

NOTIFICATION

Peshawar, dated the 08-2-2018.

No. SOER)FD/9-7/2017.-In exercise of the powers conferred by section 36 of the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No. XI of 2012), the Government of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014, the following further amendments shall be made, namely:

AMENDMENTS

1. In rule 2, in sub-rule (1),-

- (i) in clause (c), the word and slash "surety/" shall be deleted;
- (ii) clause (d) shall be deleted; and
- (iii) in clause (p), after semi-colon, the word "and" shall be deleted and thereafter, the following new clause shall be inserted, namely:

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

2. In rule 6,-

- (a) for the existing marginal heading, the following shall be substituted, namely:

"Open competitive bidding as principal method of procurement"; and

(b) in sub-rule (2),-

- (i) for the word "tendering", the words "competitive bidding" shall be substituted; and
- (ii) after clause (b), after semi-colon, the word "and" shall be added and thereafter, the following new clause shall be added, namely:

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

3. After rule 6, as so amended, the following new rule shall be inserted, namely:

"6A. Single bid in goods.---The single bid in goods may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of Government, for the time being in force. The single bid shall be in conformity

4. Rule 7 shall be deleted.

5. In rule 8, for sub-rule (4), the following shall be substituted, namely:

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

6. In rule 9, in the marginal heading, for the word “**tendering**”, the words “**competitive bidding**” shall be substituted.

7. In rule 10, in clause (d), for the brackets and letter “(c)”, the brackets and roman number “(iii)” shall be substituted.

8. In rule 11, for sub-rules (1) and (2), the following shall be substituted, namely:

“(1) The procuring entity shall engage in open competitive bidding, if the cost of the object to be procured is more than the financial limit, which is applicable under rule 10. Purchases up to Rs. 2.5 million shall be posted on the procuring entity’s website and Authority’s website, respectively. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring entity.

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

9. For rule 13, the following shall be substituted, namely:

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

10. In rule 14,-

(a) for the marginal heading, the following shall be substituted, namely:

“Open competitive bidding as principle method of procurement.”;

(b) in sub-rule (1),-

(i) for the figures “10”, the figures “18” shall be substituted; and

(ii) for the word “goods”, the word “works” shall be substituted; and

(c) in sub-rule (2), in clause (vii), for the word “tender”, the words “bid solicitation” shall be substituted.

11. After rule 14, as so amended, the following new rule shall be inserted, namely:

“**14A. Single bid in-works and non-consulting services.**---The single bid in works and non-consulting services may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in

12. Rule 15 shall be deleted.

13. In rule 16,-

- (a) in sub-rule (1), the words, figures and abbreviation "total worth of contract exceeds Rs. 45 Million or" shall be deleted;
- (b) in sub-rule (4), for the words "tender documents", the words "bid solicitation documents" shall be substituted; and
- (c) in sub-rule (5), for the figure "6", the figures "14" shall be substituted.

14. In rule 17, in sub-rule (1), the words, figures and abbreviation "in case of contracts costing between Rs. 2.5 million to Rs. 45 million", shall be deleted

15. In rule 18, in clause (c), in sub-clause (v), for the word "insure", the word "issue" shall be substituted.

16. In rule 19, for sub-rules (1) and (2), the following shall be substituted, namely:

"(1) The procuring entity shall engage in open competitive bidding if the cost of the object to be procured is more than the financial limit which is applicable under rule 18 of these rules. Procurement from Rs. 100,000/- to Rs. 2.5 million shall be posted on the procuring entity's website and Authority's website. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring entity.

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

17. In rule 20, in sub-rule (1),-

- (a) for the word "may", the word "shall" shall be substituted; and
- (b) the words "if required" shall be deleted.

18. After rule 23, the following new rule shall be inserted, namely:

"23A. Single bid in consultancy services.---The single bid in consultancy services may be considered if it meets the evaluation criteria expressed in advertisement or bid solicitation documents and is not in conflict with the Act, these rules, regulations or policy of the Government for the time being in force. The single bid shall be in conformity with best evaluated bid. The procuring entity shall make a decision with due diligence and in the light of section 3 of the Act."

19. In rule 25, for sub-rule (1), the following shall be substituted, namely:

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

20. rule 20,
- (a) for sub-rule (1), the following shall be substituted, namely:

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

- (b) after sub-rule (3), the following new sub-rule shall be added, namely:

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

21. In rule 27,-

- (a) in sub-rule (1), for the words “The procurement entity”, the words “When a procuring entity calls for expression of interest it” shall be substituted;
- (b) after sub-rule (1), as so amended, the following new sub-rule shall be inserted, namely:

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

- (c) for sub-rule (2), the following shall be substituted, namely:

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

- (a) **letter of invitation (LOI)**,---the letter of invitation shall mention the name and address of the procuring entity and shall state the intention of the procuring entity to enter into a contract for provision of consulting services;
- (b) **instruction to consultants**,---the instructions to consultants shall contain all necessary information that would help them prepare responsive proposals and shall bring as much transparency as possible to the selection system;
- (c) **terms of reference (TOR)**,---the terms of reference shall unambiguously define the objectives, goals and scope of the assignment besides conditions of contract. Terms of reference shall list the services and surveys necessary to carry out the assignment and expected outputs. It shall also include the evaluation criteria;
- (d) **evaluation criteria**,---except as otherwise provided, the evaluation of proposals shall be carried out giving due consideration to quality and cost;

circumstances, may use one of the following types of contract, namely:

