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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN

CABINET SECRETARIAT

(Cabinet Division)

NOTIFICATION

Islamabad, the 28th June, 2021

S.R.O. 834(I)2021.—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 direct that the following further amendments shall be made in the Public Procurement Rules, 2004, namely:—

In the aforesaid Rules,—

(1) in rule 2, in sub-rule (1),—

(a) after clause (b), the following new clause shall be inserted, namely:—

(1321)

Price: Rs. 20.00

“(b*) “blacklisted” means a bidder that is declared by the Authority untrustworthy after establishing the fact that the bidder was found involved in any corrupt and fraudulent practice or practices; or if the bidder is declared incapable by the Authority due to its established performance failure during the execution of the contract; or if the bidder deviates from its prior commitment or declaration made regarding the bid or proposal submitted by the bidder.”

(b) for clause (f), the following shall be substituted, namely:—

“(f) “corrupt and fraudulent practices” in respect of procurement process, shall be either one or any combination of the practices including,—

- (i) “coercive practices” which 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 practices” which means any arrangement between two or more parties to the procurement process designed to stifle open competition for any wrongful gain, and to establish prices at artificial, non-competitive levels;
- (iii) “corrupt practices” which 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 practices” which 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; and
- (v) “obstructive practices” which means harming or threatening to harm, directly or indirectly, persons to influence their participation in a procurement process, or affect the execution of a contract;”;

(c) after clause (f), the following new clause shall be inserted, namely:—

“(f) (a) “cross debarred” means a bidder debarred by any procuring agency shall be considered as debarred by all the procuring agencies.”; and

(d) after clause (ga), the following new clause shall be inserted, namely:—

“(gaa) “force account” means execution of procurement of small works and non-consultancy services through direct contracting with any state owned entity having resources to perform that particular assignment subject to ascertaining that it is cost and time effective;”;

(2) for rule 10, the following shall be substituted, namely:—

“10. **Specifications.**—(1) The procuring agency shall allow the widest possible competition by defining such specifications that shall not favour any single contractor or supplier nor put others at a disadvantage.

(2) Any terms, specifications, standards, features, characteristics and requirements prescribing the technical or quality characteristics shall be generic in nature and shall not include reference to brand name, model number, catalogue number, name or origin of the country or similar classification.

(3) In case, 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, and no other sufficiently precise or understandable way of describing the characteristics of the goods, works or services to be procured is provided, the words “or equivalent” shall be used, after recording specific justifications in writing therein. The procuring agency shall be responsible to define the parameters of “equivalence” for all participants to procurement process, to ensure transparency.

(4) Solicitation documents or notices for disposal of assets by tender, and any additional information made available to a

prospective participant, shall specify that the asset is to be sold on "as is where is" basis and shall disclaim liability after sale.

- (5) Notwithstanding anything contained in sub-rule (4), a procuring agency shall give a full and accurate description of an asset to be disposed of.”;
- (3) for rule 19, the following shall be substituted, namely:—

“19. **Blacklisting and debarment.**—(1) The procuring agency shall devise a comprehensive mechanism for blacklisting and debarment of bidders for a specified time in accordance with regulations made by the Authority, and the bidder or the bidders shall be declared as—

- (a) blacklisted and henceforth cross debarred for participation in any public procurement or disposal proceedings for the period of not more than ten years, if corrupt and fraudulent practice as defined in these rules is established against the bidder or the bidders in pursuance of blacklisting proceedings;
- (b) blacklisted and henceforth cross debarred for participation in respective category of public procurement or disposal proceedings for a period of not more than three years, if the bidder fails to perform his contractual obligations during the execution of contract or breaches the contract due to his capacity and capability to perform or otherwise. However, procuring agency shall initiate such blacklisting or debarment proceedings after exhausting the forum of arbitration, provided that such provision exists in the conditions of contract, and if such failure or breach is covered in the respective dispute settlement clauses of the contract; and
- (c) blacklisted and henceforth cross debarred for participation in respective category of public procurement or disposal proceedings for a period of not more than six months, if the bidder fails to abide with a bid securing declaration, however without being indulged in any corrupt and fraudulent practice.

- (2) Such blacklisting or barring action shall be communicated by the procuring agency to the Authority and respective bidder or bidders in the form of decision containing the grounds for such action. The same shall be publicized by the Authority after examining the record whether the procedure defined in blacklisting and debarment mechanism has been adhered to by the procuring agency.
- (3) The bidder may file the review petition before the Authority within thirty days of communication of such blacklisting or barring action after depositing the prescribed fee and in accordance with procedure issued by the Authority, and the Authority shall evaluate the case and decide within ninety days of filing of review petition. The decision of the Authority shall be considered as final.
- (4) A bidder who has been declared blacklisted or debarred by a foreign country, international organization or other foreign institutions shall be treated as blacklisted and debarred from participating in any public procurement proceedings or entering into any public contract for such period as declared by that foreign country, international organizations or other foreign institutions:

Provided that in case of public sector entities, the Board shall have the power to review and examine the case on the basis of evaluations made by the Authority, and decide the case accordingly.

