

**D R A F T**



**PUNJAB PROCUREMENT RULES 2007**

**July 4, 2007**

**PROJECT MANAGEMENT UNIT,  
PLANNING & DEVELOPMENT DEPARTMENT,  
GOVERNMENT OF THE PUNJAB**

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## GOVERNMENT OF PUNJAB

In exercise of the powers conferred by Section 26 of The Punjab Procurement Regulatory Authority Ordinance, 2007, the Government of Punjab is pleased to make the following Rules, namely:-

### SECTION I GENERAL PROVISIONS

#### 1. Short title and commencement

- (1) These Rules may be called the Punjab Procurement Rules, 2007.
- (2) They shall come into force at once.

#### 2. Scope and applicability

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

#### 3. Overriding effect

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

Provided that the prevailing Rules and procedures will remain applicable only for the procurement of goods, services and works for which invitation to tender, invitation to prequalify, or notice seeking expression of interest had been issued prior to the commencement of these Rules unless the procuring agency deems it appropriate to re-issue the invitation after commencement of these Rules.

#### 4. Definitions

- (1) In these Rules, unless there is anything repugnant in the subject or context,-
  - (a) “Authority” means Punjab Procurement Regulatory Authority formed under Punjab Procurement Regulatory Authority Ordinance, 2007;
  - (b) “award of contract” means issuance of notice of acceptance to the contractor with the selected offer;
  - (c) “CNIC” means Computerized National Identity Card issued by the Government of Pakistan;
  - (d) “competitive bidding” means a procurement procedure whereunder contractors bid for a contract;
  - (e) “contract” means an agreement enforceable by law;
  - (f) “contractor” means any person or organization party, or potentially a party, to a procurement contract with a procuring agency;
  - (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;
  - (h) “large value procurements” mean procurements in excess of Rs. 20,00,000;
  - (i) “medium value procurements” mean procurements in excess of Rs. 200,000 up to Rs. 20,00,000;
  - (j) “NTN” means National Tax Number issued by Central Board of Revenue;

- (k) “offer” is a response to an invitation from a procuring agency, by a contractor expressing willingness to supply goods, services or works at a specified price, in the form of tender, proposal or quotation;
  - (l) “Ordinance” means the Punjab Procurement Regulatory Authority Ordinance, 2007;
  - (m) “petty purchases” means procurements up to Rs. 50,000;
  - (n) “procurement contract” means a contract signed between a procuring agency and a contractor for the supply of goods, services or works;
  - (o) “procurement proceedings” mean all procedures relating to public procurement starting from solicitation of offers, upto award of procurement contract;
  - (p) “repeat order” means procurement of the same commodity from the same source without competition and includes enhancement of contracts;
  - (q) “services” means, -
    - (i) consultancy services – knowledge-based services which primarily result in intellectual output; and
    - (ii) general services – services that do not fall in the categories of “consultancy services” or “goods” or “works”;
  - (r) “small value procurements” mean procurements up to Rs. 200,000;
  - (s) “solicitation documents” mean all documents provided to contractors to allow them to prepare and submit tenders, proposals, or quotations for the supply of goods, works or services;
  - (t) “underperforming procurement contract” means a procurement contract that is either 20% over budget or 50% over the original specified duration.
- (2) The terms used but not defined in these Rules shall have the same meanings as are assigned to them in the Ordinance.

## **5. Principles of procurement**

Public procurement shall be conducted in a fair and transparent manner with particular emphasis on integrity, efficiency, and quality. Procedures of open competition shall be followed, and local industry shall be encouraged, as far as possible.

## **6. Procurement regulations**

Procurement regulations for specific types of procurements notified by the Authority shall be followed in addition to these Rules.

## **7. International and inter-governmental commitments**

To the extent that these Rules conflict with an obligation or commitment of the Government of Punjab arising out of an agreement with any international financial institution or another province of Pakistan, or an international treaty or agreement of the Government of Pakistan 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.

## **8. Language**

- (1) All communications and documentation related to procurements of the Government of Punjab shall either be in Urdu or English or both. Procuring agency may use regional language in addition to Urdu or English, in order to promote greater participation.
- (2) Where the use of local language is found essential, the original documentation shall be in Urdu or English, which shall be retained for record; for all other purposes of the procurement proceedings, translations of the documents in local language shall be used.
- (3) In case of conflict over interpretation of translated documents, reference shall be made to original documentation retained on record.

## **9. Procurement authorization**

- (1) Authorization and delegation of powers to procuring agency for different categories of procurement shall be notified by the Authority.
- (2) Competent authorities for conducting procurement proceedings and award of contracts may be defined in relevant regulations for goods, works, and services.

## **10. Training of procurement officials**

All procuring agencies shall ensure that employees involved in procurement have necessary and relevant training in accordance with the training policy issued by the Authority.

## **11. Inducements from contractors**

A procuring agency shall reject a tender if the contractor that submitted it offers, gives or agrees to give, directly or indirectly, to any current or former officer, or employee of the procuring agency or other governmental authority, a gratuity in any form, an offer of employment or any other thing of service or value, as an inducement with respect to an act or decision of, or procedure followed by, the procuring agency in connection with the procurement process. Such rejection of the tender and the reasons therefor shall be recorded in the record of the procurement proceedings and promptly communicated to the contractor.

## **12. Procurement planning and reporting**

- (1) Procuring agency shall issue an annual procurement report within one month of the closing of the financial year. This report shall contain:
  - a. list of all medium value procurements and large value procurements, including names of contractors (along with NTN for firms and CNIC for individuals), value, initiation date and completion status.
  - b. summary of annual procurement based on types of procurement (goods, works and services), classifications, and sub-classifications, if any, prepared by procuring agency.
  - c. list of underperforming procurement contracts, including contracts awarded during the year and continuing from previous years, along with reasons for delay.
- (2) Procuring agency shall issue an annual procurement plan within one month of the start of the financial year containing procurement projections based on types, classifications, and sub-

classifications used in annual procurement report. This plan shall also include details of major procurement contracts planned for the coming year.

- (3) At the end of the financial year, procuring agency shall issue annual procurement assessment report providing a comparison of actual procurement against planned procurement. This report shall record contractor performance, problems encountered in procurement and their resolution, as well as deviations from the procurement plan.
- (4) Procuring agency shall submit annual procurement report, annual procurement plan, and annual procurement assessment report to the Authority which shall consolidate and publish these on its website.

### **13. Blacklisting of contractors**

- (1) The following shall result in blacklisting of contractors:
  - (a) Conviction for fraud, corruption, criminal misappropriation, theft, forgery, bribery or any other criminal offence in connection with obtaining, attempting to obtain, or performing a procurement contract;
  - (b) Finding by a court or tribunal of competent jurisdiction that the contractor is guilty of tax evasion;
  - (c) Wilful failure to perform in accordance with the terms of one or more contracts;
  - (d) Failure to remedy underperforming contracts, as identified in consecutive annual procurement reports issued by procuring agencies.
- (2) Procuring agency may, on its own motion or on information provided by any party, carry out an investigation to determine whether there is sufficient cause for blacklisting a contractor. Procuring agency shall forward its report and recommendations, giving detailed reasons along with supporting materials, to the Authority.

Provided that if blacklisting is recommended on account of Rule 13(1)(d), the procuring agency may also recommend remedial actions for avoidance of blacklisting.
- (3) The Authority shall consider the procuring agency's report and recommendations and if, based on the material on record, it forms the view that a prima facie exist for blacklisting the contractor, it shall issue a show cause notice to the contractor which shall specify:
  - (a) grounds and the material on the basis of which the contractor is to be blacklisted;
  - (b) remedial actions, if blacklisting is recommended on account of Rule 13(1)(d), to avoid blacklisting and the period in which such actions are to be taken, provided that the period specified for any remedial action shall not be less than one week;
  - (c) period for which the contractor is proposed to be blacklisted;
- (4) The contractor may within one week of receipt of the show cause notice submit his reply to the Authority. The Authority shall within one week after the expiry of the period for submission of reply by the contractor, provide the contractor with an opportunity of hearing.
- (5) The Authority shall after considering the material on record and the submissions of the contractor order that:
  - (a) the contractor shall not be blacklisted; or,
  - (b) the contractor shall be blacklisted, and shall specify:
    - (i) the period for which the contractor shall be blacklisted, and
    - (ii) the remedial actions, if blacklisting is on account of Rule 13(1)(d), provided that the contractor shall not be blacklisted during the period specified in the show cause notice for the remedial actions;

Provided further that such period shall be deemed to begin from the date of the order.

- (6) The Authority shall, within fifteen days of passing an order under Rule 13(5) or within fifteen days after the expiry of the time provided for remedial actions in the order, whichever is later, cause the same to be published on its website.
- (7) If the contractor fails to complete the remedial action specified in the order under Rule 13(5) within the time provided in the order, the contractor shall be deemed to be blacklisted and the order of blacklisting shall be published in accordance with Rule 13(6).

Provided that if the contractor completes the remedial action to the satisfaction of the Authority, after the expiry of the time specified for this purpose in the order, the Authority shall promptly make an order for removing the contractor from the blacklist and shall remove the blacklisting order from its website.

- (8) A contractor against whom a blacklisting order has been passed under Rule 13(5) may file a petition for review of the order before the Authority within thirty days of the passing of the order. No order shall be modified or reversed in review unless the contractor is able to show that there is an error apparent on the face of the record or if the order was otherwise passed without jurisdiction.
- (9) Subject to provisions of Rule 13(7), blacklisted contractor shall not be allowed to participate in procurement proceedings during the period specified in the blacklisting order.

Provided that after the expiry of such period, the Authority shall remove the blacklisting order from its website and shall notify that the contractor is no longer blacklisted.

#### **14. Limitation and preference based on nationality**

- (1) Procuring agency shall allow contractors to participate in procurement proceedings without regard to nationality.
- (2) Procuring agency may give margin of preference to regional or national contractors with specific approval of the Authority. The magnitude of preference to be accorded shall be clearly mentioned in the solicitation documents.

#### **15. Discriminatory and difficult conditions**

Save as otherwise provided, procuring agency shall not introduce any condition in any aspect of the procurement proceedings which discriminates between contractors or that is considered to be met with difficulty. Discriminatory or difficult conditions shall be determined with reference to the ordinary practices of the trade to which that particular procurement is related.

#### **16. Specifications**

- (1) Any specifications setting forth the technical or quality characteristics of the goods, works or services to be procured that create obstacles to participation shall not be included or used in the solicitation documents. To the extent possible, specifications shall be based on the relevant objective and quantifiable technical and quality characteristics of the goods, works or services. There shall be no requirement of or reference to a particular trademark, name, patent, design, type, specific origin or producer, unless there is no other sufficiently precise or intelligible way of describing the characteristics of the goods, works or services and provided that words such as “or equivalent” are included.

- (2) Notwithstanding Rule 16(1), if standardization of specific brands is required for multiple procurements within a specified period, procuring agency shall seek prior approval of the Authority.

### **17. Rejection of offers**

- (1) If already specified in the solicitation documents, the procuring agency may reject all offers at any time prior to the acceptance of an offer. Notice of rejection of all offers shall be given promptly to all contractors that submitted offers.
- (2) The procuring agency shall incur no liability, solely by virtue of its invoking Rule 17(1) towards contractors who have submitted offers.
- (3) The procuring agency shall upon request communicate to any contractor that submitted an offer, the grounds for its rejection of all offers, but is not required to justify those grounds.
- (4) In case of re-tendering, the procuring agency may revise specifications, evaluation criteria or any other condition as it may deem necessary before it re-issues invitation to tender or prequalify, or requests for quotations or proposals, as the case may be.

### **18. Record of procurement proceedings**

- (1) Procuring agency shall maintain records and documents regarding public procurement which shall, at a minimum, contain:
  - (a) a brief description of the goods, works or services to be procured and of the procurement need for which the procuring agency requested offers;
  - (b) names and addresses of contractors that submitted offers, name and address of the contractor to whom contract was awarded, and value of the contract;
  - (c) if an alternate method of procurement was used pursuant to Rule 45 to 48, a statement of the grounds and circumstances, pursuant to Rules 28 to 30, which the procuring agency used to justify the selection of the method of procurement used;
  - (d) minutes of opening of offers, if any;
  - (e) summary of any request for clarification of the prequalification or solicitation documents, the responses to such requests, as well as a summary of any modifications of those documents;
  - (f) summary of evaluation and comparison of offers received, including the application of any margin of preference pursuant to Rule 14(2);
  - (g) record of prequalification proceedings, if any;
  - (h) if all offers were rejected pursuant to Rule 17, a statement to that effect and the grounds therefor;
  - (i) if any complaint was brought against procurement proceedings in question, all documentation related to such complaint and review proceedings;
  - (j) if any tender was rejected subject to Rule 11, a statement to that effect and the grounds therefor;
  - (k) any other communication with contractors who submitted offers;
  - (l) any other information required according to guidelines issued by the Authority; and
  - (m) detailed report on examination and evaluation of offers
- (2) The portion of the record of procurement proceedings referred to in Rule 18(1)(a) and Rule 18(1)(b) shall:
  - (a) be submitted to the Authority for all medium and large value procurements for publication on its website; and

- (b) on request be made available to any person after contract has been awarded or after procurement proceedings have been terminated without resulting in a procurement contract.
- (3) The portion of the record of procurement proceedings referred to in Rule 18(1)(a), (b), (d) to (h) shall on request, be made available to contractors who submitted offers after an offer has been accepted or after procurement proceedings have been terminated without resulting in a procurement contract.
- (4) A procuring agency shall not, except when ordered to do so by a competent court and subject to the conditions of such an order, disclose information:
  - (a) if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties, or would inhibit fair competition; or
  - (b) relating to the examination and evaluation of offers and the actual content of offers, other than a summary of the evaluation of offers received.

## **19. Advertisement**

- (1) Procuring agency may request proposals, or issue invitation to tender or invitation to prequalify using the procedure of advertisement.
- (2) Medium value procurements shall be advertised on the Authority's website. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring agency.
- (3) Large value procurements shall be advertised on the Authority's website as well as in mass circulation newspapers. Newspaper advertisements shall appear in at least two national dailies, one in English and the other in Urdu.
- (4) Response time shall not be less than fifteen working days for national competitive bidding and thirty working days for international competitive bidding from the date of publication of advertisement. All advertisements shall expressly mention the response time allowed for that particular procurement.
- (5) 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. Where advertisements are published in both electronic and print media, the response time shall be calculated from the date of its first publication in the newspapers.
- (6) Any exception to this Rule for a specific instance of procurement should be approved by the Authority.

## **20. Limitation on price negotiations**

There shall be no price negotiations with the contractor having submitted the successful offer or any other contractor unless the method of procurement used is pursuant to Rule 47 and Rule 48. In case the bid exceeds the budget available for procurement, reduction in scope can be negotiated. However, these shall be subject to the condition that the reductions will not result in compromise of original specified quality or expected benefit of proposed procurement.

## 21. Performance security

If stated in the solicitation documents, procuring agency shall require the contractor who submits the successful offer to submit a performance security not exceeding ten percent of the value of the procurement contract.

## SECTION II PARTICIPATION

### 22. Qualification criteria

- (1) This Rule applies to the ascertainment by the procuring agency of the qualifications of contractors at any stage of the procurement proceedings.
- (2) In order to participate in procurement proceedings, contractors must qualify by meeting criteria stipulated by the procuring agency which shall, at a minimum, include:
  - (a) registration with Securities & Exchange Commission of Pakistan or Registrar of Firms or other appropriate authority, Income Tax Department and Sales Tax Department, where required;
  - (b) undertaking that the firm has not been blacklisted or debarred by any Government/Semi-Government organization;
  - (c) that they possess necessary professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, and personnel to perform the procurement contract; and
  - (d) that they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a court or a judicial office, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing.
- (3) The procuring agency may require contractors participating in procurement proceedings to provide such documentary evidence or other information as it may deem useful to confirm that the contractors are qualified in accordance with the criteria given in 22(2).
- (4) Any requirement established pursuant to this Rule shall be set forth in prequalification documents, if any, and solicitation documents, and shall apply equally to all contractors. Procuring agency shall impose no criterion or requirement with respect to qualification of contractors other than those provided for in this Rule.
- (5) Procuring agency shall evaluate the qualifications of contractors in accordance with the qualification criteria and procedures set forth in the prequalification documents, if any, and in the solicitation documents.
- (6) Procuring agency shall establish no criterion, requirement or procedure with respect to qualification of contractors that discriminates against or among contractors, or that is not objectively justifiable.
- (7) At any point, during the procurement proceedings:
  - (a) a procuring agency shall disqualify a contractor if it finds that the information submitted concerning the qualifications of contractors was false.
  - (b) a procuring agency may disqualify a contractor if it finds that the information submitted concerning the qualifications of contractors was materially inaccurate or materially incomplete.
  - (c) other than in a case to which Rule 22(7)(a) applies, a procuring agency may not disqualify a contractor on the ground that the information submitted concerning the

qualifications of the contractor was inaccurate or incomplete in a non-material respect. The contractor may be disqualified if it fails to remedy such deficiencies promptly upon request by the procuring agency.

### **23. Prequalification proceedings**

- (1) Contractors may be qualified prior to provision of solicitation documents, pursuant to the qualification criteria given in Rule 22(2).
- (2) If procuring agency engages in prequalification proceedings, it shall provide a set of prequalification documents to each contractor that requests them in accordance with the invitation to prequalify and that pays the price, if any, charged for those documents. The price that the procuring agency may charge for the prequalification documents shall reflect only the cost of printing them and providing them to contractors.
- (3) The prequalification documents shall include, at a minimum, the following information:
  - (a) Instructions for preparing and submitting prequalification applications;
  - (b) A summary of the principal required terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings;
  - (c) Any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications;
  - (d) The manner and place for the submission of applications to prequalify and the deadline for the submission, expressed as a specific date and time and allowing sufficient time for contractors to prepare and submit their applications, taking into account the reasonable needs of the procuring agency;
  - (e) Any other requirements that may be established by the procuring agency in conformity with these Rules and the procurement regulations relating to the preparation and submission of applications to prequalify and to the prequalification proceedings; and
  - (f) If procedures are used pursuant to Section IV, requirements given in Rule 32(1)(a) to (d) and (h);
- (4) Procuring agency shall respond to any request by a contractor for clarification of the prequalification documents that is received by procuring agency within a reasonable time prior to the deadline for the submission of applications to prequalify. The response by the procuring agency shall be given within a reasonable time so as to enable the contractor to make a timely submission of its application to prequalify. The response to any request that might reasonably be expected to be of interest to other contractors shall, without identifying the source of the request, be communicated to all contractors to which the procuring agency provided the prequalification documents.
- (5) Procuring agency shall make a decision with respect to the qualifications of each contractor that has submitted an application to prequalify, while applying only the criteria set forth in the prequalification documents. The annual procurement report may be used, in addition to other documentary evidence, to evaluate contractor qualifications.
- (6) Procuring agency shall promptly notify each contractor submitting an application to prequalify whether or not it has been prequalified and shall make available to any contractor, upon request, the names of all contractors that have been prequalified. Only contractors that have been prequalified are entitled to participate further in the procurement proceedings.
- (7) Procuring agency shall upon request communicate to contractors that have not been prequalified the grounds therefor, but the procuring agency is not required to specify the evidence or give the reasons for its finding that those grounds were present.

