They shall come into force at once.
- (3) They shall be applicable throughout the province.

**Part I - GENERAL PROVISIONS.**

**2. Definitions**

- (1) In these rules, unless there is anything repugnant in the subject or context;
  - (a) **“Act”** means Sindh Public Procurement Act, 2009;
  - (b) **“Authority”** means the Sindh Public Procurement Regulatory Authority established under Section 3 of Sindh Public Procurement Act, 2009;
  - (c) **“Best Evaluated Bid”** means in case of Public Private Partnership projects, a bid, which attains the highest score under criteria laid down in Rule 84, read with respective bidding documents;
  - (d) **“Bid”** means a tender, or an offer by a person, consultant, firm, company or an organization expressing willingness to undertake a specified task at a price, in response to an invitation by a Procuring Agency;
  - (e) [ XXX ]<sup>1</sup>
  - (f) [ XXX ]<sup>2</sup>
  - (g) **“Bidding Documents”** means the documents notified by the Authority for preparation of bids in uniform manner;<sup>3</sup>

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<sup>1</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>2</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>3</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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- (h) **“Bidding Process”** means the procurement procedure under which sealed bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract;
- (i) **“Blacklisting”** means barring a bidder, contractor, consultant or supplier from participating in any future procurement proceedings by the procuring agency;
- (j) **“Calendar Days”** means days including all holidays;
- (k) **“Competent Authority”** means an officer of the Procuring Agency empowered to exercise financial powers and approve the award of contract for procurement of goods, works or services, as the case may be;
- (l) **“Conflict of Interest”** means -
  - (i) where a contractor, supplier or consultant provides, or could provide, or could be perceived as providing biased professional advice to a procuring agency to obtain an undue benefit for himself or those affiliated with him;
  - (ii) receiving or giving any remuneration directly or indirectly in connection with the assignment except as provided in the contract;
  - (iii) any engagement in consulting or other procurement activities of a contractor, consultant or service provider that conflicts with his role or relationship with the procuring agency under the contract;
  - (iv) where an official of the procuring agency engaged in the procurement process has a financial or economic interest in the outcome of the process of procurement, in a direct or an indirect manner;
- (m) **“Consultant”** means a professional who can study, design, organize, evaluate and manage projects or assess, evaluate and provide specialist advice or give technical assistance for making or drafting policies, institutional reforms and includes private entities, consulting firms, legal advisors, engineering firms, construction managers, management firms, procurement agents, inspection agents, auditors, international and multinational organizations, investment and merchant banks, universities, research institutions, government agencies, non-governmental organizations, and individuals;
- (n) **“Consulting Services”** means services of an advisory and intellectual nature provided by consultants using their professional skills to study, design, organize, and manage projects, encompassing multiple activities

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and disciplines, including the crafting of sector policies and institutional reforms, specialist advice, legal advice and integrated solutions, change management and financial advisory services, planning and engineering studies, and architectural design services, supervision, social and environmental assessments, technical assistance, and programme implementation;

- (o) **“Contract”** means an agreement enforceable by law and includes General and Special Conditions, Specifications, Drawings and Bill of Quantities;
- (p) **“Contractor”** means a person, firm, company or organization that undertakes to execute works including services related thereto, other than consulting services, incidental to or required for the contract being undertaken for the works;
- (q) **“Corrupt and Fraudulent Practices”** means either one or any combination of the practices given below;
  - (i) **“Coercive Practice”** means any impairing or harming, or threatening to 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;
  - (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 agency to establish prices at artificial, noncompetitive levels for any wrongful gain;
  - (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;
  - (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 the Rules.

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- (r) **“Emergency”** means 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 person(s), property or the environment;
- (s) [ XXX ]<sup>4</sup>
- (t) **“Government”** means the Government of Sindh;
- (u) **“Head of the Department”** means the administrative head of the department or the organization;
- (v) **“Lowest Evaluated Bid”** means a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document, having lowest evaluated cost;]<sup>5</sup>
- (w) **“Lowest Submitted Price”** means the lowest price quoted in a bid, which is otherwise not substantially responsive;
- (x) [ XXX ]<sup>6</sup>
- (y) **“National Company or Firm”** means any enterprise, firm or company set up or incorporated in Pakistan;
- (z) **“Notice Inviting Tender”** means the notice issued by a Procuring Agency through publication in the newspapers or through electronic means for the purpose of inviting bids, or applications for pre-qualifications, or expression of interests, which may include Tender Notice, Invitation for Bids, Notice for Pre-qualifications or Request for Expression of Interests;
- (aa) **“Open Competitive Bidding”** means a fair and transparent specified procedure defined under these Rules, advertised in the prescribed manner, leading to the award of a contract whereby all interested persons, firms, companies or organizations may bid for the contract and includes both National and International Competitive Biddings;
- (bb) [ XXX ]<sup>7</sup>
- (cc) [ XXX ]<sup>8</sup>
- (dd) **“Public Private Partnership”** means a contractual arrangement between the public and private sectors, built on the expertise and

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<sup>4</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>5</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>6</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>7</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>8</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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resources of each partner that best meets clearly defined public needs through appropriate allocation of resources, risks and rewards;

- (ee) **“Public Private Partnership Unit Sindh” or “Unit”** means the entity established within the Finance Department, Government of Sindh under the Public Private Partnership institutional framework;
- [(eee) **“Response time”** means, the period starting from the first date of issuance of bidding up to last date of issuance of bidding documents;]<sup>9</sup>
- (ff) [ **XXX** ]<sup>10</sup>
- (gg) **“Services”** means any object of procurement other than goods or works, and includes consultancy services;
- (hh) [ **XXX** ]<sup>11</sup>
- (ii) **“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;
- (jj) **“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 agency’s requirements.
- (kk) [ **XXX** ]<sup>12</sup>

(2) The expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Act and, if not defined there, as in the ordinary usage of language.

**3. Scope and Applicability** - Save as otherwise provided, these rules shall apply to all procurements for goods, works, services including consultancy services and public private partnership projects, carried out by all procuring agencies.

**4. Principles of Procurements** - While procuring goods, works or services, procuring agencies shall ensure that procurements are conducted in a fair and transparent manner and the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

**5. Conflict with International and Inter-Governmental Agreements** - In the event that these rules are inconsistent with, or in conflict with, any obligation or commitment of Government arising out of an international treaty or an agreement with a foreign country or countries, or any international financial institution, the provisions of such international treaty

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<sup>9</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>10</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>11</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>12</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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or agreement shall override the provisions of these Rules to the extent of that inconsistency or conflict as the case may be.

### **6. Language**

(1) All communications and documentation related to procurements of Government shall be in English, Urdu or Sindhi:

Provided that notice inviting tenders, notices for pre-qualifications and request for expressions of interest shall be issued in aforementioned three languages.

(2) In case of any dispute reference shall be made to the original documentation retained on record and decision shall be made in accordance with such original documentation.

**7. Constitution of a Procurement Committee** - The procuring agency shall, with approval of its Head of the Department, constitute as many procuring committees, as it deems fit, each comprising odd number of persons and headed by a gazetted officer not below the rank of BS-18, or if not available, the officer of the highest grade, and shall ensure that at least one third of the members of a procurement committee are from the agencies or departments other than the procuring agency.

**8. Functions and Responsibilities of Procurement Committee(s)** - Procurement committee(s) shall be responsible for;

- (1) Preparing bidding documents;
- (2) Carrying out technical as well as financial evaluation of the bids;
- (3) Preparing evaluation report as provided in Rule 45;
- (4) Making recommendations for the award of contract to the competent authority; and
- (5) Perform any other function ancillary and incidental to the above.

## **MAINTENANCE OF RECORD**

### **9. Record of Procurement Proceedings**

(1) All procuring agencies shall maintain a record of their respective procurement proceedings along with all associated documentation for a minimum period of five years;

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

**10. Transparency** - The procuring agency shall, immediately upon award of contract, make the evaluation report of the bid, and the contract agreement public through hoisting on the Authority's website as well as on procuring agency's website, if the procuring agency has such a website;

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Provided where the procuring agency is convinced that disclosure of any information related to the award of a contract shall be against the public interest or may jeopardize national security, it can withhold only such information from public disclosure, subject to the prior approval of the Government.



## **Part II – PROCUREMENT OF GOODS, WORKS AND RELATED SERVICES**

### **PROCUREMENT PLANNING**

#### **11. Procurement Plan**

(1) **Mandatory Provision of Procurement Plan** - All procuring agencies shall devise a mechanism for planning in detail for all proposed procurements, determining the requirement of the procuring agency, within its available resources, and prepare an annual or a longer term rolling plan, detailing the procurement methods applicable for specific procurements;

(2) **Review and Update** - The procurement plan prepared for any project shall be reviewed and updated throughout the life of the project, such as estimates of time requirements, availability of funds, assumptions about institutional capacity, changing priorities and other factors that require plan adjustments for the success of the project. Such required adjustments will not invalidate the plan if made for improving the plan in the interests of the successful and timely completion of the project.

#### **12. Limitation on Splitting or Regrouping of Proposed Procurement**

(1) Save as otherwise provided and subject to the regulations made by the Authority, a procuring agency shall prepare, in accordance with Rule 11 above, all proposed procurements for each financial year and shall proceed accordingly without any splitting or regrouping of the procurements already grouped, allocated and scheduled in the Procurement Plan;

(2) The annual or longer rolling plan, as the case may be, thus prepared, will be posted in advance on the Authority's website as well as on website of the procuring agency, in case the procuring agency has its own website.