- (5) Notwithstanding anything contained in this rule, the blacklisted or debarred bidder shall be bound to perform its contractual obligations in such on-going public contract or contracts in which such bidder is already engaged. This shall however be at the option of respective procuring agency.”;
- (4) in rule 24,—
- (a) in sub-rule (1), for the words “procuring procedure”, the words “procurement or disposal proceedings” and for the word “any”, the word “a” shall be substituted;
- (b) for sub-rule (2), the following shall be substituted, namely:-
- “(2) The procuring agency shall, while evaluating and comparing bids, allow for preference to domestic suppliers or contractors, while competing with the

international bidders in accordance with the policies of Federal Government or regulations made by the Authority for—

- (i) works projects;
 - (ii) certain goods manufactured, mined, extracted and grown in the Islamic Republic of Pakistan; and
 - (iii) disposal of certain assets having any potential impact on national security;
- (c) after sub-rule (2), amended as aforesaid, the following new sub-rule (3) shall be added, namely:—

“(3) The percentage of preference, to be accorded shall be clearly mentioned in the bidding documents under the bid evaluation criteria.”;

- (5) for rule 25, the following shall be substituted, namely:—

“25. **Bid security.**- The procuring agency may require the bidders to furnish a fixed amount of bid security not exceeding five percent of the estimated value of procurement determined by the procuring agency:

Provided that in case where the procuring agency does not require the bid security, the bidder shall submit bid securing declaration on the format prescribed by the Authority in Standard Procurement Documents.”;

- (6) for rule 35, the following shall be substituted, namely:—

“35. **Announcement of evaluation reports.**-Based on the procedure adopted for the respective procurement, the procuring agency shall announce the result of bid evaluation, in the form of final evaluation report giving justification for acceptance or rejection of bids at least fifteen days prior to the award of procurement contract:

Provided that in case where technical proposal is to be evaluated separately, prior to opening of financial proposal, the technical evaluation report shall be announced before opening of the financial proposal.”;

- (7) in rule 36,-

- (a) in clause (c), in sub-clause (vii), for the words “at a”, the words “on respective specified” shall be inserted; and

- (b) in clause (d), for sub-clause (ix), the following shall be substituted, namely:—
- (ix) the revised technical proposal and original financial proposal along with supplementary financial proposal shall be opened on respective specified time, date and venue announced in advance by the procuring agency.”;
- (8) rule 38A shall be omitted;
- (9) for rule 41, the following shall be substituted, namely:—

“41. **Confidentiality.**- The procuring agency shall keep all information regarding the technical or final evaluation confidential, as the case may be, until the time of the announcement of the respective evaluation reports in accordance with the requirements of rule 35.”;

- (10) in rule 42, after clause (d), the following new clauses shall be inserted, namely,—

“(e) force account.—

A Procuring agency, may use force account if the value of procurement does not exceed two hundred million Pakistani Rupees, subject to the following conditions, namely:—

- (i) the required works are small, scattered or remotely located for which qualified construction firms are unlikely to bid at reasonable prices;
- (ii) work is required to be carried out without disrupting ongoing operations;
- (iii) urgent repairs, rehabilitation and remodeling works of national heritage requiring prompt attention to prevent further damages;
- (iv) where unavoidable risk is better borne by the state owned entity than that of contractor;
- (v) there are extreme urgencies which require prompt attention, or
- (vi) the project is of sensitive nature and its information cannot be shared with private sector:

Provided that state owned entity engaged for the procurement shall accomplish the task exclusively through its own resources without involving private sector as a partner or in the form of a joint venture or as a sub-contractor:

Provided further that, where there are more than one eligible state owned entities having such resources to perform that particular assignment, limited competition shall be held amongst them through soliciting the proposals following any mode of enquiry providing reasonable response time without requirement of publication of open advertisement”;

“(f) Direct Contracting with State Owned Entities.-

A procuring agency may engage in direct contracting with state owned entities such as professional, autonomous or semi-autonomous organizations or bodies of the Federal or Provincial Governments for the procurement of such works and services, including consultancy services, which are time sensitive and in the public interest, subject to the following conditions, namely:-

- (i) the organization or the body to be engaged in direct contracting shall be eligible to perform the works or render the services;
- (ii) the organization or the body shall accomplish the work or the services including consultancy services, exclusively through its own resources without involving private sector as a partner or in the form of a joint venture or as a sub-contractor;
- (iii) in case there are more than one organizations or bodies eligible to perform the works or render the services, the procuring agency shall hold competition amongst them through limited tendering (notifications) without any advertisements, however, giving reasonable time for submission of their applications or proposals;
- (iv) the procuring agency shall devise a mechanism for determining price reasonability to ensure that the prices offered by the state owned entities are reasonable for award of the contract.”; and

(11) for rule 48, the following shall be substituted, namely:—

48. Redressal of grievances by the procuring agency.—(1) The procuring agency shall constitute a committee comprising of odd number of persons, with necessary powers and

authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract.

