

Islamabad, June 9, 2004

NOTIFICATION

S.R.O. 432(I)/2004.- In exercise of the powers conferred by section 26 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Federal Government is pleased to make the following rules, namely:-

1. Short title and commencement.-

- (1) These rules may be called the Public Procurement Rules, 2004.
- (2) They shall come into force at once.

GENERAL PROVISIONS

2. Definitions.-

(1) In these rules, unless there is anything repugnant in the subject or context,-

(a) "bid" means a tender, or an offer, in response to an invitation, by a person, consultant, firm, company or an organization expressing his or its willingness to undertake a specified task at a price;

(b) "bidder" means a person who submits a bid;

*[(ba) "call off order" means an order placed by a procuring agency under general terms and pricing on a range of goods under closed framework agreement, without having to negotiate terms every time;

(bb) "closed framework agreement" means an agreement with specified terms and conditions with an agreed price;]

(c) "competitive bidding" means a procedure leading to the award of a contract whereby all the interested persons, firms, companies or organizations may bid for the contract and includes both national competitive bidding and international competitive bidding;

(d) "contractor" means a person, consultant, firm, company or an organization who undertakes to supply goods, services or works;

**Inserted vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

(e) “contract” means an agreement enforceable by law;

(f) “corrupt and fraudulent practices” includes the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official or the supplier or contractor in the procurement process or in contract execution to the detriment of the procuring agencies; or misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition and any request for, or solicitation of anything of value by any public official in the course of the exercise of his duty;

(g) “emergency” means natural calamities, disasters, accidents, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment;

*[(ga) “e-Procurement” means use of information and communication technologies or digital or electronic means for procurement process;

(gb) “framework agreement” means a contractual arrangement which allows a procuring agency to procure goods, services or works that are needed continuously or repeatedly at agreed terms and conditions over an agreed period of time, through placement of a number of orders;]

**[(h) “most advantageous bid” means,-

(i) a bid or proposal for goods, works or services that after meeting the eligibility or qualification criteria, is found substantially responsive to the terms and conditions as set out in the bidding or request for proposals document; and

(ii) evaluated as the highest ranked bid or proposal on the basis of cost or quality or qualification or any combination thereof, as specified in the bidding documents or request for proposal documents which shall be in conformity with the selection techniques to be issued by the Authority;]

*[(ha) “Open framework agreement” means an agreement with specified terms and conditions without an agreed price;]

(i) “Ordinance” means the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002);

**Inserted vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

*** Substituted vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

(j) “repeat orders” means procurement of the same commodity from the same source without competition and includes enhancement of contracts;

(k) “supplier” means a person, consultant, firm, company or an organization who undertakes to supply goods, services or works;

*[(ka) “unsolicited project proposal” means any proposal containing a unique and innovative idea and approach, and the same is not submitted in response to any procurement request, however is aligned with the mission and objectives of the procuring agency and is subject to competitive selection process by soliciting counter proposals challenging the initiator’s proposal in all the technical and financial aspects; and]

(l) “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.

(2) The expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Ordinance.

3. Scope and applicability.-

Save as otherwise provided, these rules shall apply to all procurements made by all procuring agencies of the Federal Government whether within or outside Pakistan.

4. Principles of procurements.-

Procuring agencies, while engaging in procurements, shall ensure that the procurements are conducted in a fair and transparent manner, the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

5. International and inter-governmental commitments of the Federal Government.-

Whenever these rules are in conflict with an obligation or commitment of the Federal Government arising out of an international treaty or an agreement with a State or States, or any international financial institution the provisions of such international treaty or agreement shall prevail to the extent of such conflict.

6. Language.-

(1) All communications and documentation related to procurements of the Federal Government shall either be in Urdu or English or both. Except where a procuring agency is situated outside the territories of Pakistan and procurements are to be made locally, the procuring agency may use the local language in addition to Urdu or English.

(2) Where the use of local language is found essential, the original documentation shall be in Urdu or English, which shall be retained on record; for all other purposes their translations in local language shall be used:

Provided that such use of local language ensures maximum economy and efficiency in the procurement.

(3) In case of the dispute reference shall be made to the original documentation retained on record.

7. Integrity pact.-

Procurements exceeding the prescribed limit shall be subject to an integrity pact, as specified by regulation with approval of the Federal Government, between the procuring agency and the suppliers or contractors.