#### **13. Specifications**

(1) Specifications shall allow the widest possible competition and shall not favour any single contractor or supplier nor put others at a disadvantage. Specifications shall be generic and shall not include references to brand names, model numbers, catalogue numbers or similar classifications. However, if the procuring agency is convinced that the use of a reference to a brand name or a catalogue number is essential to complete an otherwise incomplete specification, such use or reference shall be qualified with the words "or equivalent".

(2) Procurement of used or reconditioned equipment, plant or machinery is not permissible in any case whatsoever.

**14. Approval Mechanism** - All procuring agencies shall provide clear authorization and delegation of powers for different categories of procurement and shall only initiate procurements once approval of the competent authorities concerned has been accorded.

## METHODS OF PROCUREMENT

### 15. Types of Bidding

(1) **Open Competitive Bidding** - Open competitive bidding shall be the principal method of procurement, save as otherwise provided;

(2) There shall be two types of open competitive bidding, International Competitive Bidding and National Competitive Bidding.

#### (a) **International Competitive Bidding**

(i) International Competitive Bidding is open to all interested parties, firms or individuals, whether national or international, but subject to Rule 29;

(ii) International Competitive Bidding shall be the default method of procurement for all procurements with an estimated cost equivalent to US \$ 10 million or above;

(iii) a procuring agency may opt for International Competitive Bidding for procurements below the estimated cost equivalent to US \$ 10 million if it is convinced that technological sophistication, technical expertise or professional capability of the satisfactory level is not available within the country and the best value for money cannot be obtained, if competition is restricted to the domestic companies, firms or parties;

Provided that provisions of Rule 15 (2) (a) (iii) may be invoked only with prior approval of the Head of the Department.

#### (b) **National Competitive Bidding**

(i) National Competitive Bidding shall be the procedure wherein bidding is open only to interested national firms, companies or parties and international firms, companies or parties are not invited for the bidding.

(ii) National Competitive Bidding shall be the principal method of procurement with an estimated cost below US \$ 10 million or equivalent in local currency.

(iii) a procuring agency may opt for National Competitive Bidding for procurements with an estimated cost equivalent to US \$ 10 million or above, where the procuring agency is convinced that it is the most economical and timely way of procuring goods, works or services which, by their nature or scope are unlikely to attract foreign competition;

Provided that the Head of the Department of the procuring agency, while making decision to opt for the National Competitive Bidding shall record reasons and justifications for his decision.

**16. Alternate Methods of Procurements**

(1) A procuring agency may utilize following alternative methods of procurement of goods, services and works, namely:-

(a) **Request for Quotations.**

- (i) request for quotation is the method based on comparing price quotations obtained from at least three suppliers, contractors, and service providers, in the case of services other than consulting services, to assure competitive prices;
- (ii) a procuring agency shall engage in this method of procurement only if the following conditions exist;
  - (A) the cost of object of procurement is below the prescribed limit of one hundred thousand rupees and above the financial limit prescribed for petty purchase, as provided in clause (d);
  - (B) the object of procurement has standard specifications;
  - (C) the object of the procurement is purchased from the supplier offering the lowest price;
  - (D) requests for quotations shall indicate the description and quantity of the goods or specifications of works, as well as desired delivery, or completion time and place. Quotations may be submitted by letter, facsimile or by electronic means;
  - (E) the evaluation of quotations shall follow the same principles as applicable to open competitive bidding;

(b) **Direct Contracting** – This method means procurement from a single source without competition and shall only be applicable under any of the following conditions:

- (i) standardization of equipment or spare parts, to be compatible with the existing equipment,  
Provided that the competent authority certifies in writing the compatibility of the equipment or spare part(s) to be procured;
- (ii) the required item(s) is of proprietary nature and obtainable only from one source,  
Provided that the Head of the Department certifies in writing the proprietary nature of the item(s) to be procured;
- (iii) the contractor responsible for a process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee;

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- (iv) 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 work subject to clause (e) below;
- (v) where a change of supplier would oblige the procuring agency to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance,  
Provided that the competent authority certifies in writing the compatibility of the materials to be procured;
- (vi) when the price of goods and works and service related thereto, is fixed by Government or any other authority, agency or body duly authorized by the Government, on its behalf;
- (vii) for purchase of locally manufactured motor vehicle from local manufacturers or their authorized agents at manufacturer's price;
- (viii) in cases of emergency;

Provided that the Head of the Department or any other officer not below BS-20 to whom such powers have been delegated by the Head of the Department, declares that a situation of emergency has arisen and reasons for making such a declaration shall be recorded in writing.

- (c) **Force Account** – means construction by the use of the procuring agency's own personnel and equipment and shall only be used for the works under the following conditions:
  - (i) quantities of work to be done cannot be defined in advance;
  - (ii) works are small and scattered or in remote locations for which qualified construction firm(s) is unlikely to bid at reasonable prices;
  - (iii) works are required to be carried out without disrupting ongoing operations;
  - (iv) in case of emergencies ;

Provided that the competent authority declares that a situation of emergency has arisen and reasons for making such a declaration shall be recorded in writing.

- (d) **Petty Purchases** - Procuring agencies may provide for petty purchases, where the object of the procurement is below the financial

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limit of twenty five thousand rupees. Such procurement shall be exempt from the requirements of bidding or quotation of prices;

Provided that procuring agencies shall ensure that the procurement of petty purchases is in conformity with the principles of procurement prescribed in Rule 4.

- (e) **Repeat Orders** – means procurement of additional quantities of the item(s) from the original contractor or supplier, where, after the items originally envisaged for the project or scheme have been procured through open competitive bidding, and such additional quantities of the same item(s) of goods or works are needed to meet the requirements of the project or scheme;

Provided that;

- (i) the cost of additional quantities of item(s) shall not exceed 15% of the original contract amount; and
- (ii) the original supplier and contractor are willing to supply goods or carry out additional work on the same prices as agreed in the original contract.
- (iii) in case of goods, it shall be permissible only within the same financial year, and in case of works, during the currency of the project(s) or scheme(s).

## NOTIFICATION AND ADVERTISEMENTS

### 17. Methods of Notification and Advertisement

(1) Procurements over one hundred thousand rupees and up to one million rupees shall be advertised by timely notifications on the Authority's website and may in print media in the manner and format prescribed in these rules.

[(1A) All procurement opportunities over one million rupees shall be advertised on the Authority's website as well as in the newspapers as prescribed.]<sup>13</sup>

(2) The advertisement in the newspapers shall appear in at least three widely circulated leading dailies of English, Urdu and Sindhi languages.

(3) The notice inviting tender shall contain the following information:

- (a) name, postal address, telephone number(s), fax number, e-mail address (if available) of the procuring agency;

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<sup>13</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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- (b) purpose and scope of the project;
  - (c) schedule of availability of bidding documents, submission and opening of bids, mentioning place from where bidding documents would be issued, submitted and would be opened;
  - (d) amount and manner of payment of tender fee and bid security;
  - (e) any other information that the procuring agency may deem appropriate to disseminate at this stage;
- (4) In cases, the procuring agency has its own website; it shall also post all advertisements concerning procurement on that website as well;
- (5) A procuring agency utilizing electronic media shall ensure that the information posted on the website contains all the information mentioned in sub-rule (3) above;
- (6) In the case of international competitive bidding, the notice shall be advertised in two widely circulated local English language newspapers in accordance with sub-rules (1) (3) (4) and (5) above, and shall also be posted in English language on an internationally known website dedicated for the particular goods, works or services, or any widely circulated English language international newspaper.

**[18. Response Time** – The procuring agency shall give due consideration to the scope, magnitude and nature of procurement, while deciding the response time, which shall not be less than fifteen calendar days in case of National Competitive Bidding, and forty-five days in case of International Competitive Bidding:

Provided that the Notice Inviting Tender (NIT) shall have been hoisted on Authority's website in case of procurements up to rupees one million and published in newspapers in case of over rupees one million on or before the date of issuance of bidding documents".]<sup>14</sup>

**19. Exceptions** - Under following circumstances deviation from the requirements under Rules 17 and 18 is permissible;

- (1) In cases of emergency, minimum time periods, specified in Rule 18 may be reduced subject to the prior approval with reasons to be recorded by the Head of Department or an officer not below BS-20 who has been delegated such powers;
- (2) In cases of procurement related to national security, the requirement of advertisements and publication under Rule 17 may be waived, provided the Head of Department declares beforehand that such a publication could jeopardize national security objectives;
- (3) The requirement of advertisement and publication under Rule 17 may be waived in a case of procurement, if it relates to disclosure of information, which is proprietary in nature or falls within the definition of intellectual property, which is available from a single source provided that, the approval of the Head of Department has been sought beforehand.

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<sup>14</sup> Substituted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

**20. Provision of Bidding Documents**

- (1) The procuring agency shall provide the bidding documents to all interested bidders in accordance with the procedures and requirements specified in the Notice Inviting Tender;
- (2) The procuring agency may charge a fee for bidding documents, which shall not exceed the cost of preparation and printing.