**24. Qualification proceedings**

- (1) Regardless of whether prequalification proceedings were conducted, procuring agency may, at any stage of the procurement proceedings, require a contractor to demonstrate its qualifications in accordance with the qualification criteria defined pursuant to Rule 22(2). In case prequalification proceedings were conducted, the procuring agency shall use the same qualification criteria as used in prequalification proceedings.
- (2) Qualification proceedings conducted more than once during the course of procurement proceedings shall require the procuring agency to record reasons for undertaking qualification proceedings in the record of procurement proceedings.
- (3) Procuring agency shall disqualify any contractor that fails to demonstrate its qualifications. The procuring agency shall promptly notify each contractor requested to demonstrate its qualifications as to whether or not the contractor has done so to the satisfaction of the procuring agency.

**SECTION III METHODS OF PROCUREMENT AND CONDITIONS FOR USE****25. Emergency procurement**

Notwithstanding any other provision of these Rules, emergency procurement of goods, works and services shall be undertaken in an expeditious manner, provided that conditions for declaring emergency, method of emergency procurement, and competent authority for conducting emergency procurement as defined by procuring agency have been approved by the Authority.

**26. Methods of procurement**

- (1) Procuring agency engaging in procurement of goods, works or services shall follow the tendering proceedings in Section IV as the primary method of procurement.
- (2) In the case of procurements to which Rule 26(1) does not apply, procuring agency may use alternate methods of procurement as given in Section V, provided a statement of the grounds and circumstances, pursuant to Rule 28 to 30, is used to justify the selection of the method of procurement. This statement shall be made part of the record of procurement proceedings.

**27. Conditions for use of request for quotations**

- (1) Procuring agency may engage in procurement by means of a request for quotations in accordance with Rule 43 for small value procurements of readily available goods or services that are not specially produced or provided to the particular specifications of the procuring agency and for which there is an established market.
- (2) Procuring agency shall not divide its procurement into separate contracts for the purpose of invoking Rule 27(1).

**28. Conditions for use of restricted tendering**

- (1) Procuring agency may, where necessary for reasons of economy or efficiency, engage in procurement by means of restricted tendering in accordance with Rule 44, when:
  - (a) The goods, works or services, by reason of their highly complex or specialized nature, are available only from a limited number of contractors; or

- (b) The time and cost required to examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or services to be procured.

## **29. Conditions for use of two-stage tendering, request for proposals or competitive negotiations**

- (1) Procuring agency may engage in procurement by means of two-stage tendering in accordance with Rule 45, or request for proposals in accordance with Rule 46, or competitive negotiation in accordance with Rule 47, in any of the following circumstances:
  - (a) It is not feasible for the procuring agency to formulate detailed specifications for the goods or works, or, in the case of services, to identify their characteristics;
  - (b) In order to obtain the most satisfactory solution to its procurement needs,
    - (i) It seeks tenders or proposals as to various possible means of meeting its needs; or,
    - (ii) it is necessary for the procuring agency to negotiate with contractors because of the technical character of the goods or works, or because of the nature of the services;
  - (c) When tendering proceedings have been engaged in but no tenders were submitted or all tenders were rejected by the procuring entity pursuant to article 17, 11, 41(5), and when, in the judgement of the procuring entity, engaging in new tendering proceedings would be unlikely to result in a procurement contract.

## **30. Conditions for use of single source procurement**

- (1) Subject to approval by the Administrative Department, procuring agency may engage in single-source procurement in accordance with Rule 48 when:
  - (a) The goods, works or services are available only from a particular contractor, or a particular contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists; or
  - (b) Procuring agency, having procured goods, equipment, technology or services from a contractor, determines that additional supplies must be procured from that contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring agency, the value of the proposed procurement in relation to the original procurement is less than 20%, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question.
- (2) Procuring agency may engage in single-source procurement for petty purchases.

# **SECTION IV TENDERING PROCEEDINGS**

## **PART I SOLICITATION OF TENDERS AND OF APPLICATION TO PREQUALIFY**

### **31. Procedures for soliciting tenders or application to prequalify**

A procuring agency shall solicit tenders or where applicable, applications to prequalify by publishing an invitation to tender or invitation to prequalify, as the case may be, in the form of an advertisement in accordance with Rule 19.

**32. Contents of invitation to tender and invitation to prequalify**

- (1) The invitation to tender shall contain, at a minimum, the following information:
  - (a) name and address of the procuring agency;
  - (b) nature and quantity, and place of delivery of the goods to be supplied, nature and location of the works to be completed, or nature of the services and the location where they are to be provided;
  - (c) desired or required time for the supply of the goods or for the completion of the works, or the timetable for the provision of the services;
  - (d) criteria and procedures to be used for evaluating the qualifications of contractors, in conformity with Rule 22;
  - (e) method of procurement to be used, subject to Rule 26.
  - (f) means of obtaining the solicitation documents, date by which they may be obtained, and the place from which they may be obtained;
  - (g) price, if any, charged by the procuring agency for the solicitation documents: the price that the procuring agency may charge for the solicitation documents shall reflect only the cost of printing them and providing them to contractors;
  - (h) place and deadline for the submission of tenders, subject to Rule 36.
- (2) An invitation to prequalify shall contain, at a minimum, the information referred to in Rule 32(1)(a) to (d), as well as the following information:
  - (a) means of obtaining the prequalification documents and the place from which they may be obtained;
  - (b) price, if any, charged by the procuring agency for the prequalification documents; the price that the procuring agency may charge for the prequalification documents shall reflect only the cost of printing and providing them to contractors;
  - (c) place and deadline for the submission of applications to prequalify.
  - (d) method of procurement to be used, subject to Rule 26.

**33. Provision of solicitation documents**

- (1) The procuring agency shall provide the solicitation documents to contractors in accordance with the procedures and requirements specified in the invitation to tender.
- (2) Solicitation documents shall be made available to contractors immediately after advertisement of invitation to tender till the date stipulated in the invitation to tender, which shall be such number of days prior to tender submission deadline as to allow contractors sufficient time to prepare and submit tenders.
- (3) If prequalification proceedings have been conducted, the procuring agency shall provide a set of solicitation documents to each contractor that has been prequalified and that pays the price, if any, charged for those documents.
- (4) Procuring agency shall maintain a record of name and contact details of contractors to whom solicitation documents have been issued.

**34. Contents of solicitation documents**

- (1) The solicitation documents shall include, at a minimum, the following information:
  - (a) instructions for preparing tenders;
  - (b) criteria and procedures, in conformity with the provisions of Rule 22, to be used for evaluation of the qualifications of suppliers or contractors;

- (c) requirements as to documentary evidence or other information that must be submitted by contractors to demonstrate their qualifications;
- (d) nature and required technical and quality characteristics, in conformity with Rule 16, of the goods, works or services to be procured, including, but not limited to, technical specifications, plans, drawings and designs as appropriate; the quantity of the goods; any incidental services to be performed; the location where the work is to be effected or the services are to be provided; and the desired or required time, if any, when the goods are to be delivered, the work is to be effected or the services are to be provided;
- (e) method of procurement to be used, subject to Rule 26;
- (f) criteria to be used by the procuring agency in determining the successful tender, including any margin of preference and any criteria other than price to be used pursuant to Rule 41(7) and (8) and the relative weight of such criteria;
- (g) terms and conditions of the procurement contract, to the extent they are already known to the procuring agency, and the contract form, if any, to be signed by the parties;
- (h) if alternatives to the characteristics of the goods, works or services, contractual terms and conditions or other requirements set forth in the solicitation documents are permitted, a statement to that effect, and a description of the manner in which alternative tenders are to be evaluated and compared;
- (i) if contractors are permitted to submit tenders for only a portion of the goods, works or services to be procured, a description of the portion or portions for which tenders may be submitted;
- (j) manner in which the tender price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services, such as any applicable transportation and insurance charges, customs duties and taxes;
- (k) currency or currencies in which the tender price is to be formulated and expressed;
- (l) any requirements of the procuring agency with respect to the issuer and the nature, form, amount and other principal terms and conditions of any tender security to be provided by contractors submitting tenders, and any such requirements for any performance security to be provided by the contractor that enters into the procurement contract, including securities such as labour and materials bonds;
- (m) if a contractor may not modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security, a statement to that effect;
- (n) manner, place and deadline for the submission of tenders, in conformity with Rule 36;
- (o) means by which, pursuant to Rule 35, contractors may seek clarifications of the solicitation documents, and a statement as to whether the procuring agency intends to convene a meeting of contractors;
- (p) period of tender validity in conformity with Rule 38;
- (q) place, deadline and procedures for the opening of tenders, in conformity with Rule 40;
- (r) a statement to the effect that the procurement agency reserves the right to reject all offers pursuant to Rule 17;
- (s) procedures to be followed for examining tenders;
- (t) a statement to the effect that the exchange rate to be used for currency conversion shall be the selling rate notified by the State Bank of Pakistan on the date of tender opening;

- (u) name, functional title and address of one or more officers or employees of the procuring agency who are authorised to communicate directly with contractors;
  - (v) any other requirements established by the procuring agency in conformity with these Rules; and
  - (w) an integrity pact, signed by the procuring agency, which is to be signed by the contractor and included in the tender.
- (2) Procuring agency shall use such standard bidding documents as notified by the Authority.

### **35. Clarification and modification of solicitation documents**

- (1) A contractor may request a clarification of the solicitation documents from the procuring agency. Procuring agency shall respond to any request for clarification of solicitation documents if it is received by procuring agency within a reasonable time prior to the deadline for the submission of tenders. Procuring agency shall respond within a reasonable time so as to enable the contractor to make a timely submission of its tender and shall, without identifying the source of the request, communicate the clarification to all contractors to which procuring agency has provided the solicitation documents.
- (2) At any time prior to the deadline for submission of tenders, procuring agency may, for any reason, whether on its own initiative or as a result of a request for clarification by a contractor, modify the solicitation documents by issuing an addendum. The addendum shall be communicated promptly to all contractors to which the procuring agency has provided the solicitation documents and shall be binding on those contractors.
- (3) If the procuring agency convenes a meeting of contractors, it shall prepare minutes of the meeting recording requests for clarification of solicitation documents submitted at the meeting, without identifying the sources of those requests. It shall also record its responses to those requests. The minutes shall be provided promptly to all contractors to which the procuring agency provided the solicitation documents, so as to enable those contractors to take the minutes into account in preparing their tenders.

## **PART II SUBMISSION OF TENDERS**

### **36. Submission of tenders and extension of deadline**

- (1) Procuring agency shall receive tenders at the place, and date and time, specified as the deadline for submission of tenders in the solicitation documents.
- (2) If, pursuant to Rule 35, procuring agency issues a clarification or modification of the solicitation documents, or if a meeting of contractors is held, it shall, prior to the deadline for the submission of tenders, extend the deadline if necessary to afford contractors reasonable time to take the clarification or modification into account in their tenders.
- (3) Procuring agency may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline if it is not possible for one or more contractors to submit their tenders by the deadline owing to any circumstance beyond their control.
- (4) Notice of any extension of the deadline shall be given promptly to each contractor to which the procuring agency provided the solicitation documents.
- (5) Tenders shall be submitted in writing, signed and in a sealed envelope, or alternately, in any other form specified in the solicitation documents that provides a record of the content of the tender and at least a similar degree of authenticity, security and confidentiality;

- (6) The procuring agency shall, on request, provide to the contractor a receipt showing the date and time when its tender was received.
- (7) A tender received by the procuring agency after the deadline for the submission of tenders shall be promptly returned unopened to the contractor that submitted it.

### **37. Tender security**

- (1) Procuring agency shall require contractors to furnish a tender security not exceeding 5% of the tender price. Any tender not accompanied by an acceptable tender security will be rejected.
- (2) Tender security shall be provided as per the specifications provided in the solicitation documents. The solicitations documents shall stipulate the issuer(s) as well as the form and terms of the tender security.
- (3) Prior to submitting a tender, contractor may request the procuring agency to confirm the acceptability of an alternate issuer of tender security. The procuring agency shall respond promptly to such a request.
- (4) Confirmation of the acceptability of an alternate issuer does not preclude the procuring agency from rejecting the tender security on the ground that the issuer, as the case may be, has become insolvent or otherwise lacks creditworthiness.
- (5) Procuring agency shall specify in the solicitation documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Any requirements given by the procuring agency regarding the contractor's conduct in relation to tender security shall be limited to the following:
  - (a) Withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if so stipulated in the solicitation documents
  - (b) Failure to sign the procurement contract if required by the Procuring Agency to do so
  - (c) Failure to provide a required performance security after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the solicitation documents
  - (d) Failure to sign integrity pact.
- (6) Procuring agency shall make no claim to the amount of the tender security, and shall promptly return the tender security, when any of the following occurs:
  - (a) Expiry of tender validity or expiry of tender security;
  - (b) Entry into force of a procurement contract and the provision of performance security, if such a security is required by the solicitation documents;
  - (c) Termination of tendering proceedings without the entry into force of a procurement contract;
  - (d) Withdrawal of the tender prior to the deadline for the submission of tenders, unless the solicitation documents stipulate that no such withdrawal is permitted.

### **38. Tender validity**

- (1) Tenders shall be considered valid only during the period of time specified in the solicitation documents.
- (2) Prior to the expiry of tender validity, the procuring agency may request contractors to extend validity for an additional specified period of time, provided reasons for request of extension are recorded in record of procurement proceedings. A contractor may refuse the request

without forfeiting its tender security, and the effectiveness of its tender shall terminate upon the end of expiry of the original tender validity.

- (3) Contractors that agree to an extension of tender validity shall extend or procure an extension of the period of effectiveness of tender securities provided by them or provide new tender securities to cover the extended period of tender validity. A contractor whose tender security is not extended, or that has not provided a new tender security, is considered to have refused the request to extend tender validity.

### **39. Modification and withdrawal of tenders**

Unless otherwise stipulated in the solicitation documents, a contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security. The modification or notice of withdrawal is effective if it is received by the procuring agency prior to the deadline for the submission of tenders.

## **PART III EVALUATION AND COMPARISON OF TENDERS**

### **40. Opening of tenders**

- (1) Tenders shall be opened at the date and time specified in the solicitation documents as the deadline for the submission of tenders, or at the deadline specified in any extension of the deadline, at the place and in accordance with the procedures specified in the solicitation documents.
- (2) All contractors that have submitted tenders, or their representatives, shall be permitted by the procuring agency to be present at the opening of tenders.
- (3) The name and address of each contractor whose tender is opened and the tender price shall be announced to those persons present at the opening of tenders, communicated on request to contractors that have submitted tenders but that are not present or represented at the opening of tenders, and recorded immediately in the record of procurement proceedings.

### **41. Examination, evaluation and comparison of tenders**

- (1) The procuring agency may ask contractors, in writing, for written clarifications of their tenders in order to assist in the examination, evaluation and comparison of tenders. No change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted;
- (2) Notwithstanding Rule 41(1), the procuring agency shall correct purely arithmetical errors that are discovered during the examination of tenders. The procuring agency shall give prompt notice of any such correction to the contractor that submitted the tender.
- (3) Subject to 41(4), the procuring agency may regard a tender as responsive only if it conforms to all requirements set forth in the solicitation documents;
- (4) Procuring agency may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the solicitation documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.
- (5) Procuring agency shall reject a tender:

- (a) If the contractor that submitted the tender is not qualified;
  - (b) If the contractor that submitted the tender does not accept a correction of an arithmetical error made pursuant to Rule 41(2);
  - (c) If the tender is not responsive;
  - (d) In the circumstances referred to in Rule 11.
- (6) The procuring agency shall evaluate and compare the tenders that have been accepted in order to ascertain the successful tender, as defined in Rule 41(7) in accordance with the procedures and criteria set forth in the solicitation documents. No criterion shall be used that has not been set forth in the solicitation documents;
- (7) The successful tender shall be:
- (a) The tender with the lowest tender price, subject to any margin of preference applied pursuant to Rule 14(2); or
  - (b) The lowest evaluated tender ascertained on the basis of criteria specified in the solicitation documents, which criteria shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation procedure or be expressed in monetary terms wherever practicable;
- (8) In determining the lowest evaluated tender in accordance with Rule 41(7)(b), the procuring agency may consider only the following:
- (a) The tender price, subject to any margin of preference applied pursuant to Rule 14(2);
  - (b) The cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the services, the functional characteristics and quality of the goods or works, the terms of payment and of guarantees in respect of the goods, works or services, environmental and sociological impact of the goods, works, or services;
- (9) If the contractor submitting the successful tender is requested to demonstrate again its qualifications in accordance with Rule 24 but fails to do so, the procuring agency shall reject that tender and shall select a successful tender, in accordance with Rule 41(7) and 41(8), from among the remaining tenders, subject to the right of the procuring agency, in accordance with Rule 17, to reject all tenders.
- (10) Procuring agency shall issue a summary of evaluation and comparison of tenders at least fifteen days prior to the award of procurement contract. Information relating to the examination and clarification of tenders shall not be included in this report.

#### **42. Award of contract and entry into force of procurement contract**

- (1) Subject to Rule 17 and 41(9), acceptance of tender is to be signified through issuance of a notice of award of contract to the contractor whose tender has been ascertained to be the successful tender.
- (2) Subject to Rule 42(1),
  - (a) Procurement contract shall not enter into force if any complaints lodged by contractors to the procurement agency have not been decided; or
  - (b) If the procurement contract is subject to approval by a higher authority, the procurement contract shall not enter into force before the approval is given. Failure to obtain the approval within the time specified in the solicitation documents shall not extend tender validity period or period of effectiveness of tender security specified in the solicitation documents.
- (3) If the solicitation documents require the contractor to sign a written procurement contract, the procuring agency and the contractor shall sign the procurement contract within a reasonable

period of time after the notice referred to in Rule 42(1) is dispatched to the contractor. Subject to Rule 42(2), the procurement contract enters into force when the contract is signed by the contractor and by the procuring agency. Between the time of dispatch of notice referred to in Rule 42(1) and the signing of the procurement contract between the procuring agency and the contractor, neither the procuring agency nor the contractor shall take any action that interferes with the entry into force of the procurement contract or with its performance.