***[7A. e-public procurement.-**

The procuring agencies may carry out e-procurement process by using information and communication technologies or digital or electronic means, in such manner as to cover any or all aspects of the procurement process, in accordance with the regulations or guidelines to be prescribed by the Authority.]

PROCUREMENT PLANNING

8. Procurement planning.-

Within one year of commencement of these rules, all procuring agencies shall devise a mechanism, for planning in detail for all proposed procurements with the object of realistically determining the requirements of the procuring agency, within its available resources, delivery time or completion date and benefits that are likely to accrue to the procuring agency in future.

9. Limitation on splitting or regrouping of proposed procurement.-

Save as otherwise provided and subject to the regulation made by the Authority, with the prior approval of the Federal Government, a procuring agency shall announce in an appropriate manner all proposed procurements for each financial year and shall proceed accordingly without any splitting or regrouping of the procurements so planned. The annual requirements thus determined would be advertised in advance on the Authority's website as well as on the website of the procuring agency in case the procuring agency has its own website.

10. Specifications.-

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 or 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".

*[Provided that this rule shall not apply to procurement made by public sector commercial concerns on the demand of private sector client specifying, in writing, a particular brand, model or classification of equipment, machinery or other objects.]

11. 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.

PROCUREMENT ADVERTISEMENTS

12. Methods of advertisement.-

(1) Procurements over ****[five hundred thousand Pakistani Rupees]** and up to the limit of *****[three million Pakistani Rupees]** shall be advertised on the Authority's website in the manner and format specified by regulation by the Authority from time to time. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring agency:

**Inserted vide S.R.O. No. 1022(I)/2008 dated 23-9-2008.*

***The words "one hundred thousand Rupees" was substituted with the words "five hundred thousand Pakistani Rupees" vide S.R.O. No 442(I)/2020 dated 15th May 2020*

****the words "two million rupees" was substituted with the words "three million Pakistani Rupees" vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

*[Provided that the lower financial limit for advertisement on Authority's website for open competitive bidding shall be the prescribed financial limit for request for quotations under clause (b) of rule 42.]

(2) All procurement opportunities over ****[three million Pakistani Rupees]** should be advertised on the Authority's website as well as in other print media or newspapers having wide circulation. The advertisement in the newspapers shall principally appear in at least two national dailies, one in English and the other in Urdu.

(3) In cases where the procuring agency has its own website it may also post all advertisements concerning procurement on that website as well.

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

13. Response time.-

(1) The procuring agency may decide the response time for receipt of bids or proposals (including proposals for pre-qualification) from the date of publication of an advertisement or notice, keeping in view the individual procurement's complexity, availability and urgency. However, under no circumstances the response time shall be less than fifteen *****[days]** for national competitive bidding and thirty *****[days]** for international competitive bidding from the date of publication of advertisement or notice.

All advertisements or notices shall expressly mention the response time allowed for that particular procurement along with the information for collection of bid documents which shall be issued till a given date, allowing sufficient time to complete and submit the bid by the closing date:

Provided that no time limit shall be applicable in case of emergency.

(2) The response time shall be calculated from the date of first publication of the advertisement in a newspaper or posting on the web site, as the case may be:

**Inserted vide S.R.O.1241(I)/2006 dated 13-12-2006.*

*** The words "two million rupees" was substituted with the words "three million Pakistani Rupees" vide S.R.O. No 442(I)/2020 dated 15th May 2020*

**** The words "working days" were substituted with the word "days" vide S.R.O.1241(I)/2006 dated 13-12-2006.*

***[Provided that for all procurements up to three million Pakistani Rupees, the response time shall be considered from the date of appearance of the advertisement on the Authority's website.]**

(3) In situations where publication of such advertisements or notices has occurred in both electronic and print media, the response time shall be calculated from the day of its first publication in the newspapers.

14. Exceptions.-

It shall be mandatory for all procuring agencies to advertise all procurement requirements exceeding ****[prescribed financial limit which is applicable under sub-clause (i) of clause (b) of rule 42]**. However under following circumstances deviation from the requirement is permissible with the prior approval of the Authority,-

(a) the proposed procurement is related to national security and its publication could jeopardize national security objectives; and

(b) the proposed procurement advertisement or notice or publication of it, in any manner, 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.