**21. Contents of Bidding Documents**

- (1) The Bidding Documents shall include the following information:
  - (a) letter of invitation for bid;
  - (b) data sheet containing information about the assignment;
  - (c) instructions for preparing bids;
  - (d) amount and manner of payment of bid security and performance guarantee (where applicable);
  - (e) manner and place, date and time for submission of bidding documents;
  - (f) manner, place, date and time of opening of bids;
  - (g) method of procurement used;
  - (h) a detailed and unambiguous evaluation criteria;
  - (i) terms and conditions of the contract agreements, as far as already known by the procuring agency;
  - (j) Terms of Reference and technical specifications of goods, works or services to be procured, subject to Rule 13;
  - (k) manner in which tender price is to be assessed and computed, including information about tax liability;
  - (l) currency in which tender price is to be formulated and expressed;
  - (m) bid validity period;
  - (n) a copy of integrity pact to be signed by the parties (where applicable);
  - (o) any other information which is specified in regulations to be issued by the Authority.
- (2) Any information, that becomes necessary for bidding or for bid evaluation, after the invitation to bid or issue of the bidding documents to the interested bidders, shall be provided in a timely manner and on equal opportunity basis. Where notification of such change, addition, modification or deletion becomes essential, such notification shall be made in a manner similar to the original advertisement.

(3) Procuring agencies shall use standard bidding documents as and when notified by the Authority;

Provided that bidding documents already in use of procuring agencies may be retained in their respective usage to the extent they are not inconsistent with these rules and till such time that the standard bidding documents are notified.

[(4) All procuring agencies shall hoist the bidding documents on Authority's website as well as on the website of procuring agency, in case the procuring agency has its own website".]<sup>15</sup>

**[21A Evaluation criteria** – The procuring agencies shall formulate an appropriate evaluation criterion, listing all the relevant information against which a bid is to be evaluated and criteria of such evaluation shall form an integral part of the bidding documents. The failure to provide a clear and unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement."]<sup>16</sup>

**22. Extension of Time Period for Submission of Bids** - The procuring agency may extend the deadline for submission of bids only, if one or all of the following conditions exist;

(1) Fewer than three bids have been submitted and procurement committee is unanimous in its view that wider competition can be ensured by extending the deadline. In such case, the bids submitted shall be returned to the Bidders un-opened;

(2) If the procuring agency is convinced that such extraordinary circumstances have arisen owing to law and order situation or a natural calamity that the deadline should be extended;

Provided that the advertisement of such extension in time shall be made in a manner similar to the original advertisement

**23. Clarification and Modification of Bidding Documents**

(1) An interested bidder, who has obtained bidding documents, may request for clarification of contents of the bidding document in writing, and procuring agency shall respond to such queries in writing within three calendar days, provided they are received at least five calendar days prior to the date of opening of bid;

Provided that any clarification in response to a query by any bidder shall be communicated to all parties who have obtained bidding documents;

(2) Procuring Agency shall re-issue the Notice Inviting Tenders, in accordance with Rules 17 and 18, if it is convinced that there is a material infirmity or ambiguity in the bidding documents, which cannot be addressed without modifying the contents of bidding documents.

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<sup>15</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>16</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013



**24. Submission of Bids**

(1) Bids shall be submitted on the place, date and time and in the manner specified in the tender notice and bidding documents and any bid submitted late due to any reason whatsoever, shall not be considered by the procurement committee;

(2) [The Bidders may submit bids on the bidding documents issued by the procuring agency or downloaded from the Authority's website along with tender fee if any by mail or by hand.]<sup>17</sup>

**25. Cancellation of Bidding Process**

(1) A procuring agency may cancel the bidding process at any time prior to the acceptance of a bid or proposal;

(2) The procuring agency shall incur no liability towards the bidders, solely by virtue of its invoking sub-rule (1);

(3) Intimation of the cancellation of bidding process shall be given promptly to all bidders and bid security shall be returned along with such intimation.

(4) The procuring agency shall, upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds;

**26. Re-issuance of Tenders** - The procuring agency may re-issue tenders in case, the bidding process has been cancelled, as provided in Rule 25 or one of the following conditions exist:

(1) Such an infirmity in the bidding documents has surfaced that the procuring committee recommends to the competent authority that the bids have to be invited afresh;

(2) The case has been declared as one of mis-procurement, in pursuance of [Rule 32 and 32-A]<sup>18</sup>;

Provided while re-issuing tenders, the procuring agency may change the specifications and other contents of bidding documents, as deemed appropriate.

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<sup>17</sup> Substituted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>18</sup> Substituted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

## PRE-QUALIFICATION AND DIS-QUALIFICATION OF SUPPLIERS, AND CONTRACTORS

### 27. Pre-qualification of Suppliers and Contractors

(1) A procuring agency, may engage in pre-qualification of bidders [XXX]<sup>19</sup> in the following cases:

- (a) in case of contracts for large and complex works and services related to, in which there are high costs of preparing detailed bids;
- (b) in the contracts to be let under turnkey, design and build, or management contract;
- (c) in case of expensive and technically complex equipment and works with a view to ensuring that invitations to bid are extended only to those who have adequate capabilities, competence and resources.
- [(d) in case of drugs and services of complex nature.]<sup>20</sup>

(2) 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) experience and past performance on similar assignments;
- (b) capabilities with respect to construction or manufacturing facilities,
- (c) financial capability;
- (d) capabilities with respect to personnel, equipment, and plant;
- (e) appropriate managerial capability; and
- (f) any other factor that is relevant to the capability, competence and resources required for accomplishment of the assignment;

Provided that pre-qualification may be carried out only for specific procurement contract and shall be applicable only to that particular assignment.

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<sup>19</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>20</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

**28. Process of Pre-qualification -**

- (1) To prequalify for bidding on a specific contract or package:
  - (a) invitation to prequalify on specific contract or package shall be advertised and notified as per Rules 17 and 18.
  - (b) procuring agency shall provide a set of pre-qualification documents containing scope of contract, a clear set of requirements for qualification and evaluation criteria to any supplier or contractor, subject to payment of price, if any, which shall not exceed the limit, as prescribed in these Rules, and shall indicate the time and place where the documents can be obtained. Alternatively, if the procuring agency does not wish to issue pre-qualification documents, it shall include the scope of work and a clear set of requirements for pre-qualification and the evaluation criteria in the notice for pre-qualification.
  - (c) all applicants found capable of carrying out the assignments in accordance with the approved prequalification criteria shall be prequalified and invited to submit bids.
  - (d) verification of the information provided by the shortlisted applicants in the submissions for prequalification may be made. In case the information is found to be wrong or incorrect in any material way or the applicant is found to be lacking in the capability or resources to successfully perform the contract, the application shall not be pre-qualified.
  - (e) procuring agency shall promptly notify each and every applicant, whether or not it has been pre-qualified; and also make available to any person directly involved in the pre-qualification process, upon request, the names of all suppliers or contractors who have been pre-qualified.
  - (f) procuring agency shall, on written request of the applicant(s) communicate to the applicant(s) the reasons for not pre-qualifying them, though it shall not be obliged to justify these reasons.
  - (g) only suppliers or contractors, who have been pre-qualified shall be entitled to participate further in the procurement proceedings.
- (2) The procuring agency, shall mention, in the pre-qualification documents;
  - (a) all information required for pre-qualification, pertaining to the factors mentioned at Rule 27 (2);
  - (b) instructions for preparation and submission of the pre-qualification documents;
  - (c) evaluation criteria;

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- (d) list of documentary evidence required from the applicants to demonstrate their respective qualifications;
  - (f) any other information that the procuring agency deems necessary for pre-qualification.
- (3) In case of pre-qualification of consultants, provisions of Rules 73 and 74 shall apply.

**29. Eligibility** – All interested bidders, national or international, firms and individuals, shall be allowed to bid for any project where international competitive bidding is adopted;

- (1) Competition may be restricted only in the following cases;
  - (a) as a matter of law or official regulations, commercial relations are prohibited with the bidder's country by the federal government; or
  - (b) a firm is blacklisted or debarred by the procuring agency, and the matter has been reported to the Authority, subject to Rule 35.
- (2) Government owned enterprises or institutions may participate only if they can establish that they are;
  - (a) legally and financially autonomous; and
  - (b) operate under commercial law;

Provided that where government owned universities or research centers in the country are of a unique and exceptional nature, and their participation is critical to project implementation, they may be allowed to participate; and

- (3) For the purposes of Part II of the Rules, bidders shall include all those contractors or suppliers and providers of services related thereto or consultants that are registered or incorporated in Pakistan, irrespective of the nationality of their owners and of their professional staff;
- (4) There shall be no enlistment or registration of contractors, suppliers and consultants by any procuring agency, and bidding shall not be restricted in any manner, except as otherwise provided in these Rules;

Provided that registration with professional institutions in respective fields shall apply as required by the law.

## **30. Disqualification of Suppliers, Contractors and Consultants**

- (1) The procuring agency shall disqualify a supplier, consultant or contractor, whether already pre-qualified or not, if it finds at any time, that the information submitted by him concerning his qualification and professional, technical, financial, legal or managerial competence as supplier, consultant or contractor, was false and materially inaccurate or incomplete; or

(2) At any stage has indulged in corrupt and fraudulent practices, as defined in these rules;

(3) A supplier, contractor or consultant being aggrieved by the decision of the procuring agency regarding disqualification may seek relief through the mechanism of grievance redressal, as provided under Rule 31.