- (4) Except as provided in Rule 42(2) and Rule 42(3) a procurement contract in accordance with the terms and conditions of the accepted tender enters into force when the notice referred to in Rule 42(1) is dispatched to the contractor that submitted the tender, provided that it is dispatched while the tender is valid. The notice is dispatched when it is properly addressed or otherwise directed and transmitted to the contractor, or conveyed to an appropriate authority for transmission to the contractor.
- (5) If the contractor whose tender has been accepted fails to sign a written procurement contract, if required to do so, or fails to provide any required performance security, the procuring agency shall select a successful tender in accordance with Rule 41(7) from among the remaining tenders that are in force, subject to Rule 17.
- (6) Upon entry into force of the procurement contract and, if required, the provision by the contractor of a performance security, notice of the procurement contract shall be given to other contractors, specifying the name and address of the contractor that has entered into the contract and the contract price.

## **SECTION V      ALTERNATE METHODS OF PROCUREMENT**

### **43. Request for quotations**

- (1) Procuring agency shall request quotations from as many contractors as practicable, but from at least three, if possible. Each contractor from whom a quotation is requested shall be informed whether any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges, customs duties and taxes, are to be included in the price.
- (2) Each contractor is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the procuring agency and a contractor with respect to a quotation submitted by the contractor.
- (3) The procurement contract shall be awarded to the contractor that gave the lowest-priced quotation meeting the needs of the procuring agency.

### **44. Restricted tendering**

- (1) When the procuring agency engages in restricted tendering on the grounds referred to in Rule 28, it shall select contractors from whom to solicit tenders in a non-discriminatory manner and it shall select a sufficient number of contractors to ensure effective competition.
- (2) The provisions of Section IV, except Rule 31, shall apply to restricted-tendering proceedings, except to the extent that those provisions are not consistent with this Rule.

### **45. Two-stage tendering**

- (1) The provisions of Section IV shall apply to two-stage tendering proceedings except to the extent those provisions are not consistent with this Rule.

- (2) The solicitation documents shall call upon contractors to submit, in the first stage of the two-stage tendering proceedings, initial tenders containing their proposals without a tender price. The solicitation documents may solicit proposals relating to the technical, quality or other characteristics of the goods, works or services as well as to contractual terms and conditions of supply, and, where relevant, the professional and technical competence and qualifications of the contractors.
- (3) Procuring agency may, in the first stage, engage in negotiations with any contractor whose tender has not been rejected pursuant to Rules 17, 11 or 41(5) concerning any aspect of its tender.
- (4) In the second stage of the two-stage tendering proceedings, the procuring agency shall invite contractors whose tenders have not been rejected to submit final tenders with prices with respect to a single set of specifications. In formulating those specifications, the procuring agency may delete or modify any aspect, originally set forth in the solicitation documents, of the technical or quality characteristics of the goods, works or services to be procured, and any criterion originally set forth in those documents for evaluating and comparing tenders and for ascertaining the successful tender, and may add new characteristics or criteria that conform with these Rules. Any such deletion, modification or addition shall be communicated to contractors in the invitation to submit final tenders. A contractor not wishing to submit a final tender may withdraw from the tendering proceedings without forfeiting any tender security that the contractor may have been required to provide. The final tenders shall be evaluated and compared in order to ascertain the successful tender as defined in Rule 41(7).

#### **46. Request for proposals**

- (1) Procuring agency shall advertise, pursuant to Rule 19, a notice seeking expressions of interest in submitting a proposal.
- (2) Procuring agency shall establish criteria for evaluating proposals and determine the relative weight to be accorded to each such criterion and the manner in which they are to be applied in the evaluation of the proposals. The criteria shall concern:
  - (a) The relative managerial and technical competence of the contractor;
  - (b) The effectiveness of the proposal submitted by the contractor in meeting the needs of the procuring agency; and
  - (c) The price submitted by the contractor for carrying out its proposal and the cost of operating, maintaining and repairing the proposed goods or works.
- (3) A request for proposals issued by a procuring agency shall include at least the following information:
  - (a) The name and address of the procuring agency;
  - (b) A description of the procurement need including the technical and other parameters to which the proposal must conform, as well as, in the case of procurement of works, the location of any works to be effected and, in the case of services, the location where they are to be provided;
  - (c) The criteria for evaluating the proposal, expressed in monetary terms to the extent practicable, the relative weight to be given to each such criterion and the manner in which they will be applied in the evaluation of the proposal; and
  - (d) The desired format and any instructions, including any relevant timetables applicable in respect of the proposal.

- (4) Any modification or clarification of the request for proposals, including modification of the criteria for evaluating proposals referred to in Rule 46(2), shall be communicated to all contractors participating in the request-for-proposals proceedings.
- (5) Procuring agency shall treat proposals in such a manner so as to avoid the disclosure of their contents to competing contractors.
- (6) Procuring agency may engage in negotiations with contractors with respect to their proposals and may seek or permit revisions of such proposals, provided that the following conditions are satisfied:
  - (a) Any negotiations between the procuring agency and a contractor shall be confidential;
  - (b) Subject to Rule 18, one party to the negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party;
  - (c) The opportunity to participate in negotiations is extended to all contractors that have submitted proposals and whose proposals have not been rejected.
- (7) Following completion of negotiations, procuring agency shall request all contractors remaining in the proceedings to submit, by a specified date, a best and final offer with respect to all aspects of their proposals.
- (8) Procuring agency shall employ the following procedures in the evaluation of proposals:
  - (a) Only the criteria referred to in Rule 46(2) as set forth in the request for proposals shall be considered;
  - (b) The effectiveness of a proposal in meeting the needs of the procuring entity shall be evaluated separately from the price;
  - (c) The price of a proposal shall be considered by the procuring agency only after completion of the technical evaluation.
- (9) Any award by the procuring agency shall be made to the contractor whose proposal best meets the needs of the procuring agency as determined in accordance with the criteria for evaluating the proposals set forth in the request for proposals, as well as with the relative weight and manner of application of those criteria indicated in the request for proposals.

#### **47. Competitive negotiation**

- (1) In competitive negotiation proceedings, procuring agency shall engage in negotiations with a sufficient number of contractors to ensure effective competition.
- (2) Any requirements, guidelines, documents, clarifications or other information relative to the negotiations that are communicated by the procuring agency to a contractor shall be communicated on an equal basis to all other contractors engaging in negotiations with the procuring agency regarding the procurement.
- (3) Negotiations between procuring agency and a contractor shall be confidential, and, except as provided in Rule 18, one party to those negotiations shall not reveal to any other person any technical, price or other market information relating to the negotiations without the consent of the other party.
- (4) Following completion of negotiations, the procuring agency shall request all contractors remaining in the proceedings to submit, by a specified date, a best and final offer with respect to all aspects of their proposals. The procuring entity shall select the successful offer on the basis of such best and final offers.

**48. Single-source procurement**

In circumstances set forth in Rule 30, the procuring agency may procure goods, works or services by soliciting a proposal or price quotation from a single contractor.

**SECTION VI REVIEW****49. Right to review**

- (1) Subject to Rule 49(2), before entry into force of procurement contract, any contractor that claims to have suffered, or that may suffer, loss or injury due to a breach of a duty imposed on the procuring agency by these Rules may seek review in accordance with Rule 50.
- (2) The following shall not be subject to the review:
  - (a) selection of a method of procurement pursuant to Rule 26 to 30;
  - (b) decision by the procuring agency under Rule 17 to reject all tenders, proposals, offers or quotations;
  - (c) grounds on the basis of which a firm has not been prequalified pursuant to Rule 23; or
  - (d) refusal by the procuring agency to respond to an expression of interest submitted pursuant to a request for proposals under Rule 46(1);

**50. Review by 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 contractor may lodge a written complaint to the procurement agency no later than fifteen days after the announcement of the tender evaluation report under Rule 41(10).
- (3) The committee shall investigate and decide upon the complaint within fourteen days of the receipt of the complaint. In case of failure to decide upon the complaint within the stipulated time, for each day of delay, sufficient cause for not deciding the complaint should be recorded in record of procurement proceedings.

**51. Arbitration**

- (1) After entry into force of the procurement contract, 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.



PLANNING & DEVELOPMENT DEPARTMENT

# Punjab Procurement Rules, 2007

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Commentary on preparation of PPR 2007  
(draft)

4/7/2007

This document examines the rationale behind inclusion of each of the Rules, as well as the specific content of the Rules, and any particular conditions that are worthy of mention. The commentary also draws on comparison between the Federal Procurement Rules, Punjab Proposed Draft Rules, and UNCITRAL Model Law on Procurement of Goods, Works and Services.

# Punjab Procurement Rules, 2007

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## Commentary on the preparation of the PPR 2007 (draft)

### **Rule 5. Principles of procurements**

The principle of 'Value for money', as included in the Federal Procurement Rules, requires that procurement be conducted with consideration of whole-life cost, quality, reliability, after sales services etc. However, the procurement procedures defined in the Rules are based on the lowest cost approach, and are inconsistent with the principle.

To remove this inconsistency, the principle of value for money has been removed from the Proposed Rules. This is not to suggest, however, that this principle is not fundamental to public procurement, but instead, requires quality-based procurement mechanisms to be suitably developed and included in the Rules before it can be adopted.

In order to meet some of the intended objectives of value for money, quality was included as a principle of procurement. This was intended as a compromise from the strict requirements of the definition of value for money while ensuring that quality was retained in the procurement process.

Another principle included in the Proposed Rules has been that of the promotion of local industry to encourage and prefer participation by local suppliers/contractors, the idea here being that indigenous producers need to be actively targeted and that the government, as large buyer, is best placed to perform this task. See explanation of Rule 14 for further details on margin of preference.

### **Rule 6. Types of procurement**

This Rule allows for a reference to be made to the relevant regulations for goods, works and services. This Rule is meant to act as a link with the relevant regulations when they are formulated.

### **Rule 8. Language**

Section on Language of the Federal Rules was modified as it was concerned with the difference between foreign and local languages. Emphasis was instead laid on the use of regional languages during procurement proceedings. The use of regional languages has been included to support the principle of promotion of local industry.

### **Rule 9. Procurement Authorization**

At the provincial level, the definition of powers of procurement is provided in the Delegation of Financial Powers Rules. Initial authorization for procurement, and any changes to the powers of procurement, is provided by the Finance Department. In the case of provincial agencies, the power for authorization of procurement should lie with the PPRA. This is different from the Federal Rules under which authorization for procurement is given by the procuring agencies themselves.

## **Rule 10. Training of Procurement Officials**

This section has been included to ensure that procuring officials conform to the training policy issued by the Authority as mandated by the provisions of the Ordinance. The training policy has not been made part of the Rules so that it can be flexible and the Authority may adjust it according to its needs.

## **Rule 11. Inducements from Contractors**

This section has been included in the Proposed Rules to introduce a mechanism for precluding attempts at inducements by contractors. The mechanism is meant to empower procuring agencies to deal with such inducements but checks have been built in against the abuse of this mechanism in the form of requirement that reasons for rejection of tenders on the basis of such inducements are to be included in the record of procurement proceedings.

## **Rule 12. Procurement Planning and Reporting**

The Federal Rules do not define mechanisms for procurement planning as procuring agencies are expected to devise their own mechanisms unlike provincial procuring agencies which do not have the capacity to devise their own procedures and therefore, require basic standards which have been laid out in the proposed Rules. Furthermore, in the absence of a standardized planning mechanism provided by the PPRA, individual procurement plans of procuring agencies are unlikely to be consolidated to allow for strategic planning and resource allocation as envisioned in the Punjab Procurement Strategy.

The designed mechanism for procurement planning has three components: annual procurement report (lists all procurements, classified according to type of procurement, carried throughout the year while noting delayed or underperforming contracts (these are to be used for purposes of blacklisting in Rule 13)), annual procurement plan (lists all procurements planned for a year, using classifications of annual procurement report), and annual procurement assessment report (compares planned with actual procurement, and offers analysis of procurement activity in the province). The annual assessment report assists in the development of procurement projections, as well as a documentation of lessons learnt during procurement proceedings. The annual procurement report is intended to be used consistently across departments, therefore, it would be useful for Authority to develop standard classifications for use by procuring agencies.

## **Rule 13. Blacklisting of contractors**

This section has not been dealt with in detail in the Federal Rules, which state that procuring agencies should specify a mechanism for blacklisting on their own. For the purposes of consistency, a mechanism for blacklisting has been defined in the Rules.

While blacklisting is used normally in procurement proceedings, the procedure is generally not automatically triggered. The impact of this is that the threat of blacklisting is used by procuring agencies to coerce contractors, and blacklisting action is rarely ever taken, especially against large contractors. A mechanism for blacklisting has been introduced whereunder blacklisting is mandatory

for instances of criminal liability, and discretionary in case of contractor failure to remedy underperforming contracts.

A mechanism has been detailed for use of blacklisting: under this mechanism, procuring agencies refer blacklisting cases to the Authority after determination of sufficient cause for blacklisting. Authority will consider case, issue notice of intention to blacklist, and conduct blacklisting proceedings. The involvement of the Authority is intended to ensure that potential bias on part of the procuring agency is mitigated.

Conditions for the reentry of contractors into public procurement activities have been clearly identified so as to ensure that this particular aspect of the blacklisting proceedings is not arbitrarily left up to procuring agencies and hence, susceptible to abuse.

## **Rule 14. Limitation and preference based on nationality**

Magnitude of preference for local contractors has been introduced, to actualize the principles stipulated in Rule 5. However, a condition has been introduced that magnitude of preference be clearly stated at the initiation of procurement proceedings, in the solicitation documents. During evaluation process, margin of preference will be quantified if least cost method is being used, and will be quantified in the form of points if a points based criteria is being used (see explanation of evaluation criteria in Rule 41).

## **Rule 15. Discriminatory and Difficult Conditions**

This section has been included to ensure that unnecessarily difficult conditions are not introduced by procuring agencies to selectively favor a particular contractor. This Rule may be used as grounds for complaint by any contractor, bidding for procurement contract, who wishes to challenge unfavorable competition.

## **Rule 16. Specifications**

This Rule has been included to ensure that procuring agencies do not define procurements in a manner that favors a particular supplier or contractor, or disadvantages other contractors. Specifications should be generalized so that ‘wishlist items’ cannot be targeted and procured. Such advantage or disadvantage could be given by using specific brand names, designs, or model numbers to identify the required procurement. Provision has been made for instances of specialized procurement, where procuring agencies may use brand names, if no other option is available. The requirement of “or equivalent” has been included to ensure open competition by any supplier or contractor that feels it can provide a substitute.

## **Rule 17. Rejection of Bids**

This Rule has been included to allow procuring agency to not compromise on its procurement needs by being able to reject offers that are not up to the standards it has stipulated, or in case they are inconsistent with those standards.

This Rule has been adopted from the Federal Rules with a few modifications: these include the fact that the right of procuring agency to reject all tenders should be communicated to bidders in the solicitation documents. It is also recommended that in case of rejection of all tenders, and re-tendering, procuring agencies review reasons for rejection and consider revising specific procurement requirements so that the next attempt at procurement proceedings is productive.

## **Rule 18. Record of Procurement Proceedings**

A standard list has been prepared for use by procuring agencies to ensure transparency in the procurement process.

The limitation on disclosure of the record is intended to protect contractors participating in procurement proceedings. The idea here is that information regarding general description of the procurement contract, and the contractors who submitted offers as well as the value of the final awarded contract should be disclosed to the general public (a number of mediums are identified) while other information relating to the procurement proceedings such as minutes of opening of offers, clarifications and modifications of solicitation documents, summary of evaluation and comparison of offers etc. should be revealed only to contractors who have submitted offers. A third category of the record is not to be disclosed to any member of the general public, but is maintained for the purposes of audit. Part of the record included in this category contains information about alternate method of procurement, complaints brought against procurement proceedings, detailed report on evaluation and examination of offers, and all communication conducted with individual contractors to ensure all such communication is official and unbiased.

Another important consideration for the record of procurement proceedings is that it be disclosed to the general public, or contractors, after the completion of procurement proceedings. Disclosure is withheld till this point because disclosure during proceedings could disrupt the procedure and result in inordinate delays as contractors could lodge complaints on the basis of the disclosed record and cause proceedings to be halted. Also, submission to the Authority is meant to encourage timely documentation by procuring agencies, but the Authority has control over the level and manner of disclosure of information to the public.

Rule 18(4)(b) has been included to ensure that the confidential trade information of contractors is not disclosed. Such information is likely to be included/considered during the examination and comparison of tenders which is why this information has been expressly excluded from disclosure. The only portion of the record in regards to this information relates to a summary of evaluation of offers.

## **Rule 19. Advertisement**

Advertisements, particularly of medium value procurements, need to be published on the Authority's website in order to assure unrestricted accessibility by all potential suppliers and contractors. Encouragement of the website as a medium of advertisement as opposed to print media is intended to open access to government procurement for small contractors.

Exceptions to the Rule require specific approval. Exceptions may concern non-advertisement for specific medium and large value procurements, for instance those where advertisement could violate

intellectual property rights (for example, proprietary designs of spare parts or components of a product), or concern the medium in which advertisements are to be placed.

## **Rule 20. Limitation on Price Negotiations**

Price negotiations are not allowed for procurement proceedings, unless the method of competitive negotiation is used. The limitation on negotiations is intended to ensure that selection is purely on merit basis, the procurement process is transparent and honest, and that formal procedures are used to conduct procurement proceedings.

## **Rule 21. Performance Security**

This rule has been moved from the section on tendering as it was included in the Federal Rules to the general section in the proposed rules in order to ensure that the requirement of performance security applies to all relevant procurement contracts and not only to those that were concluded through tendering procedure.

## **Rule 22. Qualification Criteria**

The proposed Rules have included a separate section on participation of contractors. The idea here is, firstly, to treat qualification criteria differently from qualification proceedings (of which prequalification is one kind). Qualification criteria may be used to evaluate the basic qualifications required of contractors participating in procurement proceedings. The important consideration here is that the same qualification criteria are to be used, regardless of when qualification proceedings are carried out in order to ensure consistency. Qualification proceedings may be conducted at any point during proceedings, including prior to the provision of solicitation documents to interested contractors, in which case the qualification proceedings are referred to as prequalification proceedings.