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

15. Pre-qualification of suppliers and contractors.-

(1) A procuring agency, prior to the floating of tenders, invitation to proposals or offers in procurement proceedings, may engage in pre-qualification of bidders in case of services, civil works, turnkey projects and in case of procurement of expensive and technically complex equipment to ensure that only technically and financially capable firms having adequate managerial capability are invited to submit bids. Such pre-qualification shall solely be based upon the ability of the interested parties to perform that particular work satisfactorily.

(2) A procuring agency while engaging in pre-qualification may take into consideration the following factors, namely:-

**Inserted vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

***The words "forty thousand rupees" were substituted with the words "prescribed financial limit which is applicable under subclause (i) of the clause (b) of rule 42" vide S.R.O.1241(I)/2006 dated 13-12-2006*

- (a) relevant experience and past performance;
- (b) capabilities with respect to personnel, equipment, and plant;
- (c) financial position;
- (d) appropriate managerial capability; and
- (e) any other factor that a procuring agency may deem relevant, not inconsistent with these rules.

16. Pre-qualification process.-

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

(2) The procuring agency shall provide a set of pre-qualification documents to any supplier or contractor, on request and subject to payment of price, if any.

Explanation.- For the purposes of this sub-rule price means the cost of printing and providing the documents only.

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

(4) The procuring agency shall communicate to those suppliers or contractors who have not been pre-qualified the reasons for not pre-qualifying them.

***[16A. Procurement of common use items, services and commodities through framework agreements.-**

(1) The Procuring Agency shall arrange the procurement through framework agreements of recurrent or common use items, services including maintenance services and those commodities, whose market prices fluctuate during the term of the agreement, for a maximum period of three years.

(2) The procuring agency shall prepare provisional annual estimates including description, specifications, statement of requirements and quantities, based on rational demand estimates.

(3) Based on such estimate, procuring agency shall initiate the prequalification proceedings for selection of suppliers and service providers.

(4) Open and closed framework agreements may be made with the selected suppliers and service providers. Maximum duration of open framework agreements shall not be more than three years and the closed framework agreements shall not exceed one year.

(5) The procuring agency may on need basis pre-qualify new suppliers or service providers during continuity of framework agreements with previously pre-qualified suppliers or service providers.

(6) The Authority shall make regulations, regulatory guides, guidelines or templates for procurement through framework agreements.]

***[16B. Price adjustment for framework agreements.-**

(1) The procuring agency may, during the contract execution, accept a request to make price adjustment (under circumstance of above normal price volatility) and shall make a comparison of the prices requested against the national or international price indicator guides adopted by the Authority and verify the justification for such price adjustment.

(2) The procuring agency shall determine the factor or percentage for price adjustment approved by the Principal Accounting Officer (PAO).]

17. Qualification of suppliers and contractors.-

A procuring agency, at any stage of the procurement proceedings, having credible reasons for or prima facie evidence of any defect in supplier's or contractor's capacities, may require the suppliers or contractors to provide information concerning their professional, technical, financial, legal or managerial competence whether already pre-qualified or not:

Provided that such qualification shall only be laid down after recording reasons therefor in writing. They shall form part of the records of that procurement proceeding.

18. Disqualification of suppliers and contractors.-

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

19. Blacklisting of suppliers and contractors.-

The procuring agencies shall specify a mechanism and manner to permanently or temporarily bar, from participating in their respective procurement proceedings, suppliers and contractors who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices. Such barring action shall be duly publicized and communicated to the Authority:

Provided that any supplier or contractor who is to be blacklisted shall be accorded adequate opportunity of being heard.

METHODS OF PROCUREMENT

20. Principal method of procurement.-

Save as otherwise provided hereinafter, the procuring agencies shall use open competitive bidding as the principal method of procurement for the procurement of goods, services and works.

21. Open competitive bidding.-

Subject to the provisions of rules 22 to 37 the procuring agencies shall engage in open competitive bidding if the cost of the object to be procured is more than *[the prescribed financial limit which is applicable under sub-clause (i) of clause (b) of rule 42].

22. Submission of bids.-

(1) The bids shall be submitted in a sealed package or packages in such manner that the contents are fully enclosed and cannot be known until duly opened.

(2) A procuring agency shall specify the manner and method of submission and receipt of bids in an unambiguous and clear manner in the bidding documents.