## **REDRESSAL OF GRIEVANCES AND SETTLEMENT OF DISPUTES**

### **31. Mechanism for Redressal of Grievances**

(1) The procuring agency shall constitute a committee for complaint redressal comprising odd number of persons, with appropriate powers and authorizations, to address the complaints of bidders that may occur during the procurement proceedings.

(2) The committee shall be headed by head of the procuring agency or an official of the procuring agency, at least one rank senior to the head of the procurement committee and shall include the following;

(a) District Accounts Officer, or his representative, in case of the local governments or provincial line departments at district level, or a representative of the Accountant General, Sindh in case of Government departments at the provincial level;

(b) an independent professional from the relevant field concerning the procurement process in question, to be nominated by the head of procuring agency;

(3) [Any bidder being aggrieved by any act or decision of the procuring agency after the issuance of notice inviting tender may lodge a written complaint;]<sup>21</sup>

(4) The complaint redressal committee upon receiving a complaint from an aggrieved bidder may, if satisfied;

(a) prohibit the procurement committee from acting or deciding in a manner, inconsistent with these rules and regulations;

(b) annul in whole or in part, any unauthorized act or decision of the procurement committee; and

[(b) recommend to the Head of Department that the case be declared a mis-procurement if material violation of Act, Rules, Regulations, orders,

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<sup>21</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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instructions or any other law relating to public procurement, has been established; and;]<sup>22</sup>

- (c) reverse any decision of the procurement committee or substitute its own decision for such a decision;

Provided that the complaint redressal committee shall not make any decision to award the contract.

(5) [The complaint redressal committee shall announce its decision within seven days and intimate the same to the bidder and the Authority within three working days. If the committee fails to arrive at the decision within seven days, the complaint shall stand transferred to the Review Committee which shall dispose of the complaint in accordance with the procedure laid down in rule 32;]<sup>23</sup>

(6) The Procuring Agency shall award the contract after the decision of the complaint redressal committee;

(7) [Mere fact of lodging of a complaint shall not warrant suspension of the procurement proceedings;

Provided that in case of failure of the complaint redressal committee to decide the complaint; the procuring agency shall not award the contract.”]<sup>24</sup>

(8) A bidder not satisfied with decision of the procuring agency’s complaints’ redressal committee may lodge an appeal to the Chief Secretary through the Authority, who shall refer the matter to a review panel as per Rule 32;

(9) A bidder may file an appeal to the Chief Secretary provided;

- (a) that the bidder has exhausted his complaint to the complaint redressal committee; and
- (b) that he has not withdrawn the bid security deposited by him during the procurement process.

(10) The bidder must submit the appeal to the Chief Secretary with the following documents:

- (a) a letter stating his wish to appeal to the Review Panel and the nature of complaint;
- (b) a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents in a sealed envelope; and

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<sup>22</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>23</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>24</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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- (c) non-refundable complaint registration fee in the form of a Pay Order in favour of the Authority in the amount specified in Appendix A.

(11) Upon receipt of an appeal and registration fee, the Chief Secretary shall select a Review Panel to examine the complaint. Simultaneously, the Authority shall inform the bidder and the Head of the concerned Department of the action taken by the Chief Secretary.

(12) On receipt of reference from the Chief Secretary, the Chairperson of the Review Panel shall convene a meeting of the review panel within five working days.

(13) Unless the Review Panel recommends dismissal of the complaint being frivolous, in which case the bidder shall lose the bid security deposited with the procuring agency, the Review Panel may:

- (a) propose rejection of the complaint, stating its reasons;
- (b) state the rules or principles that govern the subject matter of the complaint;
- (c) point out the infirmities and breach of rules and regulations by the procuring agencies;
- (d) suggest annulment in whole or in part of a non-compliant act or decision of a procuring agency, other than any act or decision bringing the procurement contract into force;
- (e) if the procuring agency is in breach of its obligations under the Act, Rules or Regulations, suggest the payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the bidder on preparation of bid, including the cost of the complaint registration fee paid by the complainant; or
- (f) recommends that the procurement proceedings may be terminated, in case the procurement contract has not been signed.

(14) It shall be mandatory for both, the complainant and the procuring agency to appear before the Review Panel as and when called and produce documents, when so required. The Review Panel shall issue the notice of appearance to the Head of the Department for its service who shall ensure the attendance of the Head of Procuring Agency along with relevant record. In case of failure of Head of Procuring Agency to appear before review panel despite service, the Authority shall bring the matter to the notice of Chief Secretary. In case the complainant fails to appear twice, despite service the reference may be decided ex-parte. The Review Panel shall hear the parties and give its recommendations to the Authority within thirty days of receipt of reference. In case, more time is required, the Review Panel may seek extension from the Chief Secretary through the Authority enumerating the reasons for delay. The Authority shall submit these recommendations to the Chief Secretary who shall decide the appeal keeping in view the recommendations of the Review Panel;

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Provided that the Chief Secretary may refer the matter back to the Review Panel, if there is some ambiguity or vagueness in the recommendations and a clarification is to be sought. The Review Panel shall clarify the matter within seven calendar days, following which the Chief Secretary would decide the matter;

(15) The decision of the Chief Secretary shall be final and the procuring agency shall act upon such findings. After the decision has been issued, the complaint and the decision shall be hoisted by the Authority on its website within three working days;

Provided that no information shall be disclosed if its disclosure would be against the public interest or may jeopardize national security.

**[32. Appeal to the Review Committee:** (1) A bidder not satisfied with decision of the procuring agency's complaints redressal committee may lodge an appeal to the Review committee; provided that he has not withdrawn the bid security, if any, deposited by him.

(2) The Review Committee shall comprise the following:

- (a) Managing Director;
- (b) Director General Audit Sindh or his nominee not below the rank of BS-19;
- (c) two private members represented on the SPPRA Board.
- (d) An independent professional having expertise of relevant field concerning the procurement in question.

(3) The Managing Director shall be the Chairperson of the Review Committee and the private members shall be selected by the SPPRA Board for a period not exceeding two years;

(4) The independent professional shall be nominated by the Managing Director for each reference and paid remuneration for attending the meeting of Review Committee at a rate prescribed by the Authority from time to time;

(5) The bidder shall submit following documents to the Review Committee:-

- (a) a letter stating his wish to appeal to the Review Committee and the nature of complaint;
- (b) a copy of the complaint earlier submitted to the complaint redressal committee of the Department and all supporting documents;
- (c) Copy of the decision of Procuring Agency / Complaint Redressal Committee.

(6) On receipt of appeal, the Chairperson shall convene a meeting of the Review Committee within seven working days;

(7) Unless the Review Committee recommends dismissal of an appeal being frivolous, in which case the bidder may lose the bid security deposited with the procuring agency, the Review Committee may -

- (a) reject the reference, stating its reason;



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- (b) state the rules or principles that govern the subject matter of the reference;
  - (c) point out the infirmities and breach of rules and regulations by the procuring agency;
  - (d) annul in whole or in part of a non-compliant act or decision of a procuring agency, other than any act or decision bringing the procurement contract into force;
  - (e) if the procuring agency is in breach of its obligations under the Act, Rules or Regulations, order the payment of compensation by the officer(s) responsible for mis-procurement for cost incurred by the bidder on preparation of bid; or
  - (f) direct that the procurement proceedings may be terminated, in case the procurement contract has not been signed.
  - (g) declare the case to be one of mis-procurement if material violation of Act, Rules, Regulations, orders, instructions or any other law relating to public procurement, has been established.
- (8) It shall be mandatory for the appellant and the head of procuring agency or his nominee not below the rank of BS-19 to appear before the Review Committee as and when called and produce documents, if required.
- (9) In case the appellant fails to appear twice despite the service of notice of appearance, the appeal may be decided ex-parte.
- (10) The Review Committee shall hear the parties and announce its decision within ten working days of submission of appeal .
- (11) The decision of Review Committee shall be final and binding upon the procuring agency. After the decision has been announced, the appeal and the decision thereof shall be hoisted by the Authority on its website.]<sup>25</sup>

**[32A. Declaration of Mis-procurement and its consequences,-** (1) Notwithstanding anything contained in Rule-32 (7) (g):

- (a) the Head of the Department on his own initiation or on recommendation of the Complaint Redressal Committee of the Department may declare the case to be of mis-procurement, if any material violation of provisions of the Act, Rules, Regulations, orders, instructions or any other law relating to public procurement, has been established.
- (b) The Authority may take notice of any material violation of provisions of the Act, Rules, Regulations, orders, instructions or any other law relating to public

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<sup>25</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

procurement and declare the case to be of mis-procurement if such violation has been established.

(2) On declaration of mis-procurement; the head of the procuring agency, the Authority or the Review Committee shall refer the case to the Competent Authority for initiation of disciplinary proceedings against the officials of the procuring agency responsible for mis-procurement and may also refer the matter to the Sindh Enquiries and Anti-Corruption Establishment for initiating action against such officials.]<sup>26</sup>

**33. Matters not subject to Appeal or Review** - The following actions of the procuring agency shall not be subject to the appeal or review:

- (1) Selection method adopted by the procurement committee;
- (2) Decision by the procuring agency under Rule 25 to cancel the bidding process.