A number of qualification criteria are listed which serve as the basis for all qualification proceedings. Procuring agencies are also required to ensure that the same stated qualification criteria are adopted consistently across the board.

Another important aspect of the qualification criteria concerns how contractors may be disqualified, the conditions for which have stated in the Rules.

## **Rule 23. Prequalification Proceedings**

Prequalification proceedings are intended to eliminate, early in the procurement proceedings, contractors that are not suitably qualified to perform the contract. Such a procedure may be particularly useful for the purchase of complex or high-value goods, construction or services, or for purchases that are of a relatively low value but involve a very specialized nature, or for procurements for which there are many suppliers in the market. In all these cases, conducting procurement without prequalification means that the evaluation and comparison of offers is much more complicated, costly and time-consuming. The use of prequalification proceedings may narrow down the number of offers that the procuring agency must evaluate and compare. In addition, competent suppliers and

contractors are sometimes reluctant to participate in procurement proceedings for high-value contracts, where the cost of preparing the offer may be high, if the competitive field is too large and where they run the risk of having to compete with unrealistic offers submitted by unqualified or disreputable suppliers or contractors.

The basic requirements of prequalification documents have also been included in the proposed Rules so that minimum standards are laid down for procuring agencies to follow. Also, procuring agencies are required to furnish, on demand, to contractors who have not been qualified the reasons for their not being qualified.

## **Rule 24. Qualification Proceedings**

This Rule relates to the conduct of qualification proceedings at any point during the procurement proceedings. Qualification proceedings should be used to verify that contractors are still qualified during the course of procurement proceedings, especially in instances where there is credible reason to believe that contractors' qualification status may have changed or that they have provided wrong information regarding their qualifications. In order to counter the potential for abuse of this procedure, a requirement has been built in that procuring agencies must record reasons for undertaking qualification proceedings, if they are conducted more than once in the course of procurement proceedings.

## **Rule 25. Emergency Procurement**

This Rule is the first in the section on methods of procurement, and relates to emergency conditions when it is expected that the stated methods of procurement cannot be followed. For this reason, procuring agencies should develop and have their own emergency procurement procedures approved by the Authority. Such approval should be sought only once (so that the procedure may be used for all subsequent emergencies) and gotten prior to the actual occurrence of an emergency. This Rule is meant to provide procuring agencies with a great deal of flexibility when undertaking procurement in emergency circumstances, but is also meant to preclude the possibility of arbitrariness in procedure, and abuse of the method by procuring agencies that have not adequately planned their procurements beforehand.

## **Rule 26. Methods of Procurement**

A distinction has been made in the Rules between the primary method of procurement, open tendering, and alternate methods of procurement (restricted tendering, two-stage tendering, request for proposals, competitive negotiations, request for quotations, and single source procurement). It is advisable for procuring agencies to use open tendering (which includes both tendering with and without prequalification). In general, the method of tendering that should be used is open tendering (which includes both tendering with prequalification and tendering without prequalification) but procuring agencies may adopt alternate methods of procurement when specific conditions associated with each method exist. The use of alternate methods should be made after careful consideration that the conditions listed in the following rules are actually present. Reasons for use of alternate method must be included in the record of procurement proceedings.

## **Rule 27. Conditions for use of restricted tendering**

Restricted tendering procedure is to be used sparingly because of the limitations on participation that it imposes. The only two instances where a case could be made for use of this method are either when the goods, works or services are so specialized that they are available from a select, identifiable number of suppliers or contractors, and it therefore makes no sense to allow open participation by other suppliers, or when the value of the procurement is so low in comparison to the costs of using a method of open participation that its use is not justified.

## **Rule 28. Conditions for use of two-stage tendering, request for proposals, or competitive negotiations**

These three procedures are most suitable for circumstances where it is not feasible for the procuring entity to formulate precise or final specifications for the goods, works or services to be procured. This may happen in two ways: The first is when the procuring agency has not determined the exact manner in which to meet a particular need and therefore seeks proposals as to various possible solutions (e.g., it has not decided upon the type of material to be used for building a bridge). The second case is the procurement of high technology items such as large passenger aircraft or sophisticated computer equipment. In the latter type of exceptional case, because of the technical sophistication and complexity of the goods, it might be considered undesirable, from the standpoint of obtaining the best value, for the procuring agency to proceed on the basis of specifications it has drawn up in the absence of negotiations with suppliers and contractors as to the exact capabilities and possible variations of what is being offered.

While the conditions for use of the three procedures are the same, the manner in which they are to be conducted is different (see Rules 46, 47 and 48).

## **Rule 29. Conditions for use of request for quotations**

The use of quotations has been limited to small value procurements (those upto Rs. 200,000) in light of the principle of open competition. Even with small procurements, the procedure is recommended for such procurements that are generic in nature and are commonly supplied in the market.

An important limitation on the use of this procedure has also been laid out. Procuring agencies cannot make multiple procurements of the same kind, by breaking the total procurement into smaller contracts, through the method of quotations. This is meant to discourage abuse of the process by procuring agencies, as well as encourage proper procurement planning on part of agencies.

## **Rule 30. Conditions for use of single-source procurement**

This method of procurement allows the greatest discretion to procuring agencies and its use should be carefully considered. In general, single-sourcing is to be used only when the availability of the goods, works or services is limited by way of supplier's exclusive rights to a particular product, or where the procuring agency wants to be a repeat procurement and it is efficacious (grounds for this are defined in the Rule) to procure from the same supplier or contractor with whom the original contract was signed.

Single-sourcing can also be used for all petty purchases (upto Rs. 50,000) in which instance it may be considered a modified shopping procedure.

### **Rule 32. Contents of invitation to tender and invitation to prequalify**

The two notices to be issued by way of this Rule are to be selected on the basis of the method of procurement adopted. In case of tendering without prequalification, an invitation to tender is to be issued in which case all interested contractors are to be issued solicitation documents. In case of tendering with prequalification, an invitation to prequalify is to be issued after which prequalification documents (Rule 23(3)) are to be issued to interested contractors.

### **Rule 33. Provision of solicitation documents**

When solicitation documents are being provided to contractors, prequalified or otherwise, it is important for procuring agency to record contact details of all such parties. This information is required so that possible clarification and modification of solicitation documents prior to the deadline for submission of offers may be communicated to such contractors. If electronic means are being used to distribute solicitation documents i.e. solicitation documents have been made available for downloading on the Authority's or procuring agency's website, procuring agencies must maintain contact information of all contractors who access and download such information.

### **Rule 34. Contents of solicitation documents**

The contents of solicitation documents have been written in a detailed manner to provide procuring agencies with a checklist as to the information that must be provided to contractors to enable them to prepare tenders, proposals or offers. In general, the contents may be divided into instructions for preparing tenders, information regarding the goods, works or services to be procured, and the procedures/mechanisms to be adopted by the procuring agency in evaluation and selection of offers. As before, the list is not intended to be comprehensive and procuring agencies should be encouraged to modify and include other information in the solicitation documents according to their procurement needs.

The minimum content of this document is stated in the Rules, so that contractors are able to ascertain whether the goods, works or services being procured are such that they can provide them, and if so, how they can participate in the tendering proceedings. In this Rule, as well as others which state the basic contents of documents to be prepared as part of procurement proceedings, the objective has been to standardize the contents of such documents so that participating suppliers and contractors can expect a certain level of detail regarding the contract when they deal with government departments.

### **Rule 35. Clarification and modification of solicitation documents**

The right of procuring agencies to modify documents has been included to enable procuring agencies to make procurements according to their requirements. It is important that all modifications be communicated to all contractors through an initiative of the procuring agency itself, and also that all communications between a particular contractor and the procuring agency relating to clarification of

solicitation documents be shared with all other contractors so that no contractor has unfair advantage through greater access to information.

Also, it is important for procuring agencies to make such clarifications or modification within a reasonable period of time prior to the deadline for submission of tenders, or if this is not possible, to extend this deadline. The requirement of reasonable time has been included to allow all contractors to modify their offers, and not just that contractor who asked for the clarification.

### **Rule 36. Submission of tenders and extension of deadline**

The provision for extension of deadline (Rule 37(3)) is different from the reasons for extension in the previous section. In this case, the procuring agency has discretion to extend deadline in order to ensure competitiveness in case one or several contractors are unable to meet the deadline for submission. This could happen where a particular contractor is unable to meet the deadline because of circumstances beyond his control, or where a large number of contractors are unable to meet such a deadline indicating that the time given was inadequate for preparation of offers. In order to safeguard integrity in the procurement process, it is encouraged that tenders be submitted in writing and that late tenders be returned unopened. Extensions should be fairly reasonable in length to allow contractors opportunity to take advantage of the additional time.

### **Rule 37. Tender Security**

This Rule has been included to ensure that only genuine contractors participate in the procurement proceedings, to discourage default by contractors, and also to protect the procuring agency against losses suffered due to fault on part of the contractor (the parameters of such a fault have been identified in 38(6)).

Another addition to the tender validity rule is the provision for acceptance of alternate issuers of tender security. This provision has been made keeping in mind participation by foreign contractors, who have the option to use foreign issuers of security, given that such issuer is approved by the procuring agency.

### **Rule 38. Tender Validity**

Tenders are considered to be valid for as long as the period clearly stated in the solicitation documents. The stipulation of this period is important to protect the interests of contractors, who should be expected to commit their resources etc. for a reasonable period of time only.

Tenders should also be held to be valid for a limited period of time only as tender prices are applicable for a specific period only due to inflation, after which contractors

### **Rule 39. Modification and withdrawal of tenders**

This Rule facilitates participation by contractors, as it allows them to modify offers or proposals prior to the deadline for submission. Allowing modification of submitted tenders may be particularly useful in case of extension of submission deadline. At the same time, this Rule protects the interests of the procuring agency by allowing forfeiture of the tender security if contractors modify or withdraw

tenders following lapse of deadline for submission. Lastly, tender validity period ensures that in case of delays before or after award of contract, contractors have the option to withdraw their tenders without penalty.

## **Rule 40. Opening of tenders**

This Rule contributes to transparency of the tendering proceedings. It enables contractors to observe that the procurement laws and regulations are being complied with and helps to promote confidence that decisions will not be taken on an arbitrary or improper basis. For similar reasons, the Rule requires that at such an opening the names of contractors that have submitted tenders, as well as the prices of their tenders, are to be announced to those present. With the same objectives in view, provision is also made for the communication of that information to participating contractors that were not present or represented at the opening of tenders.

## **Rule 41. Examination, Evaluation and Comparison of Tenders**

Requests for clarification of tenders should be made in writing, as should the responses to such requests. Written communication has been made mandatory to ensure transparency in the process as well as maintenance of record.

A procedure for examination of tenders has been included to identify tenders which cannot be treated as responsive due to small errors or exclusions in the tender. Such tenders only have minor errors, such that they do not warrant disqualification of the tender. After identification of such errors, the procuring agency may modify or ask the contractor in question to modify such errors so that the contractor may continue to participate in the procurement proceedings.

The evaluation procedures included in Rule 42(7) and 42(8) allow for selection of tenders on the basis of lowest price as well as the lowest evaluated tender. Although ascertaining the successful tender on the basis of the tender price alone provides the greatest objectivity and predictability, in some tendering proceedings the procuring agency may wish to select a tender not purely on the basis of the price factor. In such cases, the procuring agency will make use of "lowest evaluated tender", i.e., one that is selected on the basis of criteria in addition to price. Such criteria are given in Rule 42(8).

Evaluation criteria must be quantifiable in nature, to remove arbitrariness from the evaluation process. At the same time, all such criteria and their relative weight should be clearly stated in the solicitation documents.

Evaluation report is to be issued ten days prior to the award of contract. This is meant to ensure that all contractors who submitted tenders have sufficient opportunity to file complaints against the award decision, as well as the evaluation process as it was conducted. Complaints for review are to be filed prior to award of contract to ensure that award does not take place till all complaints are addressed. This is a concern for the government since it is unable to compensate aggrieved parties after the award of contract.

## **Rule 42. Award of Contract and entry into force of procurement contract**

Award of contract refers to the issuance of a notice of acceptance of offer to the contractor that submitted the successful offer. This acceptance is conditional in nature, and will only be converted into a final acceptance upon entry into force of the procurement contract. Acceptance is conditional upon a number of factors including accord of required approvals, clearance of outstanding complaints against the award of contract, requirements regarding signing of contract by both parties, communication of the procuring agency's acceptance to the contractor, extension of tender validity, beyond delays, till contract enters into force.

It is recommended that the procuring agency should disclose in solicitation documents the estimated period of time required to obtain higher approvals as well as the fact that failure to obtain the approval within an estimated period of time should not be deemed to extend the tender validity or security period in order to protect the interests of contractors who have submitted offers and to ensure that they do not have to remain committed to the procuring agency for a potentially indefinite period of time.

## **Rule 43. On account payment**

A minimum condition has been included in the Rule under which payments to contractors have to be made within thirty days in order to protect the interests of contractors.

## **Rule 44. Closing of contract**

This Rule concerns the two possible stages at which a contract may be closed: this may either happen upon completion of contract, signified by the issuance of the final delivery/taking over/completion certificate, or upon completion of the defect liability or maintenance period, signified by the issuance of the defect liability certificate.

The Rule also lays down the requirement that all payments to contractors must be made either within sixty days or before, if so stipulated in the conditions of contract.

## **Rule 45. Two-stage tendering**

Two-stage tendering, in its first stage, provides an opportunity for the procuring agency to solicit various proposals relating to the technical, quality or other characteristics of the procurement as well as to the contractual terms and conditions of its supply. Upon the conclusion of that first stage, the procuring agency finalizes the specifications and, on the basis of those specifications, in the second stage, conducts a regular tendering proceeding.

The rationale behind the two-stage procedure is to combine two elements: the flexibility afforded to the procuring agency in the first stage by the ability to negotiate with suppliers or contractors in order to arrive at a final set of specifications for what is to be procured, and, in the second stage, the high degree of objectivity and competition provided by tendering proceedings.

The requirement that procuring agency should allow suppliers or contractors to forgo submitting a final tender without forfeiture of any tender security has been included to make the two-stage

procedure hospitable to participation by suppliers or contractors since, upon the deadline for submission of tenders in the first stage, the suppliers or contractors cannot be expected to know what the specifications will be for the second stage, and should have the option to withdraw without penalty if they feel that the specifications are not suitable for them.

## **Rule 46. Restricted tendering**

The important requirement for the use of this procedure is to maintain transparency and avoid bias on part of the procuring agency. For this reason, the number of contractors should be such as to ensure competition, and contractors should not be selected using any criteria that discriminates against other providers in the market.

## **Rule 47. Request for proposals**

Request for proposals is a procedure in which the procuring agency typically approaches a limited number of suppliers or contractors and solicits various proposals, negotiates with them as to possible changes in the substance of their proposals, requests "best and final offers" from them and then assesses and compares those best and final offers in accordance with the prediscovered evaluation criteria, the relative weight and manner of application of which have also been prediscovered to the suppliers or contractors. By contrast to two-stage tendering, at no stage in request-for-proposals proceedings does a procuring agency conduct a tendering proceeding.

To ensure adequate competition, procuring agencies are encouraged to solicit proposals from as many as suppliers or contractors as practicable, but from at least three.

## **Rule 48. Competitive negotiations**

Competitive negotiation differs from both two-stage tendering and request for proposals in that it is by its nature a relatively unstructured method of procurement. Procuring agencies have the discretion to develop their own procedures, and it is advisable that that regulations be prepared regarding the following: establish basic rules and procedures relating to the conduct of the negotiations in order to help ensure that they proceed in an efficient manner; prepare various documents to serve as a basis for the negotiations, including documents setting forth the desired technical characteristics of the goods or works to be procured, or a description of the nature of services to be procured, and the desired contractual terms and conditions etc.

## **Rule 49. Request for quotations**

The request for quotations will be issued formally to contractors and will be included in the record of procurement proceedings.

Procuring agencies are encouraged to seek three quotations form contractors, but provision has been made for acceptability of fewer quotations in case of exceptional circumstances. Any negotiations are to be conducted before receipt of quotations, but once quotations have been accepted, they are final and award is to be made on their basis only.

## **Rule 50. Single-source procurement**

Procuring agency may directly engage a contractor using this method. A formal price quotation or proposal is required. However, procuring agency is free to negotiate even after receipt of quotation or proposal.

## **Rule 51. Right to review**

The right to review allows contractors to file complaints against any aspect of the procurement proceedings, prior to entry into force of procurement contract. The few exceptions to the right to review have been made to protect the basic right of any procuring agency to not take into consideration an offer (or offers) made by a contractor (or contractors). Also, contractors may not challenge the decision of the procuring agency to not qualify them, in respect to their qualifications, because allowing review at this point of the procurement proceedings will delay the process and undermine the reason for using prequalification in the first place. Selection of method is not open to review because it concerns a matter of discretion of the procuring agency and should not open to review by the public.

## **Rule 52. Review by procuring agency**

Rule 52 read in conjunction with Rule 42 implies that award of contract is to take place fifteen or more days after the announcement of the tender evaluation report. This is also the time available to contractors to lodge complaints regarding the procurement proceedings till this point. However, the time given to the review committee to hear and address complaint extends seven days beyond the fifteen mentioned above. Therefore, procuring agencies can award contracts after fifteen days of issuance of evaluation report but cannot take any measures pursuant to Rule 43 such that the contract would enter into force before the lapse of seven days given to committee to reach decision or the committees' actual decision, whichever comes earlier.

## **Rule 53. Arbitration**

It is recommended that contracting parties resolve disputes through methods of alternate dispute resolution, arbitration being the one being mentioned here. This is primarily because the process of arbitration is more efficient, less costly, and most importantly, quicker than any litigation procedure.

However, no procedure for how arbitration is to be undertaken has been defined in the Rules, instead discretion has been given to procuring agencies to decide their own procedures in light of the nature of their procurements. Such flexibility is important in a procedure such as arbitration which has no hard and fast rules or standards internationally, and which is considered to be most useful when customized by the parties to a contract.