- (2) Any party may file its written complaint against the eligibility parameters, evaluation criteria or any other terms and conditions prescribed in the bidding documents if found contrary to the provisions of the procurement regulatory framework, and the same shall be addressed by the grievance redressal committee (GRC) well before the proposal submission deadline.
- (3) 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 within seven days of announcement of the technical evaluation report and five days after issuance of final evaluation report.
- (4) In case, the complaint is filed against the technical evaluation report, the GRC shall suspend the procurement proceedings.
- (5) In case, the complaint is filed after the issuance of the final evaluation report, the complainant cannot raise any objection on technical evaluation of the report:

Provided that the complainant may raise the objection on any part of the final evaluation report in case where single stage single envelop bidding procedure is adopted.

- (6) The GRC shall investigate and decide upon the complaint within ten days of its receipt.
- (7) Any bidder or party not satisfied with the decision of the GRC, may file an appeal before the Authority within thirty days of communication of the decision subject to depositing the prescribed fee and in accordance with the procedure issued by the Authority. The decision of the Authority shall be considered final.

[F.No.5/25/2005-RA-III (PPRA)]

MUHAMMAD USMAN MUNAWAR,
Section Officer (RA-III).

REGISTERED No. $\frac{M - 302}{L - 7646}$

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PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
(Cabinet Division)

NOTIFICATION

Islamabad, the 15th May, 2020

S. R. O. 442(I)/2020.—In exercise of the powers conferred by section 26 of the Public Procurement Authority Ordinance, 2002 (No. XXII of 2002), the Federal Government is pleased to direct that the following further amendments shall be made in the Public Procurement Rules, 2004, namely:—

In the aforesaid Rules,—

- (i) in rule 2, in sub-rule (1),—
 - (a) after clause (b), the following new clauses shall be inserted, namely:—
 - “(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;

(1165)

Price: Rs. 10.00

[5562(2020)/Ex.Gaz.]

- (bb) “Closed framework agreement” means an agreement with specified terms and conditions with an agreed price;”;
- (b) for clause (h), the following shall be substituted, namely:—
- “(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;”;
- (c) after clause (h), substituted as aforesaid, the following new clause shall be inserted, namely:—
- “(ha) “open framework agreement” means an agreement with specified terms and conditions without an agreed price;”;
- (d) after clause (g), the following new clauses shall be inserted, namely:—
- “(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;” and
- (e) in clause (k), the word “and” at the end shall be omitted and thereafter the following new clause shall be inserted, namely:—
- “(ka) “unsolicited project proposal” means any proposal containing a unique and innovative idea and approach

which 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”;

(ii) after rule 7, the following new rule shall be inserted, namely:—

“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.”;

(iii) in rule 12, in sub-rule (1), for the words “one hundred thousand Rupees,” for the words “five hundred thousand Pakistani Rupees” and for the words “two million rupees”, the words “three million Pakistani Rupees” shall be substituted;

(iv) in rule 13, in sub-rule (2), for full stop at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:—

“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.”;

(v) after rule 16, the following new rules shall be inserted, namely:—

“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 pre-qualification 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).”;
- (vi) in rule 36,—
- (A) in clause (b), in sub-clause (ix), for the words “lowest evaluated bid”, the words “most advantageous bid” shall be substituted;
 - (B) in clause (c), in sub-clause (viii), for the words “lowest evaluated bid”, the words “most advantageous bid” shall be substituted; and
 - (C) in clause (d), in sub-clause (x), for the words “lowest evaluated bid”, the words “most advantageous bid” shall be substituted;

(vii) after rule 37, the following new rule shall be inserted, namely:—

- 37A. **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 of the initiator is found viable, the procuring agency shall—
- (a) advertise the proposal for open competition without disclosing the name of the initiator of un-solicited proposal;
 - (b) conduct pre-qualification process;
 - (c) exempt the initiator of the un-solicited proposal from the pre-qualification; 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 the 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.”;

(viii) in rule 38, for the words “lowest evaluated bid”, the words “most advantageous bid” shall be substituted;

(ix) after rule 38, the following new rules shall be inserted, namely:—

“38A. **Bid discount.**—The procuring agencies may seek un-conditional discount by incorporating the same in bid solicitation documents. The bidder may offer un-conditional 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 un-solicited 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.”;

(x) after rule 39, the following new rule shall be inserted, namely:—

“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.”;

(xi) for rule 40, the following shall be substituted, namely:—

“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) The Authority may determine the extent and types of negotiations on procurement by making regulations.”;

(xii) in rule 42, for clause (a), the following shall be substituted, 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 Rupees, without resorting to bidding or quotations and the contract for the provision of such goods, services or works may be a local purchase order.”;

(xiii) in rule 42, in clause (b), for sub-clause (i), the following shall be substituted, namely:—

“(i) where the value of procurement is more than one hundred thousand Pakistani Rupees but does not exceed five hundred thousand Pakistani Rupees, 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.”; and

(xiv) rule 52 shall be omitted.

[F.No.5/25/2005-RA-III (PPRA).]

MUHAMMAD USMAN MUNAWAR,
Section Officer (RA-III).