**34. Arbitration**

- (1) After coming into force of the procurement contracts, disputes between the parties to the contract shall be settled by arbitration;
- (2) The procuring agencies shall provide for a method of arbitration in the procurement contract, not inconsistent with the laws for the time being in force in Pakistan.

**35. Blacklisting of Suppliers, Contractors and Consultants**

- (1) The following shall result in blacklisting of suppliers, contractors, or consultants, individually or collectively as part of consortium:
  - (a) conviction for fraud, corruption, criminal misappropriation, theft, forgery, bribery or any other criminal offence;
  - (b) involvement in corrupt and fraudulent practices while obtaining or attempting to obtain a procurement contract;
  - (c) final decision by a court or tribunal of competent jurisdiction that the contractor or supplier is guilty of tax evasion;
  - (d) willful failure to perform in accordance with the terms of one or more than one contract;
  - (e) failure to remedy underperforming contracts, as identified by the procuring agency, where underperforming is due to the fault of the contractor, supplier or consultant;
- (2) Procuring agency may, on its own motion, or information provided by any party, carry out an investigation to determine, whether there is sufficient cause for

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<sup>26</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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blacklisting a contractor, consultant or supplier. If the procuring agency is satisfied that such a cause exists, it shall initiate the process of blacklisting in accordance with the procedure laid down in regulations to be issued by the Authority;

(3) As a result of the scrutiny process, as mentioned above in sub-rule (2), the procuring agency may take one of the following decisions;

- (a) contractor or consultant or supplier may be blacklisted;
- (b) contractor or consultant or supplier may be debarred temporarily, specifying the time period;
- (c) contractor or consultant or supplier may be blacklisted if he fails to take the specified remedial actions within a specified time period;

Provided that the procuring agency shall duly publicize and communicate its decision to the Authority, other Government departments, and also hoist on its own website.

[(4) Any party being aggrieved by the decision of the procuring agency may submit an appeal to the Authority, which shall refer the matter to the Review Committee, which shall decide the matter as provided in sub-rules (5) to (11) of rule 32;]<sup>27</sup>

(5) [ XXX ]<sup>28</sup>

### 36. Reservations and Preference

(1) Procuring agencies shall allow all interested bidders to participate in procuring procedure without regard to nationality, except in cases in which any procuring agency decides to limit such participation to national bidders only or prohibit participation of bidders of some nationalities, in accordance with these rules or policy of the Federal Government;

(2) Procuring agencies shall allow for a preference to domestic or national suppliers, contractors or consultants in accordance with the policies of the Government. The magnitude of price preference to be accorded shall be clearly mentioned in the bidding documents under the bid evaluation criteria.

### 37. Bid Security

(1) The procuring agency shall require the bidders to furnish a bid security not below one percent and not exceeding five percent of the bid price, which shall remain valid for a period of 28 days beyond the validity period for bids, in order to provide the procuring agency reasonable time to act, if the security is to be called;

(2) Bid security shall be released to the unsuccessful bidders once the contract has been signed with the successful bidder or the validity period has expired.

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<sup>27</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>28</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

**38. Bid Validity**

(1) A procuring agency, keeping in view nature of procurement, shall subject the bid to a validity period, which shall be specified in the bidding document and shall not be more than 90 days in case of National Competitive Bidding and 120 days in case of International Competitive Bidding;

(2) Extension of bid validity may be allowed subject to approval by the competent authority of the procuring agency, and with reasons to be recorded in writing;

Provided that if validity period has to be extended due to some slackness on the part of procuring agency, the competent authority shall fix responsibility and take appropriate disciplinary action;

(3) After obtaining such approval, the procuring agency, shall request in writing all bidders to extend the bid validity period. Such a request shall be made before the date of expiry of the original bid validity period;

(4) Such an extension shall not be for more than [XXX]<sup>29</sup> of the original period of bid validity;

(5) In case the Procuring Agency fails to finalize the bid evaluation within the extended time, the bids shall stand cancelled and a fresh bidding process shall be initiated;

(6) Whenever an extension of bid validity period is requested, a bidder shall have the right to refuse to grant such an extension and withdraw his bid and bid security shall be returned forthwith;

(7) Bidders who;

(a) agree to extension of the bid validity period shall also extend validity of the bid security for the agreed extended period of the bid validity;

(b) agree to the procuring agency's request for extension of bid validity period shall neither be requested nor permitted to change the price or other conditions of their bids.

**39. Performance Security**

(1) Procuring Agency shall, in all procurement of goods, works and services, carried out through open competitive bidding, require security in the form of pay order or demand draft or bank guarantee, an amount sufficient to protect the procuring agency in case of breach of contract by the contractor or supplier or consultant, provided that the amount shall not be more than 10% of contract price;

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<sup>29</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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(2) The security shall be provided in an appropriate form and amount, as provided in the bidding documents;

(3) Validity of performance security shall extend at least ninety days beyond the date of completion of contract to cover defects liability period or maintenance period subject to final acceptance by the procuring agency.

**40. Force Majeure** - The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract.

### OPENING, EVALUATION AND REJECTION OF BIDS

#### 41. Opening of Bids

(1) The date for opening of bids and the last date for the submission of bids shall be the same, as given in the bidding documents and in the Notice Inviting Tender;

(2) Subject to provisions of Rule 18, in case, the two dates are different, the date and time, given in the bidding documents shall apply;

(3) The bids shall be opened within one hour of the deadline for submission of bids;

(4) All bids shall be opened publicly in the presence of all the bidders, or their representatives, who may choose to be present in person, at the time and place announced in the invitation to bid;

(5) The procuring agency shall read aloud the name of the bidder and total amount of each bid, and of any alternative bids if they have been permitted, shall be read aloud and recorded when opened;

(6) All bidders in attendance shall sign an attendance sheet;

(7) All bids submitted after the time prescribed as well as those not opened and read out at bid opening, due to any procedural flaw, shall not be considered, and shall be returned without being opened;

(8) The official chairing procurement committee shall encircle the rates and all the members of procurement committee shall sign each and every page of financial proposal;

(9) The procurement committee shall issue the minutes of the opening of the tenders and shall also mention over writing or cutting, if any.

**42. Evaluation of bids**

(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.

**43. Clarification of bids**

(1) No bidder shall be allowed to alter or modify his bid(s) after the expiry of deadline for the receipt of the bids;

Provided that the procuring agency may ask the bidders for clarifications needed to evaluate the bids but shall not permit any bidder to change the substance or price of the bid;

(2) Any request for clarification in the bid, made by the procuring agency, shall invariably be in writing. The response to such request shall also be in writing.

**44. Discriminatory and difficult conditions** - Save as otherwise provided, no procuring agency shall introduce any condition which discriminates among bidders. In ascertaining the discriminatory 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.

**45. Announcement of evaluation reports** - Procuring agencies shall announce the results of bid evaluation in the form of a report giving reasons for acceptance or rejection of bids. The report shall be hoisted on website of the Authority and that of the procuring agency if its website exists and intimated to all the bidders at least seven (07) days prior to the award of contract.

**46. Procedures of open competitive bidding** - Save as otherwise provided in these rules, the following procedures shall be permissible for open competitive bidding;

(1) **Single Stage – One Envelope Procedure**

(a) Notice Inviting Tenders and bidding documents of this method shall contain the following eligibility criteria;

(i) relevant experience;

(ii) turn-over of at least last three years;

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- (iii) registration with Income Tax, Sales Tax and Pakistan Engineering Council (where applicable);
- (iv) any other factor deemed to be relevant by the procuring agency subject to provision of Rule 44;
- (b) each bid shall comprise one single envelope containing the financial proposal and required information mentioned at clause (a) above;
- (c) all bids received shall be opened and evaluated in the manner prescribed in the Notice Inviting Tenders or bidding document.

### **(2) Single stage – two envelope procedure**

- (a) bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (b) envelopes shall be marked as “FINANCIAL PROPOSAL” and “TECHNICAL PROPOSAL” in bold and legible letters to avoid confusion;
- (c) initially, only the envelope marked “TECHNICAL PROPOSAL” shall be opened;
- (d) envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the procuring agency without being opened;
- (e) procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements;
- (f) no amendments in the technical proposal shall be permitted during the technical evaluation;
- (g) financial proposals of technically qualified bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;
- (h) financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and
- (j) bid found to be the lowest evaluated or best evaluated bid shall be accepted.

### **(3) Two Stage Bidding Procedure**

- (a) **First Stage;**

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- (i) bidders are invited to submit, according to the required specifications, a technical proposal without price, which shall be subject to technical as well as commercial clarifications and adjustments;
- (ii) technical proposal shall be evaluated in accordance with the specified evaluation criteria and may be discussed with all the bidders together regarding any technical features that may require technical as well as commercial clarifications and adjustments;
- (iii) after such discussions, all the bidders shall be permitted to revise their respective technical proposals to meet the requirements of the procuring agency;
- (iv) procuring agency may revise, delete, modify or add any aspect of the technical requirements or evaluation criteria, or it may add new requirements or criteria not inconsistent with these rules;

Provided that such revisions, deletions, modifications or additions are communicated to all the bidders equally at the time of invitation to submit final bids, and that sufficient time is allowed to the bidders to prepare their revised bids;

Provided further that such allowance of time shall not be less than fifteen days in the case of National Competitive Bidding and [forty five days]<sup>30</sup> in the case of International Competitive Bidding;

- (v) The bidders not willing to conform their respective bids to the procuring agency's technical requirements may be allowed to withdraw from the bidding without imposition of any penalty.