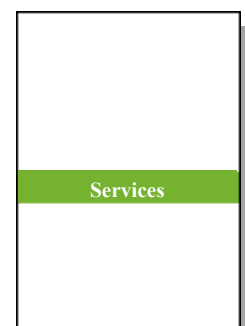
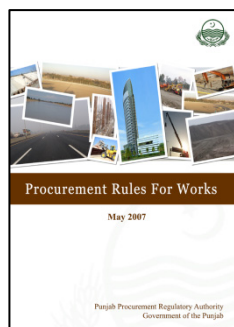
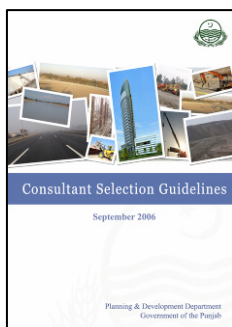


## PROJECT MANAGEMENT UNIT

# Analysis on Implementation of Federal Procurement Rules 2004 in Punjab

## Punjab Procurement Regulatory Authority Ordinance, 2007

## Punjab Procurement Rules 2007





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## Section

# 1

# Introduction

Public procurement reform in Punjab is one in a series of similar reforms following those undertaken by the federal government, and parallel to those currently underway in Sindh. Punjab procurement reform was initiated through the 'Strategy for Procurement Reform in Punjab' in April 2006 which set the direction for the present reform effort.

Procurement reform was initiated by the federal government in 2004 through the implementation of Public Procurement Regulatory Authority Ordinance 2002 and Public Procurement Rules 2004.

Following the federal government, the Sindh government adopted and enacted the Federal Procurement Law and Rules in September 2006.

Government of Punjab initiated procurement reform through the preparation of the Strategy for Procurement Reform in Punjab in April 2006. Following this, the Government of Punjab promulgated the Punjab Procurement Regulatory Authority Ordinance, 2007 in April 2007 which establishes the Punjab Procurement Regulatory Authority. With the law in place, Punjab now requires Procurement Rules to establish a reformed procurement system.

Project Management Unit circulated a Brief on Procurement Reform in March 2007, to identify the scope of the Procurement Rules and its impact on the procurement practices of the province. The Brief recommended adopting a consolidated approach to procurement reform, which would include the Law, Rules, regulations and templates. The Brief highlighted that, as the basis of the procurement framework, the Rules integrate with all other levels of the framework and should, therefore, be developed in conjunction with these other components.

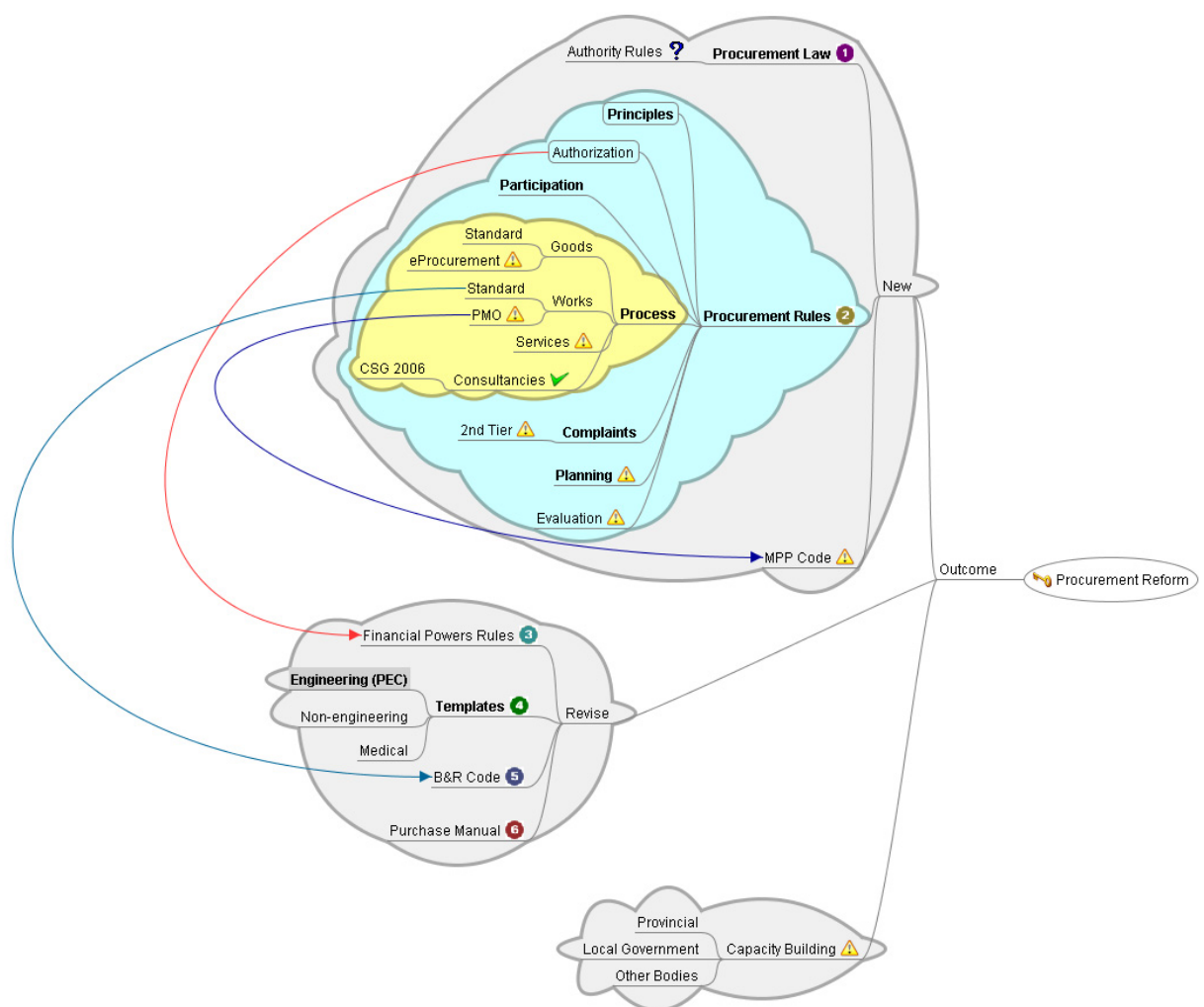


Figure 1 - Scope of Procurement Reforms in Punjab

At present, the Federal Rules are being considered for enactment. PMU, P&D Department has prepared the following analysis to identify major difficulties in the adoption of Federal Rules in context of the agreed provincial procurement framework, as well as recommendations regarding how these may be addressed.

## Section

# 2

# Procurement Rules

The preparation of Procurement Rules in Punjab is assisted by the existence of a number of national and international templates for the same. Following in Sindh's footsteps, Punjab has the option of adopting the Federal Procurement Rules. It also has the option of adopting draft Rules prepared by the Punjab Resource Management Program (PRMP). In addition to these, there are a number of widely used international templates for procurement regulations such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services, World Bank's procurement guidelines (Guidelines for Procurement under IBRD Loans) and ADB's Procurement Guidelines to name a few.

When considering the Federal Rules for enactment, a preliminary observation makes it apparent that the procurement framework under which these Rules operate is vastly different from the framework envisioned for Punjab. Punjab Procurement Rules are intended to provide a cover for the entire provincial procurement framework, and integrate with implementing procurement regulations to create a functional procurement mechanism. The Federal Rules, on the other hand, operate as an

independent entity, which requires conformance by procuring agencies without providing the procurement mechanism for doing so. Adoption of the Rules, without significant modification, may disrupt the envisioned procurement framework.

## Section

# 3

# Federal Rules: Analysis

The Federal Rules provide a basic, generalized framework for procurement practices, but require procuring agencies to develop procedures for their specific procurements. The federal government is able to adopt this approach on account of the existence of large procuring agencies, which generally have sufficient capacity to develop regulations in conformance with the Rules. Provincial procuring agencies, on the other hand, require procurement rules to lay out detail sufficient to achieve two ends:

- (i) enable agencies that currently do not have capacity to develop conforming procedures to carry out procurement regardless of development of regulations, and
- (ii) ensure that all procuring agencies, regardless of their specific procurement procedures, maintain a certain level of consistency across procurements.

Some of the areas in which the Federal Rules require modification, either through further elaboration of provisions or amendment of their contents, to allow for implementation in Punjab are highlighted.

### **3.1 Methods of Procurement**

The principal method of procurement as stated in Rule 20 of the Federal Rules is open competitive bidding, procedures for which are defined in rule 36, i.e. "single stage-one envelope", "single stage-two envelope", "two stage bidding" and "two stage-two envelope bidding". The procedures state that the accepted bid is the one found to be the "lowest evaluated bid", defined as:

- (i) a bid most closely conforming to evaluation criteria and other conditions specified in the bidding document; and
- (ii) having lowest evaluated cost;

Essentially, this means that the Federal Rules have limited procurement to least cost evaluation only. Both the stated types of tendering and the least cost evaluation method are suitable, and commonly employed, for the procurement of goods and works, but are insufficient for the procurement of services.

In Punjab, existing procedures for procurement of consultancy services, as defined in Consultant Selection Guidelines 2006 issued by Planning & Development Department, use the Quality and Cost Based Selection (QCBS) and Quality Based Selection (QBS) methods as the default mechanism for procurement of specialized services. Proposals are evaluated on weighted evaluation criteria, and the accepted "bid" is the proposal with the highest points.

The federal rules, in their existing form, are inconsistent with existing procurement practices of Punjab, and through enactment will enforce least cost procurement on procurement of intellectual services, such as engineering designs, IT projects, etc. In fact, the least cost approach, by design, violates the "value for money" principle (Rule 4 of the Federal Rules), which guides procuring agencies to seek better value through consideration of "whole-life cost", "quality", "reliability", "after sales service", etc.

In addition to this, the Federal Rules do not provide a procedure for specialized public procurements, such as those made by the Health Department for drugs, complex medical equipment, etc. The lack of provision for specialized procurements bottlenecked procurements in Health Department of Sindh, after the adoption of Federal Rules by the Sindh government.

## **3.2 Procurement Procedures**

### **3.2.1 Review**

Rule 48 of the Federal Rules addresses the issue of redressal of grievances of “bidders” participating in government procurement. There are two main issues in the federal review mechanism: one concerns inconsistencies in the procurement procedure during such a review, and the other concerns the absence of a second-tier review mechanism.

In order to deal with requests for review during procurement proceedings, the federal government has introduced a mandatory delay in award of procurement contracts of ten days in order to allow bidders enough time to file any complaints. This is done through Rule 35 which states “Procuring agencies shall announce the results of bid evaluation ... at least *ten* days prior to the award of the procurement contract”.

However, at the same time, Rule 48(2) states “Any bidder feeling aggrieved ... may lodge a written complaint concerning his grievances not later than *fifteen* days after the announcement of the bid evaluation report ...”.

The discrepancy in the number of days poses significant problem in implementation, since bidders will potentially be able to file a complaint after award of contract, which if found valid, cannot be addressed since government procedures do not allow compensation to be paid to aggrieved persons who are not party to a procurement contract.

Under the federal rules, the procuring agency is mandated to “constitute a committee comprising odd number of people” to “address the complaints of bidders” (Rule 48(2)). However, this committee is the only body defined in the Rules to hear complaints and, no mechanism has been defined to allow contractors to appeal against the committee’s decision.

Even though Rule 48(5) of the same Rule does go on to state that “Any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction”, this option is already available to contractors by Law.

### 3.2.2 Blacklisting

In Rule 19, which deals with blacklisting of contractors, the federal government requires procuring agencies to specify their own mechanisms for barring contractors from their “respective procurement proceedings”. This mechanism is not effective in the provincial environment, as procuring agencies are often small in size and blacklisting large contractors from only their contracts will have little effect. For this reason, the provincial framework requires government wide blacklisting.

### 3.2.3 Procurement Planning

Procurement planning, which has been an important concern for Punjab and has been accorded particular significance in the Strategy for Procurement Reform, has not been adequately addressed in the Federal Rules. Rule 8 gives procuring agencies one year to devise mechanisms for planning their procurement, but does not define any mechanism for consolidating, publishing or effectively using these plans to guide future procurements. Also when read with Rule 9 – “Limitation on splitting or regrouping of proposed procurement” – the Rules imply that procuring agencies shall be bound by their proposed plans. This is neither the intended objective of provincial procurement planning, as defined in the Strategy, nor will it result in any particular benefit to provincial procuring agencies, which will be required to place

inordinate amounts of effort into coming up with their exact procurement requirements and phasing at the start of each year.

### 3.2.4 Alternate Methods of Procurement

The Federal Rules focus exclusively on the use of tendering, and adopt the terms 'bidder' and 'bid' which have been stated to be "person who submits a bid" and "a tender, or an offer, in response to an invitation..." respectively to refer to all manner of procurements. These definitions exclude other methods such as quotations, which are a common provincial procurement procedure.

The Rules explain, in detail, the procedures for tendering, but alternate methods such as "request for quotations" given in Rule 42(b) lack similar procedural details. Aspects such as method of requesting proposals, record keeping, comparison etc, are not covered in section on quotations.

### 3.2.5 Others

The following aspects of other important procurement procedures have not been described in sufficient detail in the Rules:-

**Acceptance of Bids (Rule 38):** details regarding notification of acceptance of tender, conditions for approval of contract, such as approval of higher authorities, etc.

**Entry into force of procurement contract (Rule 44):** requirements that procuring agency and contractor have to fulfill before contract is brought into force, and actions to be taken if such conditions are not fulfilled, etc.

**Evaluation and clarification of bids (Rule 30 and 31):** details regarding examination of tenders, mechanisms to make adjustments and corrections, disclosure of information etc.

**Bid security and bid validity (Rule 25 and 26):** bid securities and their validity, extension of such securities, effect on tender validity of failure to extend bid securities, etc.

### 3.2.6 Conditions for use of procurement methods

Rule 36 provides procedures for the multiple types of open competitive bidding and Rule 37 provides the conditions for choosing between these types. This is not the same case with alternate methods of procurement such as quotations and negotiated tendering, whose conditions for use are not sufficiently explained. The use of non-definitive terms such as "certain type of machinery or equipment, or manufacturing plant" in open competitive bidding, and terms such as "turnkey" and "expensive and technically complex equipment" in prequalification requirements are not clearly explained.

Financial limits are defined for a number of procurement procedures, such as Rule 12 "Methods of advertisement" and Rule 42 "Alternative methods of procurements". The use of limits to categorize procedures has resulted in lack of clarity: "petty purchases" (Rule 42(a)) is treated as a method of procurement along with "direct contracting", instead of as conditions *for use* of "single-sourcing" method as suggested by UNCITRAL. Such overlaps need to be clarified in the adoption for Punjab to ensure that users get a clearer understanding of procurement options and not depend on interpretation. An example of this is in Rule 12, Clause (a) of which states "procurement over one hundred thousand ... shall be advertised on the Authority's website". Since Rule 12 does not clearly state that advertisement is limited only to open competitive bidding, if it is read with Rule 42(b)(i) where Autonomous Bodies can get their financial limit increased up to five hundred thousand, it could lead to uncertainty.

### **3.3 Procurement Documentation**

Due to the emphasis on development of mechanisms by procuring agencies, the Federal Rules do not provide sufficient details for procurement documentation that is necessary for immediate implementation. Instead the Rules indicate that Standard Bidding Documents as notified by the Authority are to be used for this purpose (Rule 23(4)).

### **3.4 Implementing regulations**

Procurement-related procedures, mechanisms, evaluation procedures, documents and other details vary according to the type of procurement, i.e. Goods, Works, Services or other specialized procurements. The Federal Rules, while providing a basic framework, cannot on their own guide public procurement. Detailed regulations for each of the procurement types are necessary to enable procuring agencies to easily and effectively meet their procurement needs. The Federal Rules do not require the development of regulations, or provide for any mechanism to get such regulations approved.

Since Punjab has already issued a detailed guideline for procurement of consultancy services, and has circulated draft guidelines for procurement of works for mega projects, the absence of cover for such regulations through the Rules will adversely affect the transition from existing procedures to a new procurement regime.

## Section

# 4

# Recommendations

The Federal Rules draw on the UNCITRAL Model Law for Procurement of Goods, Construction and Services as their primary source. They also make some reference to the World Bank and Asian Development Bank's Procurement Guidelines. Since the document is on large part based on UNCITRAL, our recommendations have been based on a comparison of the Federal Rules, PRMP Rules, and UNCITRAL Model Law, with specific emphasis on the Articles of the latter that were omitted from the Federal Rules (refer to Annex D). In addition to this, recommendations have also drawn on the experiences gained in the development and implementation of the Consultant Selection Guidelines, and the feedback on Draft Guidelines for Procurement of Works.

The Federal Rules are organized into a general provisions section, followed by a section on procurement methods, and a concluding section on redressal mechanisms. The general section is specific to the tendering process, and needs to be modified so as to make its sections relevant to all procurement methods.

It is recommended that the Rules be organized to have a general section of wide application, which should explain the different types of procurement that the Rules

govern. This should be followed by a discussion of any specific procurement procedures that are common to all procurement methods, such as qualification and prequalification. The third section of the Rules should list the available methods of procurement and the suggested conditions for the use of each of these methods. This should be followed with a fourth section on the main procurement procedures (tendering or any others). A separate section should be prepared on alternate methods of procurement. Lastly, a section on review of procurement proceedings should be included.

## **4.1 Methods of Procurement**

The need to move away from least cost procurement has been explained in the earlier section. The inclusion of other evaluation methods requires the adoption of a scoring system as opposed to conversion of evaluation criteria to monetary values to maintain the definition of "lowest evaluated bid" necessary for least cost evaluation.

Lastly, there is a need to make provision for specialized procurements, for instance those undertaken by the Health department. This may be done by way of a clause that permits specialized procurement procedures for particular agencies. The extent of the deviation of such specialized procedures from those given in the Rules should be debated.

## **4.2 Procurement Procedures**

### **4.2.1 Review**

The proposed rules should remove the inconsistency in the review period by reducing it to ten days for both the waiting period and the time in which an aggrieved party may file a complaint. For the purpose of a second tier review, the government could authorize the formation of a Procurement Ombudsman, whose office could be applied to for appeal against the committee's decision.

## 4.2.2 Blacklisting

A province-wide mechanism is required under which, several offences such as offer of inducements, fraud, willful failure to fulfill contract conditions, etc should result in blacklisting by default, while others such as poor contractor performance or quality should be associated with discretionary blacklisting. Under such a detailed mechanism, individual procuring agencies should forward a case for blacklisting to the PPRA which should issue a notice of intent regarding the same to the relevant contractor/supplier, after hearing whose response, the PPRA should make a decision regarding the blacklisting. Details regarding period of blacklisting, removal from blacklist, review of PPRA's decision etc. should also be included.

## 4.2.3 Procurement Planning

In line with the Procurement Strategy and day-to-day needs of procuring agencies, the proposed Rules should include a detailed section on the way in which procurement planning is to be conducted. Standardization will allow procurement needs of each agency to be consolidated into a broader planning framework for the province, which would make strategic planning and allocation of resources possible. A mechanism should be developed that links procurement to planning instead of spending as is the case at present, highlights procurement performance, and allows consolidated procurement in the government. Restrictions on regrouping and splitting of procurements should be removed on account of the reasons discussed above.