23. Bidding documents.-

(1) Procuring agencies shall formulate precise and unambiguous bidding documents that shall be made available to the bidders immediately after the publication of the invitation to bid.

(2) For competitive bidding, whether open or limited, the bidding documents shall include the following, namely:-

**The words "forty thousand rupees" was substituted with the words "the prescribed financial limit which is applicable under subclause (i) of the clause (b) of rule 42" vide Cabinet Division S.R.O.No.1241(I) /2006, dated 13-12-2006*

- (a) invitation to bid;
 - (b) instructions to bidders;
 - (c) form of bid;
 - (d) form of contract;
 - (e) general or special conditions of contract;
 - (f) specifications and drawings or performance criteria (where applicable);
 - (g) list of goods or bill of quantities (where applicable);
 - (h) delivery time or completion schedule;
 - (i) qualification criteria (where applicable);
 - (j) bid evaluation criteria;
 - (k) format of all securities required (where applicable);
 - (l) details of standards (if any) that are to be used in assessing the quality of goods, works or services specified; and
 - (m) any other detail not inconsistent with these rules that the procuring agency may deem necessary.
- (3) Any information, that becomes necessary for bidding or for bid evaluation, after the invitation to bid or issue of the bidding documents to the prospective 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.
- (4) Procuring agencies shall use standard bidding documents as and when notified by regulation 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 specified by regulations.

- (5) The procuring agency shall provide a set of bidding documents to any supplier or contractor, on request and subject to payment of price, if any.

Explanation.- For the purpose of this sub-rule price means the cost of printing and providing the documents only.

24. Reservations and preference.-

- (1) Procuring agencies shall allow all prospective 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 the policy of Federal Government.

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

25. Bid security.-

The procuring agency may require the bidders to furnish a bid security not exceeding five per cent of the bid price.

26. Bid validity.-

(1) A procuring agency, keeping in view the nature of the procurement, shall subject the bid to a bid validity period.

(2) Bids shall be valid for the period of time specified in the bidding document.

(3) The procuring agency shall ordinarily be under an obligation to process and evaluate the bid within the stipulated bid validity period. However under exceptional circumstances and for reason to be recorded in writing, if an extension is considered necessary, all those who have submitted their bids shall be asked to extend their respective bid validity period. Such extension shall be for not more than the period equal to the period of the original bid validity.

(4) Bidders who,-

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

(b) agree to the procuring agency's request for extension of bid validity period shall not be permitted to change the substance of their bids; and

(c) do not agree to an extension of the bid validity period shall be allowed to withdraw their bids without forfeiture of their bid bonds or securities.

27. Extension of time for submission of bids.-

Where a procuring agency has already prescribed a deadline for the submission of bids and due to any reason the procuring agency finds it necessary to extend such deadline, it shall do so only after recording its reasons in writing

and in an equal opportunity manner. Advertisement of such extension in time shall be done in a manner similar to the original advertisement.

OPENING, EVALUATION AND REJECTION OF BIDS

28. Opening of bids.-

(1) The date for opening of bids and the last date for the submission of bids shall be the same. Bids shall be opened at the time specified in the bidding documents. The bids shall be opened at least thirty minutes after the deadline for submission of bids.

(2) All bids shall be opened publicly in the presence of the bidders or their representatives who may choose to be present, at the time and place announced prior to the bidding. The procuring agency shall read aloud the unit price as well as the bid amount and shall record the minutes of the bid opening. All bidders in attendance shall sign an attendance sheet. All bids submitted after the time prescribed shall be rejected and returned without being opened.

29. Evaluation criteria.-

Procuring agencies shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated. Such evaluation criteria shall form an integral part of the bidding documents. Failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement.

30. Evaluation of bids.-

(1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided for in sub-clause (iv) of clause (c) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.

(2) For the purposes of comparison of bids quoted in different currencies, the price shall be converted into a single currency specified in the bidding documents. The rate of exchange shall be the selling rate, prevailing on the date of opening of bids specified in the bidding documents, as notified by the State Bank of Pakistan on that day.

(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 issue of notice for invitation of bids.

31. Clarification of bids.-

(1) No bidder shall be allowed to alter or modify his bid after the bids have been opened. However the procuring agency may seek and accept clarifications to the bid that do not change the substance 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.