### (b) **Second Stage;**

- (i) bidders shall be allowed to amend their technical proposals in order to ensure conformance to the same technical standards;
- (ii) bidders submit the revised technical proposals along with financial proposals;
- (iii) the financial proposals of only those bidders whose original or revised technical proposals are found to be conforming to the agreed technical standards and requirements, shall be opened at a time, date and venue announced and communicated to the bidders in advance;

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<sup>30</sup> Substituted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013



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- (iv) the revised technical proposals and the financial proposals shall be evaluated in the manner prescribed above. The bid found to be the lowest evaluated bid shall be accepted;

Provided that in setting the date for the submission of the revised technical proposal and financial proposal a procuring agency shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and prepare their financial proposals accordingly.

### (4) **Two Stage - Two Envelope Bidding Procedure**

#### (a) **First Stage**

- (i) bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (ii) 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) envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the procuring agency without being opened;
- (v) technical proposal shall be discussed with all the bidders or their representatives present together with reference to the procuring agency’s technical requirements;
- (vi) the bidders willing to meet the requirements of the procuring agency shall be allowed to revise their technical proposals following these discussions;
- (vii) bidders not willing to conform their technical proposal to the revised requirements of the procuring agency shall be allowed to withdraw their respective bids without forfeiture of their bid security;

#### (b) **Second Stage**

- (i) 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 revised technical requirement;

- (ii) 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 agency;

Provided that in setting the date for the submission of the revised technical proposal and supplementary financial proposal a procuring agency 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) procuring agency shall evaluate the whole proposal in accordance with the evaluation criteria and the bid found to be the lowest evaluated bid shall be accepted.

#### **47. Conditions for Use of Various Procedures**

(1) **Single Stage One Envelope Bidding Procedure** shall be used as the standard bidding procedure for procurement of goods, works and services of simple and routine nature and where no technical complexity or innovation is involved;

[(2) **Single Stage Two Envelope Bidding Procedure** shall be used for goods and services where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation;]<sup>31</sup>

(3) **Two Stage Bidding Procedure** shall be adopted in large and complex contracts where technically unequal proposals are likely to be encountered or where the procuring agency is aware of its options in the market but, for a given set of performance requirements, there are two or more equally acceptable [technical solutions of machinery or equipment or manufacturing plant available to the procuring agency]<sup>32</sup>; and

[(4) **Two Stage Two Envelope Bidding** method shall be used for procurement where alternative technical proposals are possible, such as certain type of machinery or equipment or manufacturing plant.]<sup>33</sup>

### **ACCEPTANCE OF BIDS AND AWARD OF PROCUREMENT CONTRACTS**

**48. Acceptance of Bids** - Even when only one bid is submitted, the bidding process may be considered valid, if the bid was advertised in accordance with rules, and prices are comparable to the prices or rates of the last awarded contract or the market prices.

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<sup>31</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>32</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>33</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

**49. Award of Contract** - The bidder with the lowest evaluated cost, but not necessarily the lowest submitted price, shall be awarded the procurement contract, within the original or extended period of bid validity.

**50. Publication of the Award of Contract** - Within seven days of the award of contract, procuring agency shall publish on the website of the Authority and on its own website, if such a website exists, the results of the bidding process, identifying the bid through procurement identifying number, if any, and the following information:

- (1) Evaluation Report;
- (2) Form of Contract and Letter of Award;
- (3) Bill of Quantities or Schedule of Requirement.

**51. Debriefing**

(1) A bidder may ask the procuring agency for reasons for non-acceptance of his bid and may request for a debriefing meeting and procuring agency shall give him the reasons for such non-acceptance, either in writing or by holding a debriefing meeting with such a bidder.

(2) The requesting bidder shall bear all the costs of attending such a debriefing.

**52. Bar on Negotiations** - Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder.

**53. Confidentiality** - The procuring agency shall keep all information regarding the bid evaluation confidential until the time of announcement of evaluation report in accordance with the requirements of Rule 45.

**54. On Account Payments** - All procuring agencies shall make payments to suppliers, consultants and contractors against their invoices or running bills within the time given in the conditions of the contract,

**55. Entry into Force of the Procurement Contract** - A procurement contract shall come into force when the procuring agency signs a contract, the date on which the signatures of both the procuring agency and the successful bidder are affixed to the written contract. Such affixing of signatures shall take place within the time prescribed in the bidding documents.

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

**56. [ XXX ]<sup>34</sup>**

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<sup>34</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

**57. Closing of Contract**

(1) Except for defect liability or maintenance by the supplier, consultant or contractor, as specified in the conditions of contract, performance of the contract shall be deemed close on the issue of overall delivery certificate, certificate of completion of deliverables, or taking over certificate which shall be issued within thirty days of final taking over of goods or receiving the deliverables or completion of works enabling the supplier or contractor to submit final bill and the procuring agency to carry out any inspection of goods, works or services related thereto, as provided in the contract agreement and auditors to do substantial audit.

(2) In case of defect liability or maintenance periods, defect liability certificate shall be issued within thirty days of the expiry of the said period enabling the supplier or contractor to submit the final bill.

(3) Except for unsettled claims, which shall be resolved through arbitration, and shall be paid within the time given in the conditions of contract.

## Part III – PROCURING CONSULTING SERVICES

### GENERAL PROVISIONS

#### 58. Applicability

- (1) Subject to provisions of Part I and II, Part III shall apply only to consulting services;
- (2) In case of any conflict in provisions or their interpretation within the rules, for consulting services, rules under this part shall take precedence over rules in other parts.

#### 59. [ XXX ]<sup>35</sup>

#### 60. [ XXX ]<sup>36</sup>

#### 61. Selection of Consultancy Services - The selection shall be guided by the following considerations:

- (1) Best quality of services available;
- (2) Need for economy and efficiency;
- (3) Need to give all qualified consultants an equal opportunity to compete;
- (4) Encouragement of local consultants without any unfair competitive advantage;
- (5) Transparency in the selection process.

#### 62. Bar on hiring in cases of Conflict of Interest - Without limitations on the generality of the foregoing, consultants shall not be hired if there is a conflict of interest, as defined in these rules.

#### 63. Hiring of Government Officials and Academics - Government officials and civil servants may be hired as consultants only if:

- (1) They are on leave of absence without pay;
- (2) They are not being hired by the agency they were working for, six months prior to going on leave; and
- (3) Their employment would not give rise to any conflict of interest.

#### 64. Equal Access to Information - The procuring agency shall make available information to all the bidders for consulting services on an equal opportunity basis.

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<sup>35</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>36</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

**65. Rights and Obligations of the Procuring Agency and Consultants** - Rights and obligations of the procuring agency and the consultant shall be governed by General and Special conditions of contract signed between the procuring agency and the consultant.

**66. Steps in the Selection Process** - Depending on the selection method adopted, the procuring agency shall undertake the following steps but not limited to:

- (1) Preparation of the Terms of Reference of the assignment;
- (2) Preparation of the cost estimate or budget of the assignment;
- (3) Public advertisement of Request for Expressions of Interest;
- (4) [Short-listing of consultants, if deemed necessary;]<sup>37</sup>
- (5) Preparation and issuance of the Request for Proposal to the shortlisted consultants;
- (6) Preparation and submission of proposals by consultants;
- (7) Evaluation of technical proposals as per criteria given in the Request for Proposal;
- (8) Opening and evaluation of financial proposals as per criteria given in the Request for Proposal;
- (9) Contract negotiations, as provided in the selection method;
- (10) Award and signing of the contract between the procuring agency and the consultant;

**67. Consultant Selection Committee** - Every procuring agency, for the selection of consultant(s), shall set up a Consultant Selection Committee, which shall consist of the following:

- (1) Consultant Selection Committee shall be headed by a gazetted officer not below the rank of BS-19 and, if not available, the officer of the highest grade available in case of adm departments, autonomous and semi autonomous bodies.
- (2) Project or programme directors, coordinators or managers shall head Consultant Selection Committees of the respective projects or programmes;
- (3) **Members;**

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<sup>37</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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- (a) nominee of the Planning & Development Department not below the rank of BS-18;
- (b) nominee of the Finance Department not below the rank of BS-18;
- (c) a representative of the procuring agency not below the rank of BS-18 to act as member and secretary;
- (d) one technical member from the concerned departments for consultation having adequate experience in the relevant field not below the rank of BS-18 or equivalent;
- (e) co-opted member(s) – The Consultants Selection Committee, with the approval of its Chairperson, can co-opt up to two members, having adequate technical knowledge and experience in the relevant field, for providing technical input to the committee. The co-opted members shall have no voting rights.

Provided that co-opted members shall have no conflict of interest in the procurement process.

**68. Quorum** - The chairman, representatives of the Finance Department, and the Planning and Development Department shall form the quorum for conducting the business of the Consultants Selection Committee.