## 4.2.4 Alternate Methods of Procurement

The Rules should include further details regarding the procedures to be used in alternate methods of procurement. If these procedures are similar to those already explained for tendering, references should be made to the relevant sections.

A further development to the Rules could be through the demarcation of the primary method of procurement: the tendering procedure, as included in the Rules, relates mainly to the procurement of goods and works. A primary method for the procurement of services should also be developed that provides cover to procedures defined in the Consultant Selection Guidelines - this could possibly use request for proposals as its base, and also include evaluation mechanisms alternate to the least cost method (quality based selection etc.). In UNCITRAL Model Law, the method of "Request for Proposal" has been stated as the "Principal Method for Procurement of Services" to address this issue.

#### 4.2.5 Approval mechanism

Rule 11 of the Federal Rules should be modified as competent authority for approval of procurement at the federal level is different from that at the provincial level. While in the federal government, authorization is provided by procuring agencies themselves, provincial procuring agencies receive their definition of powers of procurement through the Delegation of Financial Powers Rules. Initial authorization for procurement, and any changes to the powers of procurement, is provided by the Finance Department. In the case of provincial agencies, it is recommended that this power for authorization of procurement should lie with the PPRA.

#### 4.2.6 Prequalification, Qualification and Disqualification

Procedures relating to participation of contractors (prequalification and qualification) require modification as the federal rules do not give sufficient detail as to how these procedures are to be used. Modifications could include further details regarding the minimum contents of prequalification documents (for example, that prequalification documents list the principal terms and conditions of procurement contract, as well as basic information that would be included in the invitation to tender, if tendering were to be used) and, the manner in which clarifications and modifications to prequalification documents are to be made.

Modifications should also be made to qualification proceedings, so that the process maybe used independently of the prequalification process. In order to maintain consistency in qualification proceedings, it is also suggested that the same qualification criteria be employed in case of multiple qualification proceedings.

The criteria for disqualification should also be modified so that different levels of violations by contractors (false information, materially inaccurate information or materially incomplete information) are associated with different courses of action (mandatory or discretionary disqualification).

#### 4.2.7 Limitation and Preference

The Federal Rules state, but do not elaborate how margin of preference may be used. The use of the margin of preference in procurement proceedings (particularly during evaluation of offers) has to be included in the proposed Rules.

#### 4.2.8 Negotiations

The federal Rules state a blanket prohibition but the effect of this is mitigated by way of a proviso that the Authority may issue regulations permitting the same. A blanket prohibition should be made on price negotiations for all methods of procurement. This will allow for the development of consistent practices on transparency in procurement.

#### 4.2.9 Solicitation Process

As stated, the primary emphasis of the Federal Rules is on tendering proceedings. However, within this process some areas are not developed in sufficient detail. Areas that have to be developed include:

- (i) Provision of solicitation documents (Rule 34)
- (ii) Clarification and modification of solicitation documents (Rule 36)

- (iii) Tender security (Rule 38)
- (iv) Modification and withdrawal of tenders (Rule 40)
- (v) Examination and comparison of tenders (Rule 42)
- (vi) Award and entry into force of procurement contract (Rule 43)

#### 4.2.10 Conditions for use of procurement methods

Conditions for use of prequalification proceedings, single stage tendering and two-stage tendering should be clarified. Conditions for use of the prequalification mechanism should link usage of this mechanism not to the nature of procurement but to the availability and type of contractors.

Emergency procurement should be delinked from all other procurement methods, unlike the federal rules which treat emergency as a condition for use of 'direct contracting method' (Rule 42 (c)). The idea behind this modification is to treat emergency procurement as a unique scenario where procuring agencies have the flexibility to use any procurement method, in any manner they feel appropriate, albeit with prior approval of this method/procedure by the PPRA.

There should also be rules on the conditions for use of alternate methods of procurement (two stage tendering, request for quotations, restricted tendering, request for proposals, competitive negotiations, single source). The rules should discuss conditions separately from the procedure while overlaps in the conditions for use of methods in the Federal Rules should also be addressed so that each method relates to unique set of conditions, as far as possible.

Secondly, the identification of financial limits for the use of certain methods of procurement, such as quotations, and for use of certain procedures, such as advertising, should be removed to provide flexibility to procuring agencies. For instance, the use of quotations is associated with a different financial limit for goods as opposed to works, and it is more appropriate for individual procuring agencies to set these limits themselves, with approval from appropriate authority.

### 4.3 Procurement Documentation

In Punjab, it will be essential that the rules lay down a basic minimum of content for each of the important documentation of the procurement proceedings, so that procuring agencies are able to create documents of sufficient quality that are necessary for the functioning of these rules, and a certain level of standardization is achieved to enable contractors to have better accessibility to procurement contracts, in accordance with principles laid down in the Strategy.

Some key modifications to the following documents are required:-

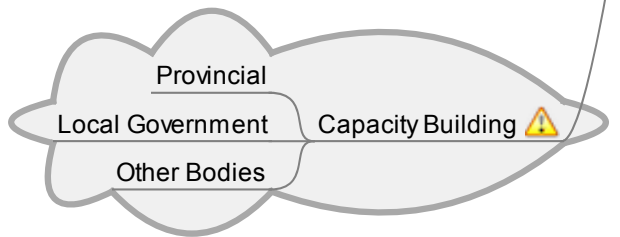
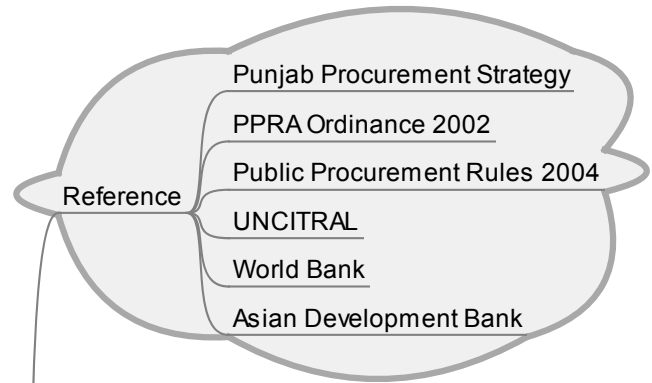
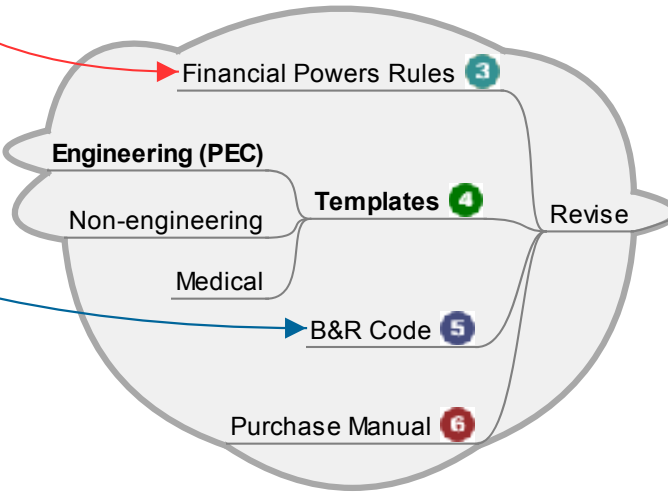
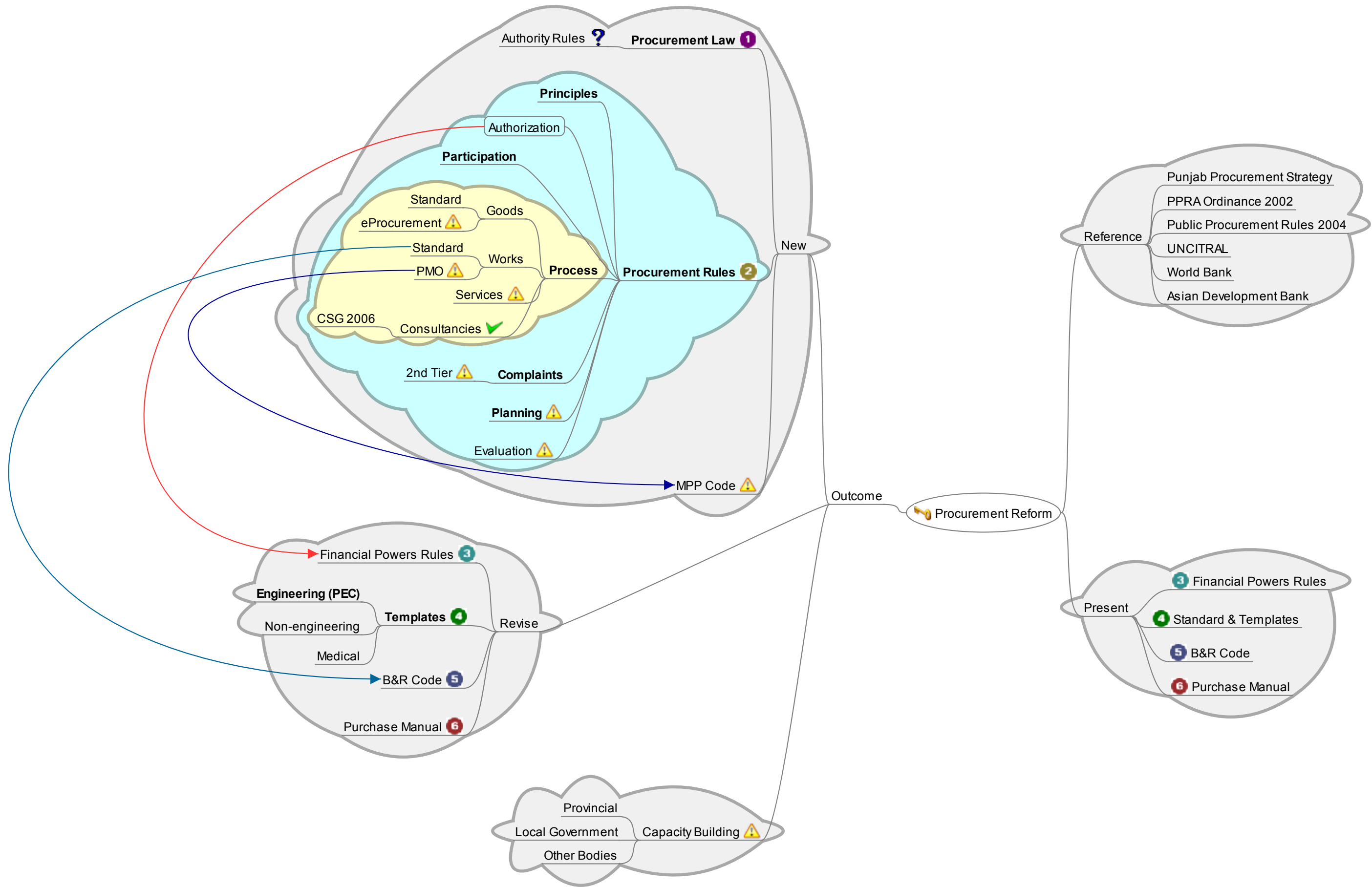
- (i) Qualification criteria (Rule 17 and 29)- basic criteria include those relating to legal capacity and technical and professional competence
- (ii) Record of procurement proceedings (Rule 46)- records should contain information regarding all participants, opening and evaluation of offers, communications with suppliers/contractors, and any complaints regarding procurement proceedings
- (iii) Solicitation documents (Rule 23)- basic contents of these documents should be elaborated, and requirements regarding these documents should be consolidated in order to simplify the task of the procuring agency when preparing both of these documents
- (iv) Invitation to Prequalify (Rule 15)- details regarding the nature of procurement, responsibilities of both parties, and means of obtaining the relevant further documents
- (v) Invitation to Tender- document needs to be included in section on tendering, and should include details regarding the nature of procurement, responsibilities of both parties, and means of obtaining the relevant further documents.

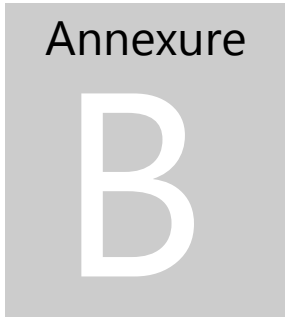
## **4.4 Implementing Regulations**

In order to provide greater flexibility according to type of procurement, Rules should include the definition of the main types of procurement (goods, works and services) and require that regulations be prepared to provide detailed procedures for each type of procurement.



# Reform Mindmap





# Comparison of Rules

**Procurement Rules: Comparison**

Sr. No.	Draft Public Procurement Rules (prepared by Punjab Resource Management Program)	Public Procurement Rules 2004 (federal government)	United Nations Commission on International Trade Law (articles included)	World Bank Procurement Guidelines (articles included)	ADB Procurement Guidelines (articles included)
1	Rule 1 (Short Title and Commencement)	Rule 1 (Short title and commencement)			
2	Rule 2 (Definitions) <sup>1</sup>	Rule 2 (Definitions)	Article 2 <sup>19</sup>	footnote 2 <sup>34</sup>	
3	Rule 3 (Scope and Applicability)	Rule 3 (Scope and Applicability)			
4	Rule 4 (Principles of procurements)	Rule 4 (Principles of procurements)		1.2 <sup>35</sup>	
5	Rule 5 (International and inter-governmental commitments of the Federal Government)	Rule 5 (International and inter-governmental commitments of the Federal Government)	Article 3 <sup>20</sup>		
6	Rule 6 (Language)	Rule 6 (Language)			
7	Rule 7 (Procurement planning)	Rule 7 (Integrity pact)			
8	Rule 8 (Limitation on splitting or regrouping of proposed procurement)	Rule 8 (Procurement planning)			
9	Rule 9 (Competence for procurement)	Rule 9 (Limitation on splitting or regrouping of proposed procurement)			
10	Rule 10 (Specifications) <sup>2</sup>	Rule 10 (Specifications)	Article 16 (1); 16(2) <sup>21</sup>	2.19; 2.20 <sup>36</sup>	
11	Rule 11 (Standardization Criteria)	Rule 11 (Approval mechanism)	Article 16(3)		
12	Rule 12 (Approval mechanism) <sup>3</sup>	Rule 12 (Methods of advertisement)			
13	Rule 13 (Methods of advertisement) <sup>4</sup>	Rule 13 (Response time)		2.44 <sup>37</sup>	
14	Rule 14 (Response time)	Rule 14 (Exceptions)			
15	Rule 15 (Exceptions) <sup>5</sup>	Rule 15 (Pre-qualification of suppliers and contractors)	Article 6 (1)(b)(i) <sup>22</sup>	2.9 <sup>38</sup>	
16	Rule 16 (Pre-qualification of suppliers and contractors) <sup>6</sup>	Rule 16 (Pre-qualification process)	Article 7 (2); 7(3)(i); 7(3)(iii); 7(3)(v); 7(6); 7(7) <sup>23</sup>		
17	Rule 17 (Pre-qualification process) <sup>7</sup>	Rule 17 (Qualification of suppliers and contractors)	Article 6(1)(a); 7(8) <sup>24</sup>		
18	Rule 18 (Qualification of suppliers and contractors)	Rule 18 (Disqualification of suppliers and contractors)	Article 6(6)(a); 6(6)(b)		
19	Rule 19 (Disqualification of suppliers and contractors)	Rule 19 (Blacklisting of suppliers and contractors)			
20	Rule 20 (Blacklisting of suppliers and contractors) <sup>8</sup>	Rule 20 (Principal method of procurement)		1.3 <sup>39</sup>	
21	Rule 21 (Principal method of procurement)	Rule 21 (Open competitive bidding)			
22	Rule 22 (Open competitive bidding) <sup>9</sup>	Rule 22 (Submission of bids)	Article 30(1); 30(5)(a); 27(n)		
23	Rule 23 (Submission of bids)	Rule 23 (Bidding documents)	Article 26 <sup>25</sup> ; 27(a); 27(b); 27(d); 27(e); 27(f); 27(l); 27(z) <sup>26</sup>	2.11 <sup>40</sup> ; 2.16; 2.17; 2.18 <sup>41</sup>	
24	Rule 24 (Bidding documents) <sup>10</sup>	Rule 24 (Reservations and preference)	Article 8(1); 34(4)(d)		
25	Rule 25 (Reservations and preference)	Rule 25 (Bid security)	Article 32(1)(a)	2.14 <sup>42</sup>	
26	Rule 26 (Bid security)	Rule 26 (Bid validity)	Article 31(2)(a); 31(2)(b)	2.57	
27	Rule 27 (Bid validity)	Rule 27 (Extension of time for submission of bids)	Article 30(3); 30(4) <sup>27</sup>		
28	Rule 28 (Extension of time for submission of bids)	Rule 28 (Opening of bids)	Article 33(1); 33(2)	2.45 <sup>43</sup>	
29	Rule 29 (Opening of bids)	Rule 29 (Evaluation criteria)	Article 34(4)(a)		
30	Rule 30 (Evaluation criteria) <sup>11</sup>	Rule 30 (Evaluation of bids)	Article 34(5)	2.31 <sup>44</sup>	
31	Rule 31 (Evaluation of bids)	Rule 31 (Clarification of bids)	Article 34(1)(a)	2.46	
32	Rule 32 (Clarification of bids)	Rule 32 (Discriminatory and difficult conditions)			
33	Rule 33 (Discriminatory and difficult conditions)	Rule 33 (Rejection of bids)	Article 12 <sup>28</sup>		
34	Rule 34 (Rejection of bids)	Rule 34 (Re-bidding)			
35	Rule 35 (Re-bidding)	Rule 35 (Announcement of evaluation reports)		2.54	
36	Rule 36 (Announcement of evaluation reports) <sup>12</sup>	Rule 36 (Procedures of open competitive bidding)			User's Guide for Procurement of Goods, Asian Development Bank, 2004, p. 5-6
37	Rule 37 (Procedures of open competitive bidding) <sup>13</sup>	Rule 37 (Conditions for use of single stage two envelope, and two stage two envelope bidding procedures) <sup>14</sup>			
38	Rule 38 (Conditions for use of single stage two envelope, and two stage two envelope bidding procedures) <sup>14</sup>	Rule 38 (Acceptance of bids)			
39	Rule 39 (Acceptance of bids)	Rule 39 (Performance guarantee)		2.39 <sup>45</sup>	
40	Rule 40 (Performance guarantee)	Rule 40 (Limitation on negotiations)	Article 35 <sup>29</sup>		
41	Rule 41 (Limitation on negotiations) <sup>15</sup>	Rule 41 (Confidentiality)	Article 45 <sup>30</sup>	2.47	
42	Rule 42 (Confidentiality)	Rule 42 (Alternative methods of procurements)	Article 21(1); 50(3); 22(1)(a); 22(1)(c); 22(1)(d); 22(2); 49(1); 19(1)(b); 19(2)(a) <sup>31</sup>	3.5; 3.6 <sup>46</sup>	
43	Rule 43 (Alternative methods of procurements) <sup>16</sup>	Rule 43 (On account payments)			
44	Rule 44 (Payments) <sup>17</sup>	Rule 44 (Entry into force of the procurement contract)	Article 36(1); 36(2b); 36(4) <sup>32</sup>		
45	Rule 45 (Entry into force of the procurement contract)	Rule 45 (Closing of contract)			
46	Rule 46 (Closing of contract)	Rule 46 (Record of procurement proceedings)	Article 11(1)		
47	Rule 47 (Record of procurement proceedings) <sup>18</sup>	Rule 47 (Public access and transparency)	Article 11(2); 11(3)(a) <sup>33</sup>		
48	Rule 48 (Public access and transparency)	Rule 48 (Redressal of grievances by the procuring agency)			
49	Rule 49 (Maintenance of information on website)				
50	Rule 50 (Amendment and Termination of contract)				
51	Rule 51 (Arbitration)	Rule 49 (Arbitration)			
52	Rule 52 (Mis-procurement)	Rule 50 (Mis-procurement)			
53	Rule 53 (Overriding effect)	Rule 51 (Overriding effect)			



# Notes on Comparison

<sup>1</sup> Terms 'Act', 'Authority', defined in PRMP Draft Rules but are not defined in Procurement Rules 2004; Definition of 'corrupt and fraudulent practices' is included in Procurement Rules 2004 but has been excluded from PRMP Draft Rules (it is included in PRAP 2007).