32. Discriminatory and difficult conditions.-

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

33. Rejection of bids.-

(1) The procuring agency may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring agency shall upon request communicate to any supplier or contractor who submitted a bid or proposal, the grounds for its rejection of all bids or proposals, but is not required to justify those grounds.

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

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

34. Re-bidding.-

(1) If the procuring agency has rejected all bids under rule 33 it may call for a re-bidding.

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

35. Announcement of evaluation reports.-

Procuring agencies shall announce the results of bid evaluation in the form of a report giving justification for acceptance or rejection of bids at least ten days prior to the award of procurement contract.

36. Procedures of open competitive bidding.-

Save as otherwise provided in these rules the following procedures shall be permissible for open competitive bidding, namely:-

(a) Single stage - one envelope procedure.-

Each bid shall comprise one single envelope containing, separately, financial proposal and technical proposal (if any). All bids received shall be opened and evaluated in the manner prescribed in the bidding document.

(b) Single stage - two envelope procedure.-

- (i) The bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (ii) the envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked "TECHNICAL PROPOSAL" shall be opened;
- (iv) the envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the procuring agency without being opened;
- (v) the 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;
- (vi) during the technical evaluation no amendments in the technical proposal shall be permitted;
- (vii) the financial proposals of bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;

- (viii) after the evaluation and approval of the technical proposal the procuring agency, shall at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and
 - (ix) the bid found to be the ***[most advantageous bid]** shall be accepted.
- (c) Two stage bidding procedure.-

First stage

- (i) the bidders shall first submit, according to the required specifications, a technical proposal without price;
- (ii) the technical proposal shall be evaluated in accordance with the specified evaluation criteria and may be discussed with the bidders regarding any deficiencies and unsatisfactory technical features;
- (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) the 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 thirty days in the case of international competitive bidding;

- (v) those bidders not willing to conform their respective bids to the procuring agency's technical requirements may be allowed to withdraw from the bidding without forfeiture of their bid security;

Second stage

**The words "lowest evaluated bid" was substituted with the words "most advantageous bid" vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

- (vi) the bidders, whose technical proposals or bids have not been rejected and who are willing to conform their bids to the revised technical requirements of the procuring agency, shall be invited to submit a revised technical proposal along with the financial proposal;
- (vii) the revised technical proposal and the financial proposal shall be opened at a time, date and venue announced and communicated to the bidders in advance; and
- (viii) the revised technical proposal and the financial proposal shall be evaluated in the manner prescribed above. The bid found to be the ***[most advantageous 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.

(d) Two stage - two envelope bidding procedure.-

First stage

- (i) the bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (ii) the envelopes shall be marked as "FINANCIAL PROPOSAL" and "TECHNICAL PROPOSAL" in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked "TECHNICAL PROPOSAL" shall be opened;
- (iv) the envelope marked as "FINANCIAL PROPOSAL" shall be retained in the custody of the procuring agency without being opened;
- (v) the technical proposal shall be discussed with the bidders with reference to the procuring agency's technical requirements;

**The words "lowest evaluated bid" was substituted with the words "most advantageous bid" vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

- (vi) those 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;

Second stage

- (viii) after agreement between the procuring agency and the bidders on the technical requirements, bidders who are willing to conform to the revised technical specifications and whose bids have not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the technical requirement;
- (ix) the revised technical proposal along with the original financial proposal and supplementary financial proposal shall be opened at a date, time and venue announced in advance by the procuring agency:

Provided that in setting the date for the submission of the revised technical proposal and supplementary price 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

- (x) the procuring agency shall evaluate the whole proposal in accordance with the evaluation criteria and the bid found to be the ***[most advantageous bid]** shall be accepted.

37. Conditions for use of single stage two envelope, two stage and two stage two envelope bidding procedures.-

Single stage one envelope bidding procedure shall ordinarily be the main open competitive bidding procedure used for most of the procurement. Other appropriate procedures of open competitive bidding shall be selected in the following circumstances, namely:-

**The words "lowest evaluated bid" was substituted with the words "most advantageous bid" vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

(a) single stage two envelope bidding procedure shall be used where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation;

(b) 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 available to the procuring agency; and

(c) 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

***[37(A).Unsolicited Proposal.**

(1) An unsolicited proposal received by the procuring agency from any individual or agency, private or public, consistent with the mission of the procuring agency, shall be assessed by the assessment committee, consisting of at least three technical experts, to be notified by the procuring agency. The assessment committee shall ascertain the viability of the proposal. If the proposal is found viable, the procuring agency shall-

- (a) advertise the proposal for open competition without disclosing the name of the initiator of unsolicited proposal;
- (b) conduct prequalification process;
- (c) exempt the initiator of the unsolicited proposal from the prequalification; and
- (d) award five percent additional weightage to the project proponent in the combined evaluation of his proposal.