### **69. Consultants Selection Committee for Local Government Institutions**

(1) In case of District Governments, the Executive District Officer of the concerned department shall head the Consultants Selection Committee, with the following members:

- (a) Executive District Officer, Finance & Planning or his representative not below the rank of BS-18 as member;
- (b) District Officer of the concerned procuring department as member and secretary;
- (c) [ XXX ]<sup>38</sup>

(2) Consultants Selection Committee, with the approval of its Chairperson, can co-opt up to two members, having adequate technical knowledge and experience in the relevant field, for providing technical input to the committee;

Provided that the co-opted members shall have no conflict of interest in the procurement proceedings and shall have no right to vote;

(3) The chairman, representative of the Finance and Planning Department, and one private member shall form the quorum for conducting the business of the

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<sup>38</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

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Consultants Selection Committee.

(4) In case of Town or Taluka Municipal Administrations, Town or Taluka Officer of the concerned department concerned shall head the Consultants Selection Committee, with the following members:

- (a) Town or Taluka officer, Infrastructure as member;
- (b) Accounts officer of the Taluka or Town Municipal Administrator as member;
- (c) two members from civil society having the professional background in the relevant field;
- (d) Consultants Selection Committee, with the approval of its chairperson, can co-opt up to two members, having adequate technical knowledge and experience in the relevant field, for providing technical input to the committee. The co-opted members shall have no voting rights;

Provided that the co-opted members shall have no conflict of interest in the procurement process.

**70. Decision by Simple Majority** - All decision of the Consultants Selection Committee shall be made by simple majority.

**71. Functions and Responsibilities of the Committee** - The Consultants Selection Committee shall perform the following functions:

- (1) Approval of Request For Proposal before issuance;
- (2) Short listing of consultants, responding to the Request for Expression of Interest, where applicable, in accordance with the criteria mentioned in Request for Expression of Interest;
- (3) Evaluation of technical and financial proposals, according to the selection method and evaluation criteria, mentioned in the Request for Proposal;
- (4) Finalization of recommendation based on evaluation as mentioned at sub-rule (3) above.

**72. Methods for Selection of Consultants** - The selection system shall be determined by the procuring agency prior to issuance of the Request for Proposals from interested consultants. A procuring agency may adopt one of the following methods for selection of consultants, keeping in view nature of the assignment:

- (1) **Least Cost Selection Method**
  - (a) this method shall be adopted for assignments of standard or routine nature where well-established practices and standards exist;



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- (b) financial proposals of only technically qualified firms shall be opened. The firm with the lowest quoted cost or bid shall be selected.
- (c) procuring agency may adopt any other method as deemed fit with reason to be recorded in writing by the competent authority.

### (2) **Quality Based Selection Method –**

- (a) this method shall be used only in case of highly specialized, innovative and complex assignments, where quality is the only factor taken into consideration.
- (b) in Quality Based Selection method the technical proposal which attains the highest score according to the criteria mentioned in the bidding documents shall be selected without any consideration for cost.
- (c) the selected firm shall be asked to submit its financial proposal and invited to negotiate the financial proposal and the contract.

### (3) **Quality and Cost Based Selection Method -** This method shall be used only where;

- (a) the Terms of Reference are well-defined and Quality is of prime consideration, while cost is a secondary consideration;
- (b) the firm which attains the highest combined weighted technical and financial score according to the criteria mentioned in the bidding documents shall be selected.

### (4) **Direct Selection Method -** This method shall be used only if all or any of the following conditions exists:

- (a) for tasks which are natural continuation of previous assignment and where continuity of technical services is required[:]<sup>39</sup>  
  
[Provided that the cost of additional assignment does not exceed fifteen per cent of the cost of previous assignment.]<sup>40</sup>
- (b) for assignments worth less than rupees one hundred thousand;
- (c) in cases of emergency [with the approval competent authority and for reasons to be recorded in writing.]<sup>41</sup>
- (d) where only one consultant is qualified or has experience of exceptional worth.

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<sup>39</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>40</sup> Inserted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

<sup>41</sup> Amended vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013

(5) **Fixed Budget**

- (a) this method shall be used only when all of the following conditions exist:
  - (i) assignment is simple;
  - (ii) can be precisely defined;
  - (iii) budget is fixed;
- (b) the Request for Proposal shall indicate the available budget. Proposals that exceed the indicated budget shall be rejected;
- (c) the ranking shall be based only on evaluation of technical proposals of the qualified bidders.

(6) **Design Contest** - This method shall be used only for projects where aesthetic component is of prime consideration. The procuring agency shall invite consultants to submit a financial proposal and present a plan or design for the project based on a concept or criteria provided by it. The financial proposal of the top-ranked consultant shall only be opened.

(7) **Consultant's Qualifications Selection Method –**

- (a) this method shall apply only to small consultancies for which the cost of a full-fledged selection process would not be justified.
- (b) consulting firm is selected at the stage of Expression of Interest on the basis of criteria mentioned in the Request for Expression of Interest. The selected firm is asked to submit a technical and financial proposal, in single envelope, and then invited to negotiate the contract.

(8) **Selection Process of Individual Consultants**

- (a) this method shall be adopted only if all or any of the following conditions exist:
  - (i) the scope of work is such that teams of personnel are not required;
  - (ii) no additional professional support is required;
  - (iii) the experience and qualifications of the individual are the paramount requirement.
- (b) individual consultants may not be required to submit proposals, and may be selected on the basis of the evaluation of their curriculum vitae. Interviews may be set up for selection under this method

**73. Request for Expression of Interest**

- (1) Request for Expression of Interest shall be advertised or announced in accordance with the provisions of Rule 17 and 18 above;
- (2) Request for Expression of Interest shall contain the following information:
  - (a) name and address of procuring agency;
  - (b) appropriate description of the assignment providing scope of the intellectual and professional services required;
  - (c) deadline and place of the submission of Request for Expression of Interests;
  - (d) criteria for short listing; and
  - (e) any other information that the procuring agency may deem appropriate to disseminate at this stage.

**74. Criteria for Short-listing of Consultants**

- (1) Procuring agency shall short list the applicants according to a pre-determined criteria mentioned in the Request for Expression of Interest;
- (2) The procuring agency while engaged in short listing of consultants shall take into consideration the following factors:
  - (a) qualification;
  - (b) experience;
  - (c) financial capability; and
  - (d) any other factor that a procuring agency may deem relevant not inconsistent with these Rules.

**75. Request for Proposals**

- (1) The procuring agency shall use Request for Proposal for seeking proposals from the shortlisted consultants, which shall include the following:
  - (a) **Letter of Invitation** - It shall mention the name and address of the procuring agency and shall also state the intention of the procuring agency to enter into a contract for provision of consulting services and contain names of all the short listed firms;
  - (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;

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- (c) **Terms of Reference** - It shall define the objectives, goals and scope of the assignment unambiguously and list the deliverables, services and surveys necessary to carry out the assignment and expected outputs. Terms of Reference are to be read along with the conditions mentioned in the Form of Contract;
- (d) **Form of Contract** - Form of contract is a draft contract agreement which includes all general and special conditions of contract;
- (e) **Evaluation Criteria** - Except as otherwise provided, the evaluation of proposals shall be carried out giving due consideration to quality and cost;
- (f) **Types of Contract** - The procuring agency may use one of the following types of contract:
  - (i) lump sum contract shall be used mainly for assignments in which the contents, duration of the services and the required output are unambiguously defined;
  - (ii) time based contract shall be used when it is difficult to define the scope and the length of services;
  - (iii) hourly or daily rates contract shall be used for small projects, especially when the assignment is for less than a month; and
  - (iv) any other contract, based on combination of the above types of contracts, including out of pocket expenses, where required.
- (g) **Special provisions** - The procuring agency may specify any other requirement related to the assignment or contract, where required.

(2) The procuring agency shall invite the interested consultants to submit their technical and financial proposals in separate sealed envelopes. The procuring agency shall give deadline for submission of proposals. Consultants shall be given adequate time in which to prepare their proposals which shall not be less than 15 days for National Competitive Bidding and 45 days for International Competitive Bidding.

**76. Criteria for Evaluation of Quality of Consulting Services** - Evaluation criteria shall include, but shall not be limited to the following;

- (1) **Specialization:** Consultants' specialized skills and access to particular technologies related to the assignment;
- (2) **Experience:** Consultants' experience and past performance on similar contracts or assignments and in similar geographical conditions;
- (3) **Financial Capability:** Financial capability of the consulting firms may be evaluated with a view to ensuring that they can complete the assigned task in a timely manner;

(4) **Understanding of the Assignment:** Consultant's understanding of the assignment is a very important consideration for evaluation;

(5) **Proposed Methodology.** Methodology proposed by the consultants shall be evaluated for its innovativeness and soundness;

(6) **Quality Management:** Availability of a well-established Quality Management system may be taken into account for large and complex assignments.

#### **77. Association between Consultants**

(1) An association of consultants may take either the form of a consortium or a sub-consultancy.

(2) Under a consortium arrangement only one entity, either through the lead consultant or by forming a legal juridical person, shall be responsible to the Government for execution of the entire assignment

(3) Under sub-consultancy, the main consultant may engage another consultant for performing part of an assignment, only if expressly provided in the contract agreement and expressly agreed to by the procuring agency. The main consultant shall, however, bear all responsibility for quality of the output and in all other respects as provided in the main contract.