<sup>2</sup> PRMP Draft Rules introduce details regarding types of specifications - functional, performance-oriented, technical, and combination. These are addendums to the equivalent section in Procurement Rules 2004.

<sup>3</sup> PRMP Draft Rules require formation of Tender Evaluation Committee to evaluate procurement contracts above 2 million. This is an addendum to the equivalent section in Procurement Rules 2004.

<sup>4</sup> PRMP Draft Rules fix lower limit for advertisement, while equivalent section in Procurement Rules (12(1)) states this limit but allows option of variation subject to Rule 42(b) of the same Rules.

<sup>5</sup> PRMP Draft Rules fix lower limit for advertisement while this limit is given as variable in equivalent section of Procurement Rules (12(1)) subject to Rule 42(b) of the same Rules.

<sup>6</sup> The term “civil works” as used in equivalent section of Procurement Rules 2004 has been removed; addendum to equivalent section of Procurement Rules 2004 discourages use of prequalification process for procurements below 2 million.

<sup>7</sup> Addendum to equivalent section of Procurement Rules 2004 requires data regarding pre-qualified suppliers’ data to be uploaded on website (17(3)).

<sup>8</sup> Addendum to equivalent section of Procurement Rules 2004 states that blacklisting of suppliers shall be for at least 2 years, blacklisting decision to be communicated to PPRA within 15 days of it coming into effect, and list of blacklisted suppliers to be maintained on website.

<sup>9</sup> PRMP Draft Rules fix lower limit for open competitive bidding while this limit is stated as variable in equivalent section of Procurement Rules subject to Rule 42(b) of the same Rules. Addendum to equivalent section of Procurement Rules 2004 includes a generic provision on fair and equitable conduct of procurement proceedings.

<sup>10</sup> Addendum to equivalent section of Procurement Rules requires bidding documents to “contain sufficient information to enable competition...to take place on the basis of complete, neutral and objective terms.” It also includes bidding documents relating to final date for receipt of bids, bid opening procedure, bid validity period, procuring agency contact, and notification regarding possibility of rejection of all bids.

<sup>11</sup> Addendum to equivalent section of Procurement Rules includes two criteria for evaluation of bids- lowest priced technically acceptable bid (for lower end procurements) and weighted technical and financial evaluation with 70% weightage given to technical evaluation (for complex procurements).

<sup>12</sup> Addendum to equivalent section of Procurement Rules requires that bid evaluation report be updated on website prior to award of contract.

<sup>13</sup> PRMP Draft Rules introduce financial limits for use of single stage and two stage two envelope bidding procedures; PRMP Draft Rule excludes two stage bidding procedure as included in Procurement Rules 2004 and modifies two-stage two-envelope bidding procedure from that included in the Procurement Rules 2004<sup>1</sup>.

<sup>14</sup> PRMP Draft Rules modify equivalent section of Procurement Rules 2004 to apply conditions for two stage bidding procedure as given in Procurement Rules 2004 to two stage two envelope in PRMP Draft Rules.

<sup>15</sup> PRMP Draft Rules modify equivalent section of Procurement Rules 2004 to allow negotiation for purposes of 'operational refinement/enhancement that may result in cost reduction' while suggesting limitations on the manner of negotiation. Equivalent section of Procurement Rules 2004, suggests a number of limiting factors as well.

<sup>16</sup> PRMP Draft Rules modify equivalent section of Procurement Rules 2004 to lower limit for petty purchases to 10,000, to allow quotations to be accepted from suppliers other than those offering the lowest price given that reasons for doing so are recorded in writing (16(b)(iii)) while the Procurement Rules 2004 require that lowest

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<sup>1</sup> World Bank and ADB have developed four bidding procedures (single stage, single stage two envelope, two stage, two stage two envelope) which have been incorporated verbatim in the PR 2004. The PRMP Draft Rules have redesigned the two stage procedures by combining both the *two stage bidding procedure* and the *two stage two envelope bidding procedure*.

The main difference between the two original procedures is that the two stage bidding procedure did not require a financial proposal to be submitted initially. Only technical proposals would be submitted in the first stage, which would be evaluated and negotiated, after which they could be resubmitted after revision (hence the second stage) at which point the financial proposals would also be submitted. Both would now be simultaneously evaluated.

As opposed to this, the two stage two-envelope bidding procedure requires bidders to submit both financial and technical proposals at the same time, even though the financial proposals are not opened until the second stage. Like the two stage procedure, the technical proposal is evaluated, negotiated, and revised. When revised technical proposals are submitted, bidders also have the option of submitting a supplementary financial proposal which would be read in conjunction with the original financial proposal. In the second stage, both revised technical and financial proposal will be opened together and evaluated at the same time.

The only difference in the two procedures appears to be with regards to the timing of submission of financial proposal. In one case, the proposal is submitted only at second stage, while in the other it is submitted in the first stage, but can be amended in the second.

The PRMP 'two stage two envelope' bidding procedure is in fact a hybrid. In the first stage, bidders submit a technical proposal only (making it similar to the two stage procedure). This is evaluated, negotiated, and revised. In the second stage, bidders submit both a technical and financial proposal but in individual envelopes. The proposals are not opened together in the second stage (deviation from both kinds of WB two stage procedures) but, instead the technical proposal is opened and evaluated first, and then the financial proposals of technically qualified bidders are opened. Lowest evaluated bid is to be selected.

priced quotation be accepted (16(b)(iv)), and to treat Repeat Orders and Emergency Procurement as separate methods of procurement (43(c), 43(e)) while both are treated as conditions for using direct contracting in Procurement Rules 2004 (42(c)(iv), 42(c)(v)); addendum to equivalent section of Procurement Rules 2004 requires approval of Head of procuring agency for use of direct contracting; the equivalent sections of Procurement Rules 2004 relating to negotiated tendering (42(d)) and conditions for using direct contracting stated in 42(c)(vi) and 42(c)(vii) have been removed.

<sup>17</sup> Addendum to equivalent section of Procurement Rules 2004 states that payments to contractors/suppliers is contingent upon contract award data having been uploaded onto website.

<sup>18</sup> Addendum to equivalent section of Procurement Rules 2004 details content of procurement proceedings' records, and the procedures for the disclosure of these records.

<sup>19</sup> Only commonly defined term in UNCITRAL and equivalent section of Procurement Rules 2004 is 'supplier/contractor' however, definitions are substantively different with UNCITRAL defining the same as "any potential party or the party to a procurement contract with the procuring entity" and Procurement Rules 2004 defining the same as "person, consultant, firm, company, or an organization who undertakes to supply goods, services, or works."

Since Procurement Rules 2004 also refer to definitions provided in PPRA (Ordinance) 2002, differences in definitions in that document and UNCITRAL Law may also be noted.

For one, the definition of 'goods' as covered in UNCITRAL law states (differences italicized):

"objects of every kind and description including raw materials, products

and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves”

while that of goods in PPRA (Ordinance) states (differences italicized):

*“articles and objects of every kind and description including raw materials, products, equipment, machinery, spares and commodities in any form and includes services incidental to installation, transport, maintenance, and similar obligations related to the supply of goods if the value of these services does not exceed the value of such goods”*

Secondly, the definition of construction/works is slightly different under both documents.

UNCITRAL defines construction as (differences italicized):

*“all work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the construction itself”*

PPRA (Ordinance) 2002 defines works as:

*“any construction work consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, such as site preparation, excavation, installation of equipment or materials and decoration, finishing and includes incidental services such as drilling, mapping, satellite photography, seismic investigations and similar activities, if the value of those services does not exceed that of the works themselves”*

<sup>20</sup> UNCITRAL Model Law Article 3(a) and 3(b) is basis for equivalent article in Procurement Rules 2004.

<sup>21</sup> UNCITRAL Model Law Article 16(1), 16(2) is the basis for equivalent article in Procurement Rules 2004, however substantive differences remain. Firstly, Article 16(1) UNCITRAL Model Law applies to a number of other modes of description of goods, works and services including plans, drawings etc. Procurement Rules 2004 limit scope of Rule 10 to specifications only (It is not clear whether or not the term 'specifications' is being used in a generic sense to cover all manner of descriptions). Secondly, UNCITRAL Model Law Article 16(2) states the basis for descriptions of goods/works/services (that they 'be based on objective technical and quality characteristics') whereas equivalent section of Procurement Rules 2004 does not state such a basis.

<sup>22</sup> UNCITRAL Model Law Article 6(i)(b)(i) is the basis for equivalent article in Procurement Rules 2004 but the later does not include certain criteria mentioned in the UNCITRAL Article including those relating to professional and technical qualifications, professional and technical competence, reliability, and reputation.

<sup>23</sup> UNCITRAL Model Law Articles 7(3)(i), 7(3)(iii) 7(3)(v) are the basis for Rule 16(1), 16(2) in Procurement Rules 2004. Substantive differences include: Article 7(3)(i) refers to submission of 'prequalification applications' while the same is referred to as 'prequalification documents' in Procurement Rules 2004 Rule 16(1).

UNCITRAL Model Law Article 7(6) is the basis for Rule 16(3) in Procurement Rules 2004, however, while UNCITRAL article requires that the names of prequalified bidders be made available 'to any member of the general public upon request', Rule 16(1) of Procurement Rules 2004 limits this availability to 'any person directly involved in the pre-qualification process.'

UNCITRAL Model Law Article 7(7) is the basis for Rule 16(4) in Procurement Rules 2004, however, while Procurement Rules imposes a mandatory requirement that reasons for not prequalifying bidders be communicated to them, UNICTRAL Article

imposes no similar obligation on the procuring entity and states that such reasons be communicated to such bidders as ask for them. Also, UNCITRAL law removes onus from the procuring entity as it states that the entity is not required to justify its reasons for refusing prequalification. The Procurement Rules are silent on this matter.

<sup>24</sup> Procurement Rules 2004 Rule 17 states that qualification proceedings may be initiated at any stage of the procurement proceedings, given 'credible reasons for prima facie evidence of any defect in supplier's or contractor's capacities' and that such reasons must be recorded in writing and kept as part of procurement proceedings' records. Associated Article 6(1)(a) of UNCITRAL Model Law imposes no such limitations on initiation of qualification proceedings.

<sup>25</sup> UNCITRAL Model Law Article 26 is the basis for Rule 23 in Procurement Rules 2004. However, UNCITRAL Law allows more flexibility in the manner of provision of solicitation/tender documents specifying different procedure in case prequalification took place. On the other hand, procurement Rules Rule 23(1) requires that solicitation documents be given to bidders<sup>2</sup> immediately after publication of invitation to bid/tender.

<sup>26</sup> UNCITRAL Model Law Article 27(a); 27(b); 27(d); 27(e); 27(f); 27(l); 27(z) is the basis for Rule 23(2) Procurement Rules 2004. However, Rule 23(2) includes invitation to tender within the tender documents while this is treated as a separate document and process, under UNICTRAL Model Law dealt with in Article 25. Rule 23(2) Procurement Rules 2004 also includes 'form of bid', 'performance criteria' and 'details of standards to be used in assessing quality of goods/works/services specified' as part of bidding documents while these are not included in relevant UNCITRAL article. Likewise, of the UNCITRAL bidding documents' articles that correspond to Procurement Rules 2004, the differences include: UNCITRAL Article 27(e) includes margin of preference as well as relative weight of each criteria to be included in the article relating to evaluation criteria, Procurement Rules 2004 do not include these. UNCITRAL Article 27(l) as

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<sup>2</sup> Bidder as defined in the Rules as 'person who submits a bid'. This does not automatically refer to those who have been prequalified. Therefore, it is unclear as to which bidder the particular section is referring to.

included in Procurement Rules 2004 refers to bid security, the article also makes a reference to performance security (labor and material bonds) which are excluded from Procurement Rules 2004 equivalent section.

<sup>27</sup> UNCITRAL Model Law Article 30(3) allows for extension of deadline 'if it is not possible for one or more suppliers to submit tenders by deadline owing to any circumstance beyond their control'. However, equivalent rule in Procurement Rules 2004 allows for submission of deadline 'due to any reason' but requires that reasons for doing so be recorded in writing.

<sup>28</sup> UNCITRAL Model Law Article 12 is the basis for equivalent rule in Procurement Rules 2004. However, the Model Law requires that there be notification in the solicitation documents of the possibility of rejection of all tenders. Procurement Rules 2004 remove this qualification for the applicability of this Rule.

<sup>29</sup> UNCITRAL Model Law Article 35 is the basis for equivalent article in Procurement Rules 2004. However, the former does not recognize any possibility of negotiation while the latter does recognize such a possibility: "extent of negotiation permissible shall be subject to the regulations issued by the Authority."

<sup>30</sup> UNCITRAL Model Law Article 45 is the basis for equivalent article in Procurement Rules 2004. The UNCITRAL article holds both parties responsible for maintaining the confidentiality of procurement proceedings. While the Procurement Rules 2004 places an onus on the procuring agency to keep information regarding bid evaluation confidential, UNCITRAL holds that both parties to procurement negotiations (in the case of procedures other than tendering) shall not reveal information without consent of other party and that which is not already made public according to rules regarding records of procurement proceedings.

<sup>31</sup> UNCITRAL Model Law Article 21(1) and 50(3) is the basis for equivalent Rule 42(b) in Procurement Rules 2004. UNCITRAL Model Law Article 22(1)(a)(c)(d) and 22(2) is the basis for equivalent Rule 42(c) in Procurement Rules 2004. UNCITRAL Model Law

Article 19(1)(b), 19(2)(a) and 49(1) is the basis for equivalent Rule 42(d) in Procurement Rules 2004.

<sup>32</sup> UNCITRAL Model Law Article 36(1); 36(2b); 36(4) is the basis for equivalent Rule 44 in Procurement Rules 2004. UNCITRAL law provides greater detail as to entry into force of contract. With regards to the instance where no contract is signed, it is said to come into force when notice is dispatched. UNCITRAL states in Article 36(4) that a notice is said to be dispatched when it is properly addressed or otherwise directed and transmitted to supplier/contractor, this is excluded from Rule 44(a).

<sup>33</sup> UNCITRAL Article 11(3)(a) is basis for Rule 47 of Procurement Rules 2004. However, Article 11(3)(a) states a number of exceptions to information disclosure that are not included in Rule 47 such as: impede law enforcement, be contrary to law, prejudice legitimate commercial interests of parties, or inhibit fair competition.

<sup>34</sup> World Bank Procurement Guidelines define 'goods' as commodities, raw materials, machinery, equipment, and industrial plant. 'Works' includes construction and other similar projects that yield a physical output. Services related to 'goods' and 'works' such as transportation, insurance, installation, commissioning, training and initial maintenance, are included within their respective definitions. 'Services' under the Procurement Guidelines include such as are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping, and similar operations. Services under the Procurement Guidelines do not include consulting services, which are dealt with separately under 'Guidelines for Selection and Employment of Consultants by World Bank Borrowers'. 'Consulting services' are defined as services of an intellectual and advisory nature.

<sup>35</sup> The World Bank Procurement Guidelines state general considerations for procurement in 1.2, which are in part reflected in Rule 4 Procurement Rules 2004. The considerations of economy and efficiency, and transparency are both mentioned in the equivalent Rule but the considerations relating to equal opportunity and development of domestic industries have been excluded from Rule 4.

<sup>36</sup> World Bank Guidelines 2.19 and 2.20 are the basis for equivalent Rule in Procurement Rules 2004. World Bank guidelines introduce a criterion for description of goods/works: it should 'assure critical performance'. Such a criterion is not included in Procurement Rules. Likewise, other points of World Bank guidelines omitted from Rule 10 include: specification of internationally accepted standards, or national ones where appropriate; goods/works meeting other standards/characteristics which promise 'at least substantial equivalence' also to be acceptable.

<sup>37</sup> World Bank Guideline 2.44 provides different response timeframe. It states that not less than six weeks be given for preparation of bids (international competitive bidding), which period should not be less than 12 weeks in case of large works or complex items of equipment. The equivalent time for ICB in Procurement Rules is stated to be not less than 30 days.

<sup>38</sup> Prequalification criteria in WB Guideline 2.9 are used as such in Procurement Rules 2004. The term 'plant' in Rule 15(2)(b) has been substituted in place of 'construction and manufacturing facilities' in 2.9.

<sup>39</sup> The principal of open competitive bidding as stated in the Procurement Rules 2004 is based largely on the World Bank's insistence on the procedure. A direct reference to the use of open competitive bidding is found in Guideline 1.3.

<sup>40</sup> The contents of the bidding documents as stated in World Bank Guideline 2.11 are produced exactly in Procurement Rules 2004 (23). Contents from Guidelines not included are: relevant technical data (including of geological and environmental nature).

<sup>41</sup> Guideline 2.17 pertains to the statement of bid evaluation criteria in the bidding documents. It states that if factors other than price are to be taken into account, their weightage and method of quantification is to be stated. Also, if alternates to the details provided in bidding documents are permissible, then their method of evaluation should also be stated. These details are excluded from Rule 23.