(2) If no other bidder in response to the advertisement submits bid, the procuring agency may award the contract to the initiator of the proposal.

(3) In case of bidding competition, if the bid of initiator does not emerge as most advantageous bid, procuring agency shall give the initiator an opportunity to make his bid at par with the most advantageous bid, however if the initiator does not want to accept the challenge to match the proposal, he shall be given right of refusal without forfeiture of bid security.

(4) The proprietary information of the initiator contained in the proposal shall remain confidential and shall not be disclosed to any interested bidder.

(5) Subject to sub-rule (4), the procuring agency shall not be responsible for any intellectual property rights accruing to the proposal of the initiator.

(6) Unless otherwise expressly stated in writing by the initiator, the procuring agency may, if it considers necessary, disclose any information of the unsolicited proposal or the bidders as part of procurement process.]

ACCEPTANCE OF BIDS AND AWARD OF PROCUREMENT CONTRACTS

38. Acceptance of bids.-

The bidder with the *[most advantageous bid], if not in conflict with any other law, rules, regulations or policy of the Federal Government, shall be awarded the procurement contract, within the original or extended period of bid validity.

**[38A. Bid Discount.-

The procuring agencies may seek unconditional discount by incorporating the same in bid solicitation documents. The bidder may offer unconditional discount, in percentage of their quoted price or bids, before opening of the financial proposal. The discounted bid price shall be considered as original bid for evaluation being an integral part of the bid. No offer of discount shall be considered after the bids are opened.

38B. Single responsive bid in goods, works and services.-

(1) The procuring agency shall consider single bid in goods, works and services if it-

- (a) meets the evaluation criteria, ensures compliance of specifications and other terms & conditions expressed in advertisement or bid solicitation documents;
- (b) is not in conflict with any provision of the Ordinance;
- (c) conforms to the technical specifications;
- (d) has financial conformance in terms of rate reasonability:

Provided that except unsolicited proposal, in case of pre-qualification proceedings single bid shall not be entertained.

(2) The procuring agency shall make a decision with due diligence and in compliance with general principles of procurement like economy, efficiency and value for money.]

**The words "lowest evaluated bid" was substituted with the words "most advantageous bid" vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

***Inserted vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

39. Performance guarantee.-

Where needed and clearly expressed in the bidding documents, the procuring agency shall require the successful bidder to furnish a performance guarantee which shall not exceed ten per cent of the contract amount.

***[39A. Letter of credit.-**

Where required the procuring agency may incorporate the provision of letter of credit (LC) and International Chamber of Commerce incoterms, in such processes where shipments and custom clearance are involved and where procuring agency's bank mitigate procurement risk in terms of quality assurance and delivery mechanism and bidder's bank in terms of its payments.]

****[40. Limitation on negotiations.-**

(1) Without changing the cost and scope of work or services, the procuring agency may negotiate with the successful bidder (with a view to streamline the work or task execution, at the time of contract finalization) on methodology, work plan, staffing and special conditions of the contract.

(2) Authority may determine the extent and types of negotiations on procurement by regulations.]

41. Confidentiality.-

The procuring agency shall keep all information regarding the bid evaluation confidential until the time of the announcement of the evaluation report in accordance with the requirements of rule 35.

42. Alternative methods of procurements.-

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

****[(a) petty purchases.-**

Procuring agency may provide for petty purchases through single quotation where value of the object of the procurement is up to the financial limit of one hundred thousand Pakistani Rupee, without resorting to bidding or quotations and the contract for the provision of such goods, services or works may be a local purchase order.]

**Inserted vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

***Substituted vide S.R.O. No. 442(I)/2020 dated 15th May, 2020*

(b) request for quotations.-

A procuring agency shall engage in this method of procurement only if the following conditions exist, namely:-

*[(i) Where the value of procurement is more than one hundred thousand Pakistani Rupee but does not exceed five hundred thousand Pakistani Rupee, the procuring agency may engage in procurement through request for three quotations from GST registered firms, original equipment manufacturers or authorized dealers, without resorting to bidding.]