#### **78. Intellectual Property Rights**

(1) All documents, reports, designs, research work and all deliverables prepared by the consultant shall become and remain the property of the procuring agency;

(2) Any restrictions on the future use of these documents and software by the consultant shall be specified in the conditions of the contract.

**79. Extent of Contract Negotiation** - Procuring agency may negotiate with the highest ranked bidder regarding methodology, work plan, staffing and special conditions of the contract. 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.

#### **80. Professional Liability of Consultants**

(1) The consultant selected and awarded a contract shall be liable for consequence of omissions or commissions on his or their part. The extent of liability of consultant shall be incorporated in the contract, and in no case, shall be less than the remuneration, excluding out of pocket expenses, nor shall the liability exceed twice the amount of remunerations;

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(2) The procuring agency may demand insurance on part of the consultant to cover its liability as stated above, and necessary costs shall be borne by the consultant;

(3) The consultant shall be liable for all losses or damages suffered by the procuring agency on account of any misconduct by the consultant in performing the consulting services.

## **PART IV – PUBLIC PRIVATE PARTNERSHIP PROJECTS**

### **81. Public Private Partnership Projects**

(1) The rules under this part shall be applicable for procurement of goods, works and services through Public Private Partnership;

(2) The rules for procurement of goods, works and services in Parts II and III shall *mutatis mutandis* apply to the projects in which the design, financing and operations and maintenance will be undertaken under any of the following mode of procurement;

- (a) Service Contract
- (b) Management Contract
- (c) Lease Contract
- (d) Build, Operate and Transfer
- (e) Build, Own and Operate
- (f) Design, Build, Finance and Operate and Transfer
- (g) Build, Own, Operate, Transfer
- (h) Build, Lease and Transfer
- (i) Build and Transfer
- (j) Rehabilitate, Operate and Transfer
- (k) any combination or variation of the above modes or any other arrangement under PPP mode approved by the Authority.

(3) The competent authority to approve PPP Projects and related processes for all sectors shall rest with the Public Private Partnership Policy Board;

(4) In case of any conflict in provisions or their interpretation within the rules, for PPP projects rules under this part shall take precedence over rules in other parts.

### **82. Procurement Process under Public Private Partnership**

(1) Some or all the functions and responsibilities of procurement planning and execution may be performed by the professional transaction advisers and consultants subject to approval by the Public Private Partnership Policy Board;

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- (2) The Government shall appoint a committee for each Public Private Partnership project for technical and financial evaluation for evaluating the project. The terms of reference of each such committee shall be approved by the Government;
- (3) Except otherwise provided in these rules all the Public Private Partnership contracts and concessions shall be granted through national or international open competitive bidding, as the case may be;
- (4) The procuring agency may levy a reasonable fee for submitting requests for proposals. Such fee shall not exceed Rs. 100,000/-;
- (5) Bidding documents shall be prepared according to Rule 21 and shall also include the following;
  - (a) minimum design and performance standards and specifications, land and economic parameters;
  - (b) draft concession or management contract;
  - (c) other documents as may be deemed necessary by the procuring agency concerned;
- (6) The instructions to bidders shall be unambiguous, comprehensive and fair to all bidders and shall, as far as necessary and practicable, include but not be limited to the following information;
  - (a) general description and objectives of the project;
  - (b) bid submission procedures and requirements, which shall include information on the manner of bid submission, the number of copies of bid proposal to be submitted, where the bids are to be submitted, the deadline for the submission of bids and permissible mode of transmission of bid proposals;
  - (c) Government undertaking such incentives to be provided, subsidies debt financing, if any, and equity by government or other government guarantees;
  - (d) bid security and bid validity period;
  - (e) milestone bonding;
  - (f) method and criteria, including the minimum amount and form of equity, for the evaluation of the bids;
  - (g) formulas and indices to be used in the adjustments of tolls, fees, rentals, royalties and charges, where applicable;
  - (h) requirements of concerned regulatory bodies, if any;



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- (i) monetary rules and regulation governing foreign exchange remittances;
- (j) revenue sharing arrangements;
- (k) expected commissioning date.

(7) Minimum design and performance standards or specifications, including applicable environmental standards shall be clearly defined and shall refer more to the desired quantity and quality of the outputs of the facility and shall state that non-conformity with any of these minimum requirements shall render the bids as non-responsive. Likewise, the following economic and financial parameters, among others, shall be prescribed:

- (a) discount rate and foreign exchange rate as prescribed by the government, where applicable;
- (b) maximum period of project construction;
- (c) fixed term or variable term for project operation and collection of tolls, fees, rentals and charges authorized or approved by the government;
- (d) formula and price indices to be used for adjustments in tolls, fees, rentals and charges, in the case of Build Operate Transfer, Build Operate Own and other variations thereof authorized or approved by the government;
- (e) other financial features embedded in the Public Private Partnership project to enhance Value for Money.

### **83. Negotiations**

(1) Notwithstanding the provisions of Rule 52, negotiations may be permissible after the financial bids have been opened. In case the procuring agency has valid reasons, which must be recorded in writing, that the financial offers are not providing best value for money or need changes, the procuring agency may invite sealed revised financial bids from all qualified bidders or through open bidding. The procuring agency shall keep complete minutes of the negotiation process;

(2) Direct negotiations shall be resorted to when there is only one complying bidder left as defined hereunder:

- (a) If, in response to advertisement, only one interested bidder responds for pre-qualification, and it meets the pre-qualification criteria;
- (b) If after advertisement, more than one interested bidders respond for pre-qualification, if any but only one of them meets the pre-qualification criteria;

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- (c) After pre-qualification, if any, more than one interested bidders respond, and only one of them submits a bid, which is found by procuring agency to be complying;
- (d) After pre-qualification, if any, more than one interested bidders submits the bid, but only one is found by the procuring agency to be complying.

**84. Bid Evaluation** - The best evaluated bid shall be determined on the basis of the following criteria;

- (1) Lowest bid in terms of user fees if the concession period is fixed.
- (2) Highest return or profit for the government if the concession period is fixed and the user fees is the same or lower than other bidder.
- (3) Shortest concession period if the user fee is fixed.
- (4) Lowest Net Present Value of return to the bidder if user fee, concession period and subsidy element is same as those of other bidders, if government equity is not involved.
- (5) Lowest amount of subsidy if the other considerations are almost same.
- (6) Any other factor deemed relevant to the particular project by the procuring agency.

**85. Award of Contract**

- (1) Notwithstanding anything contained in these rules, award of contract under Public Private Partnership shall be based on the criteria of evaluation prepared by the procuring agency, and published along with the Request for Proposal. Subsequently, if procuring agency deems it necessary to change the evaluation criteria after the Request for Proposal has been issued, it shall issue fresh Request for Proposal to afford equal opportunity to all the interested bidders;
- (2) In so far as applicable, the same rules provided for the evaluation of the technical and financial aspects of bid proposals in Part II shall be applied in the evaluation of single bid;
- (3) The procuring agency concerned shall have the right to cancel bidding process, as provided in Rule 25.

**86. Unsolicited Proposal**

- (1) To promote and invigorate innovation the government may receive unsolicited proposals for Public Private Partnership investment from any source;
- (2) The concerned procuring agency shall get the proposal reviewed by their respective technical committee to determine whether the project for which the

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proposal has been submitted is an appropriate project for implementation under Public Private Partnership mode. Such proposal, if found feasible for Public Private Partnership mode, shall be submitted to the Public Private Partnership Unit, Finance Department, Government of Sindh for approval of concept. The concerned procuring agency shall carry out further process in collaboration with the Public Private Partnership Unit;

(3) The initiator of the unsolicited proposal shall be exempt from the pre-qualification process;

(4) Procuring agencies shall ensure competitiveness through advertising the proposed project for open bidding without disclosing the name of the initiator of unsolicited proposal. The initiator will be given five percent additional weightage on the combined secured score, technical and financial, in evaluation. If there is no other bid submitted in response to the competitive bidding, the procuring agency may award the contract to the initiator under these rules.

**87. Power to Frame Procedures** - Public Private Partnership Unit, Finance Department, Government of Sindh shall be empowered to devise guidelines and procedures for effective, efficient and transparent procurement process for Public Private Partnership projects, subject to concurrence by the Authority.

**88. Removal of Difficulties** - To remove the difficulties with respect to any procurement related issues, not expressly covered in these rules, the procuring agencies or the Unit shall refer the matter to the Authority for resolution. The Authority shall co-opt a representative of Public Private Partnership Unit in a committee, formed to resolves such issues.

## PART V – GENERAL

**89. Integrity Pact** - Procurements exceeding Rs. 10 million for goods and works, and Rs. 2.5 million for services shall be subject to an integrity pact, as specified by regulations, between the procuring agency and the suppliers or contractors or consultants.

**90. Overriding Effect** - Provisions of these rules shall have overriding effect notwithstanding anything to the contrary contained in any other Rules, Regulations, Manuals, Instructions or Orders issued by the Government from time to time concerning public procurements.

**91. Repeal and Savings** – Public Procurement Rules, 2004 as adopted by the Government of Sindh shall stand repealed on coming into force of these rules. However, procurement processes already initiated shall be completed according to the statutory framework applicable at the time of initiation of such procurements.

### Appendix - A

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<sup>42</sup> Omitted vide SGA&CD Notification No.SORI(SGA&CD)2-30/2010 dated 8<sup>th</sup> October, 2013