- (i) lump sum contract will be used mainly for assignments in which the content, duration of the services and the required output are unambiguously defined;
- (ii) time based contract will be used when it is difficult to define the scope and the length of services;
- (iii) hourly or daily rates will be used for small projects, especially when the assignment is for less than a month; and
- (iv) any other, based on combination of the above and including out of pocket expenses, where required; and
- (f) **special provisions**,---the procuring entity may specify any other requirement related to the assignment or contract etc, where required.”.

Asstt. Secy
Govt. of Punjab
[Signature]

22. For rule 31, the following shall be substituted, namely:

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

- (a) block acquisition of goods, services or works shall unnecessarily hold up available resources;
- (b) technical reasons indicate that packaging shall improve manageability and quality; and
- (c) the impact of weather, geographical spread on certain procurement, particularly in case of works contract, shall affect its execution with regard to quality and delivery schedule.”.

23. After rule 31, the following new rule shall be inserted, namely:

“31A. Framework contract.---(1) A procuring entity may procure goods, services or works through framework contract in order to ensure uniformity in the procurement.

(2) The procuring entity shall adopt any of the methods of procurement mentioned in these rules for purposes of entering into a framework contract.”.

24. After rule 32, the following new rule shall be inserted, namely:

“32A. Enlistment.---(1) Each Department of Government shall constitute a sub-committee, consisting of five members with the chairperson, not below the rank of BPS-19, for scrutinizing credentials, submitted to it by the prospective bidders, before referring to the Provincial Enlistment and Pre-registration Committee for

may be registered, renewed or rejected, as the case may be, and the Provincial Enlistment and Pre-registration Committee shall give its final decision of enlistment, registration and rejection, within five working days:

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

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

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

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

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

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

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

26. In rule 33,-

(a) for sub-rule (1), the following shall be substituted, namely:

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

(b) in sub-rule (2), the comma and words, “in case of procurement of works”, appearing at the end shall be deleted.

27. In rule 34,-

(a) in sub-rule (1), for the words “or notice in the national newspapers”, the words and commas “on Authority’s website or notice in the national newspaper whichever is later, as the case may be.” shall be substituted.

(b) in sub-rule (2), for the words “website, as the case may be”, the words and commas “Authority’s web site, whichever is later, as the case may be.” shall be substituted; and

(c) in sub-rule (3), after the word “newspapers”, appearing at the end, the words “whichever is later” shall be added.


28. In rule 37, in sub-rule (2), after the full-stop, appearing at the end, the following shall be added, namely:

“The procuring entity shall also specify the place for submission of such bids.”.

29. After rule 37, as so amended, the following new rules shall be inserted, namely:

“37A. Registration with Khyber Pakhtunkhwa Revenue Authority.---All bidders are required to be registered with the Khyber Pakhtunkhwa Revenue Authority, established under the Khyber Pakhtunkhwa Finance Act, 2013 (Khyber Pakhtunkhwa Act No. XXI of 2013), for works, consulting and non-consulting services as listed in Schedule-II of the Act *ibid*.

37B. Unsolicited proposal.---(1) In case of unsolicited proposal received for any engineering, procurement and construction project, the procuring entity shall technically and financially evaluate the proposal to ascertain its viability and after such process if the proposal is found viable, the procuring entity, with the approval of Government,-

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- (a) shall advertise the proposal for open competition without disclosing the name of the initiator of unsolicited proposal;
 - (b) shall conduct prequalification process;
 - (c) shall exempt the initiator of the unsolicited proposal from the prequalification;
 - (d) may award the contract to the initiator of the proposal, if no other bidder in response to the advertisement submits bid;
 - (e) shall give first right of refusal to the initiator, if he does not emerge as the lowest bidder, in case of bidding competition; and
 - (f) shall award five percent additional weightage to the initiator of the proposal from the combined score of technical and financial evaluation.


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

30. In rule 41, for the marginal heading “**Opening tendering with international competition**”, the marginal heading “**International competitive bidding**” shall be substituted.

31. In rule 44, at the end, the following explanations shall be inserted, namely:

“Explanation.---“Corrupt and fraudulent practices” means either one or any combination of the practices given below:

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

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- (iii) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain; and
- (iii) "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;
- (iv) "obstructive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights provided for under these rules."

32. After rule 49, the following new rule shall be inserted, namely:

"49A. Community participation in procurement.---Government may, in order to achieve certain specific social objects, call for the participation of the local community or philanthropic organizations to-

- (a) perform civil works and the delivery of non-consulting services;
- (b) increase the utilization of local know-how, goods, and materials; and
- (c) employ labor-intensive and other appropriate technologies, the procurement procedures, specifications, and contract packaging shall be suitably adapted to reflect these considerations; provided that these are acceptable to the Authority."

**Secretary to
Government of the Khyber Pakhtunkhwa,
Finance Department.**