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

(iii) minimum of three quotations have been obtained; and

(iv) the object of the procurement is purchased from the supplier offering the lowest price:

Provided that procuring agencies convinced of the inadequacy of the financial limit prescribed for request for quotations in undertaking their respective operations may approach the Federal Government for enhancement of the same with full and proper justifications;

(c) direct contracting.-

A procuring agency shall only engage in direct contracting if the following conditions exist, namely:-

(i) the procurement concerns the acquisition of spare parts or supplementary services from original manufacturer or supplier:

Provided that the same are not available from alternative sources;

(ii) only one manufacturer or supplier exists for the required procurement:

Provided that the procuring agencies shall specify the appropriate fora, which may authorize procurement of proprietary object after due diligence; and

- (iii) 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 contract or contracts do not exceed three years in duration;

- (iv) repeat orders not exceeding fifteen per cent of the original procurement;
- (v) in case of an emergency:

Provided that the procuring agencies shall specify appropriate fora vested with necessary authority to declare an emergency;

- *[(vi) when the price of goods, services or works is fixed by the government or any other authority, agency or body duly authorized by the Government, on its behalf]; and

- **[(vii) for purchase of ***[motor vehicle] from local original manufacturers or their authorized agents at manufacturer's price.]

- (d) negotiated tendering.-

A procuring agency may engage in negotiated tendering with one or more suppliers or contractors with or without prior publication of a procurement notification. This procedure shall only be used when,-

- (i) the supplies involved are manufactured purely for the purpose of supporting a specific piece of research or an experiment, a study or a particular development;
- (ii) for technical or artistic reasons, or for reasons connected with protection of exclusive rights or intellectual property, the supplies may be manufactured or delivered only by a particular supplier;

* Inserted vide S.R.O. 65(I)/2006 dated 27-1-2006.

**Inserted vide S.R.O. 1241(I)/2006 dated 13-12-2006.

***The words "motor car" were substituted with the words "motor vehicle" vide S.R.O.1022(I)/2008 dated 23-09-2008.

- (iii) for reasons of extreme urgency brought about by events unforeseeable by the procuring agency, the time limits laid down for open and limited bidding methods cannot be met. The circumstances invoked to justify extreme urgency must not be attributable to the procuring agency:

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

43. On account payments.- All procuring agencies shall make prompt payments to suppliers and contractors against their invoices or running bills within the time given in the conditions of the contract, which shall not exceed thirty days.

44. Entry into force of the procurement contract.-

A procurement contract shall come into force,-

- (a) where no formal signing of a contract is required, from the date the notice of the acceptance of the bid or purchase order has been given to the bidder whose bid has been accepted. Such notice of acceptance or purchase order shall be issued within a reasonable time; or
- (b) where the procuring agency requires signing of a written contract, from 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 a reasonable time:

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

45. Closing of contract.-

(1) Except for defect liability or maintenance by the supplier or contractor, as specified in the conditions of contract, performance of the contract shall be deemed close on the issue of over all delivery certificate or taking over certificate which shall be issued within thirty days of final taking over of goods or receiving the deliverables or completion of works enabling the supplier or contractor to submit final bill and the auditors to do substantial audit.

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

MAINTENANCE OF RECORD AND FREEDOM OF INFORMATION

46. 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.

47. Public access and transparency.-

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

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

REDRESSAL OF GRIEVANCES AND SETTLEMENT OF DISPUTES

48. Redressal of grievances by the procuring agency.-

(1) The procuring agency shall constitute a committee comprising of odd number of persons, with proper powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract.

(2) Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances not later than fifteen days after the announcement of the bid evaluation report under rule 35.

(3) The committee shall investigate and decide upon the complaint within fifteen days of the receipt of the complaint.

(4) Mere fact of lodging of a complaint shall not warrant suspension of the procurement process.

(5) Any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction.

49. 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 of Pakistan.

50. Mis-procurement.-

Any unauthorized breach of these rules shall amount to mis-procurement.

51. Overriding effect.-

The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules concerning public procurements:

Provided that the prevailing rules and procedures will remain applicable only for the procurement of goods, services and works for which notice for invitation of bids had been issued prior to the commencement of these rules unless the procuring agency deems it appropriate to re-issue the notice for the said procurement after commencement of these rules.