Also, Guideline 2.18 relates to clarification of bidding documents which is the basis for Rule 23(3) in Procurement Rules 2004. The Guideline does suggest the possibility of extension of bid submission deadline in such a case, which has been excluded from the equivalent Rule.

<sup>42</sup> Guideline 2.14 on bid security includes details which have been omitted from equivalent Rule. Firstly, it states that bid security is to remain valid for a period of four weeks beyond period of bid validity. Secondly, bid security is to be released to unsuccessful bidders after signing of procurement contract. Thirdly, an alternate to bid security could be a declaration signed by bidders in which they accept being suspended from being eligible for bidding for government contracts if they “withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents.”

<sup>43</sup> Guideline 2.45 is basis for Procurement Rules Rule 28. An omission from Rule 28 is that the Guidelines require that once written record is made of bids as they have been opened, this record should be promptly sent to all bidders who submitted bids in time.

<sup>44</sup> While Guideline 2.31 is basis for equivalent Rule, there is difference in the date to be used for ascertaining selling rate. Rule 30(2) states this to be the date of opening of bids, while Guideline 2.31 states this to be any date stated in bidding documents, “provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.”

<sup>45</sup> Guideline 2.39 on performance security provides details excluded from Rule 29. For one, it is stated that “a portion of security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the Borrower”. Also, an alternate arrangement to performance security could be “contracts (which) provide for a percentage of each periodic payment to be held as retention money until final acceptance.”

<sup>46</sup> Guideline 3.5 suggests 'shopping' as an alternative method of procurement which is equivalent of 'request for quotations (Rule 42(b)). Guideline 3.6 is basis for Rule 42(c). One circumstance that allows for direct contracting under Guideline 3.6 which has been omitted from Rule is where "Contractor responsible for a process design requires the purchase of critical items from a particular Supplier as a condition of a performance guarantee."



# Additional Articles in UNCITRAL Model Law

**UNCITRAL Model Law**

<b>Articles Omitted</b>	<b>Articles Included Partially (Excluded subsections noted here)</b>
Article 1 (Scope of application)	Article 2 (Definitions)
Article 5 (Public accessibility of legal texts)	Article 6 (Qualifications of suppliers and contractors) - 6(1)(b)(ii); 6(1)(b)(iii); 6(1)(b)(iv); 6(1)(b)(v); 6(2); 6(3); 6(4); 6(5); 6(6)(c)
Article 9 (Form of communications)	Article 7 (Prequalification proceedings) - 7(3)(a)(ii); 7(3)(a)(iv); 7(3)(b); 7(4); 7(5)
Article 13 (Entry into force of the procurement contract)	Article 8 (Participation by suppliers or contractors)- 8(2); 8(3)
Article 14 (Public notice of procurement contract awards)	Article 11 (Record of procurement proceedings)- 11(1); 11(3); 11(3)(b); 11(4)
Article 15 (Inducements from suppliers or contractors)	Article 16 (Rules concerning description of goods, construction or services)- 16(3)(a); 16(3)(b)
Article 17 (Language)	Article 19 (Conditions for use of two-stage tendering, request for proposals or competitive negotiation)- 19(1)(a); 19(1)(c); 19(1)(d); 19(2)(b)
Article 18 (Methods of procurement)	Article 22 (Conditions for use of single-source procurement)- 22(1)(b); 22(1)(e); 22(1)(f)
Article 20 (Conditions for use of restricted tendering)	Article 27 (Contents of solicitation documents)- 27(c); 27(g); 27(h); 27(i); 27(j); 27(k); 27(m); 27(o) 27(p); 27(q); 27(r); 27(s); 27(t); 27(u); 27(v); 27(w); 27(x); 27(y)
Article 23 (Domestic tendering)	Article 30 (Submission of tenders)- 30(2); 30(5)(b); 30(5)(c); 30(6)
Article 24 (Procedures for soliciting tenders or applications to prequalify)	Article 31(Period of effectiveness of tenders; modification and withdrawal of tenders)- 31(1); 31(3)
Article 25 (Contents of invitation to tender and invitation to prequalify)	Article 32 (Tender securities)- 32(1)(b); 32(1)(c); 32(1)(d); 32(1)(e); 32(1)(f); 32(2)
Article 28 (Clarifications and modifications of solicitation documents)	Article 33 (Opening of tenders)- 33(3)
Article 29 (Language of tenders)	Article 34 (Examination, evaluation and comparison of tenders)- 34(1)(b); 34(2); 34(3); 34(4)(b); 34(4)(c); 34(4)(d); 34(6); 34(7); 34(8)
Article 37 (Notice of solicitation of proposals)	Article 36 (Acceptance of tender and entry into force of procurement contract)- 36(2)(a); 36(3); 36(5); 36(6)
Article 38 (Contents of requests for proposals for services)	Article 49 (Competitive negotiation)- 49(2); 49(3); 49(4)
Article 39 (Criteria for the evaluation of proposals)	Article 50 (Request for quotations)- 50(1); 50(2)
Article 40 (Clarification and modification of requests for proposals)	
Article 41 (Choice of selection procedure)	
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Article 43 (Selection procedure with simultaneous negotiations)	
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Article 51 (Single-source procurement)	
Article 52 (Right to review)	
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Article 54 (Administrative review)	
Article 55 (Certain rules applicable to review proceedings )	
Article 56 (Suspension of procurement proceedings)	
Article 57 (Judicial review)	



# Procurement Rules For Works

**May 2007**

**Punjab Procurement Regulatory Authority  
Government of the Punjab**

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## 1 NOTE ON PROPOSED DRAFT

The Punjab Procurement Regulatory Authority (PPRA), created under the Punjab Procurement Regulatory Authority Ordinance, 2007 enacted on 19<sup>th</sup> April, 2007 is required to prepare Procurement Rules for the regulation of public procurement in Punjab. These Rules will consist of a set of general articles, followed by separate Sections for different types of procurement, i.e. Works, Goods, Services and Consulting Services. This document will form the Section of the Rules that deal with the procurement of Works.

The following actions need to be taken before this document can be finalized:

1. Formulation of the General Articles of the Procurement Rules
2. Identification of overlaps between this document and existing Building & Roads Code and other existing departmental rules and regulations to identify and incorporate modifications in such documents.
3. Review of existing Standard Bidding and Contract Documents, i.e. FIDIC, PEC, etc, and the notification of appropriate standards for various values of procurement.
4. Development of a website for maintaining a list of notified documents to be used for Procuring Agencies and displaying advertisements.
5. Approval of emergency procurement procedures on a department-to-department basis and their notification.
6. Specifying competent authorities for various types and values of procurements in accordance with Financial Powers Rules and guidelines on the use of contract types based on the value and method of the procurements.

## 2 PROCUREMENT OF WORKS

Procuring Agencies can use three methods for the procurement of Works: Quotation, Open Tendering, and Tendering with Pre-Qualification. The selection of method is dependent on the value of the proposed works as well as other considerations including complexity, availability of Contractors and location, etc. In all cases the first step is for the Procuring Agency to prepare a detailed scope, cost and time estimate for the proposed work.

The cost estimate shall be based on the assessment of the resources needed to carry out the works: material, machinery, labor, services, etc. Availability of funds should be ascertained if the work is being funded from existing budget or necessary funding should be sought through Supplementary Grant or PC-1.

The authorization for award of works under any of the three procurement processes is subject to the limits defined in the Delegation of Financial Powers Rules notified by the Finance Department, Government of Punjab.

## 3 SOLICITATION

The choice of procurement method is contingent on the value of the proposed works. The values given under may be revised by the PPRA from time to time via amendment to these Rules duly posted on its website. Procuring Agencies are required to review the website for any amendments before selecting procurement method.

### 3.1 PETTY WORKS

Any works with a value under Rs. 200,000 may be procured using the Quotation method.

### 3.2 MEDIUM-VALUE WORKS

Any works with a value under Rs. 50 million may be procured using the Open Tender or Tender with Prequalification method.

### 3.3 LARGE-VALUE WORKS

Any works over Rs. 50 million shall be procured using Tender with Prequalification method.

### 3.4 EMERGENCY WORKS

Emergency Works can only be executed by those Procuring Agencies that have emergency procurement procedures approved by the Punjab Procurement Regulatory Authority (PPRA). Rules for emergency works, conditions for declaring emergency, mechanism for emergency procurement and competent authority of the same should be defined for each procuring authority by its Administrative Department and approved by the PPRA.

## 4 SELECTION METHOD

There are three primary selection methods available for the procurement of works. The use of these selection methods is subject to Section . In case of tender documents, the approved versions of the tender documents as notified by the PPRA will be applicable. Such notifications will be made available

on the PPRA website and are to be checked by Procuring Agencies before preparation of tender documents.

## 4.1 QUOTATION

The Procuring Agency may directly select a suitable Contractor for negotiations if the value of the work is up to Rs. 50,000. For works with a value over Rs. 50,000 and up to Rs. 200,000, Procuring Agency should review potential Contractors on the basis of their capability, prior performance, experience and availability, and make a short-list of three or more Contractors. The criteria used by the Procuring Agency to shortlist/identify Contractors should be clearly documented prior to starting the selection process.

The Procuring Agency shall request quotations from the short-listed Contractors through a Request for Quotation. Each Contractor is permitted to give only one price quotation and is not permitted to change its quotation. No negotiations shall take place between the Procuring Agency and a Contractor with respect to a quotation submitted by the Contractor. The Procuring Agency reserves the right to reject all quotations without assigning any reason.

A comparative statement shall be prepared listing out the quoted price of each quotation, provided that such quotation complies with the specifications given in the Request for Quotations. The work will be awarded to the Contractor with the lowest quoted price.

## 4.2 TENDERING

### 4.2.1 OPEN TENDER

Any interested tenderer, who responds to the advertisement for tenders by submitting a responsive tender to the Procuring Agency within the appropriate time limit, shall be eligible for consideration for award of works contract. Under this method, an unlimited number of tenderers may be considered for the work.

#### 4.2.1.1 APPROVAL OF COST ESTIMATE

For every work proposed to be carried out, a properly detailed estimate must be prepared for sanction by the Competent Authority<sup>1</sup>.

#### 4.2.1.2 PREPARATION OF TENDER DOCUMENTS

In preparing the Tender Documents it should be ensured that the scope of work is compatible with the available budget. The following should be clearly and adequately defined in the tender documents:

- invitation to tender
- project scope

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<sup>1</sup> Technical Sanction Authority as described in the B&R Code, or approved specifically for the Procuring Agency.

- detailed drawings of the proposed work
- specifications of the work to be done and of the materials to be used, or reference to standard technical specifications if applicable
- schedule of quantities or deliverables
- general and particular conditions of contract
- background information (survey reports, design, data, etc.)
- project milestones with proposed phasing of the works
- other factors such as geographic location, support facilities, special requirements etc.

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#### 4.2.1.3 PREPARATION OF QUALIFICATION CRITERIA

The following criteria shall be used for qualification as a minimum:

- legal validity of the firm i.e. registration with Securities & Exchange Commission or Registrar of Firms, etc
- audited accounts for last three years
- registration with Income Tax Department
- undertaking that the firm has not been blacklisted or debarred by any Government/Semi-Government organization
- general and relevant experience – technical competency
- reliability and reputation in context of past performance on similar works
- available tools, plants, equipment and other physical facilities
- managerial capability and available personnel to perform the procurement contract
- financial capability of the firm with reference to the value of the work
- current engagements listing the value and nature of works already in hand
- compliance to any national/international standards in quality, safety, etc

The requirements of documentary evidence or other information that must be submitted by Contractors to demonstrate their qualifications in regards to the above must be specified.

Any scoring methodology should be included in the qualification documents and should clearly identify mandatory criteria, scores associated with individual criteria and minimum composite score required to qualify.

Procuring Agency may specify additional criteria for qualification provided that such criteria do not discriminate against or among Contractors, are objectively justifiable, and provide a level playing field for all competitors.

The information requested shall be the minimum required to judge a firm's suitability and should not be so complex as to discourage firms from expressing interest.

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#### 4.2.1.4 APPROVAL OF TENDER DOCUMENTS

Procuring Agency should get approved the tender documents, the advertisement, and the procurement process (open tender, or tender with pre-qualification) by the competent authority as given in the B&R Code or approved specifically for the Procuring Agency.

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#### 4.2.1.5 ADVERTISE

A Procuring Agency shall solicit tenders by issuing an Invitation To Tender (ITT) in two or more national newspapers of wide circulation. The Procuring Agency may also advertise in international newspapers or magazines if required. Sufficient time should be given for submission of tenders - in no case should this be less than five (5) weeks. Additionally, all ITT should be posted on the PPRA website.

The ITT should contain:

- the name and contact details of the Procuring Agency
- the means of obtaining the tender documents and the place from which they may be obtained
- the price, and means of payment for the tender documents. The price charged for tender documents shall reflect only the cost of printing them.
- the place and deadline for the submission of tenders
- the scope and location of the work to be effected
- the desired or required time for the completion of the work
- amount of tender security
- tender opening time and place

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#### 4.2.1.6 PROVISION OF TENDER DOCUMENTS

The Procuring Agency shall provide the tender documents, upon request, to any Contractor after recording their contact details (either manually or electronically on the internet).

The tender documents should be provided using the Standard Form of Bidding Documents notified by the PPRA.

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#### 4.2.1.7 CLARIFICATION AND MODIFICATION OF TENDER DOCUMENTS

A Contractor may request a clarification, in writing, of the tender documents from the Procuring Agency not later than four (4) weeks before the tender submission deadline. The Procuring Agency shall respond to any such request in writing within a reasonable time so as to enable the Contractor to make a timely submission of its tender and shall, without identifying the source of the request, communicate the clarification to all Contractors to whom the Procuring Agency has provided the tender documents.

At any time prior to the deadline for submission of tenders, the Procuring Agency may, for any reason, whether on its own initiative or as a result of a request for clarification by a Contractor, modify the tender documents by issuing an addendum. The addendum shall be communicated promptly to all

Contractors to whom the Procuring Agency has provided the tender documents and shall be binding on those Contractors.

If clarifications are requested in a pre-bid meeting, the procurement agency shall include these requests and responses to the requests in the minutes of the meeting. These minutes shall be provided promptly to all Contractors to which the Procuring Agency provided the tender documents.

---

#### 4.2.1.8 SUBMISSION OF TENDERS

If, pursuant to Section , the Procuring Agency issues a clarification or modification of the tender documents, it shall extend the deadline for submission of tenders, provided that the deadline has not already passed, if necessary to afford Contractors reasonable time to take the clarification or modification into account in their tenders.

The Procuring Agency may, in its absolute discretion, prior to the deadline for the submission of tenders, extend the deadline if it is not possible for one or more Contractors to submit their tenders by the deadline owing to any circumstance beyond their control.

Notice of any extension of the deadline shall be given promptly to each Contractor to whom the Procuring Agency provided the tender documents.

Tenders shall be submitted in writing, signed and in a sealed envelope, or in any other form specified in the tender documents that provides a record of the content of the tender with at least a similar degree of authenticity, security and confidentiality. The tender shall be submitted in two separate envelopes marked 'Technical' and 'Financial' placed together in one outer envelope.

The submitted tenders shall be registered by the officer in-charge at the time they are submitted. The Procuring Agency shall provide the Contractor a receipt showing the date and time when its tender was received. Any tender received after the deadline for submission of tenders shall be returned unopened.

All received tenders shall be kept safe until they are to be opened.

Unless otherwise stipulated in the tender documents, a Contractor may modify or withdraw its tender prior to the deadline for the submission of tenders without forfeiting its tender security (see Section ). The modification or notice of withdrawal is effective if it is received by the Procuring Agency prior to the deadline for the submission of tenders.

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#### 4.2.1.9 EXTENSION OF PERIOD OF EFFECTIVENESS OF TENDER

Tenders shall be in effect during the period of time specified in the tender documents.

Prior to the expiry of the period of effectiveness of tenders, the Procuring Agency may request Contractors, in writing, to extend the period for an additional specified period of time. A Contractor may refuse the request, in writing, without forfeiting its tender security.

Contractors that agree to an extension of the period of effectiveness of their tenders shall extend the period of effectiveness of tender securities provided by them or provide new tender securities to cover the extended period of effectiveness of their tenders. A Contractor whose tender security is not

extended, or that has not provided a new tender security, is considered to have refused the request to extend the period of effectiveness of its tender.

#### 4.2.1.10 TENDER SECURITY

The Procuring Agency will require tenderers to furnish a tender security not exceeding 2% of the tender price. Any tender not accompanied by an acceptable tender security will be rejected.

The tender documents should stipulate the issuer(s) as well as the form and terms of the tender security.

Prior to submitting a tender, a Contractor may request the Procuring Agency to confirm the acceptability of an alternate issuer of tender security. The Procuring Agency shall respond promptly to such a request.

Confirmation of the acceptability of an alternate issuer does not preclude the Procuring Agency from rejecting the tender security on the ground that the issuer, as the case may be, has become insolvent or otherwise lacks creditworthiness.

The Procuring Agency shall specify in the tender documents any requirements with respect to the issuer and the nature, form, amount and other principal terms and conditions of the required tender security. Any requirements regarding the Contractor's conduct in relation to tender security shall be limited to the following:

- (i) Withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if so stipulated in the tender documents
- (ii) Failure to sign the procurement contract if required by the Procuring Agency to do so
- (iii) Failure to provide a required security for the performance of the contract after the tender has been accepted or to comply with any other condition precedent to signing the procurement contract specified in the tender documents
- (iv) Failure to sign integrity pact, if required to do so.

The Procuring Agency shall make no claim to the amount of the tender security, and shall promptly return the tender security, when any of the following occurs:

- (i) The expiry of the effectiveness of tender or expiry of tender security;
- (ii) The entry into force of a procurement contract and the provision of a security for the performance of the contract, if such a security is required by the tender documents;
- (iii) The termination of the tendering proceedings without the entry into force of a procurement contract;
- (iv) The withdrawal of the tender prior to the deadline for the submission of tenders, unless the tender documents stipulate that no such withdrawal is permitted.

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#### 4.2.1.11 OPENING OF TECHNICAL BID

Tenders shall be opened at the time specified in the tender documents as the deadline of the submission of tenders, at the place and in accordance with the procedures specified in the tender documents. Only the envelopes marked 'Technical' shall be opened at this stage. Envelopes marked 'Financial' shall not be opened till the technical evaluation (see Section ) is completed.

All Contractors that have submitted tenders or their representatives shall be invited by the Procuring Agency to be present at the opening of tenders. Attendance of the tenderers is optional.

The name and address of each Contractor whose tender is opened will be read out to those persons present at the opening of tenders. Procuring Agency will also read out whether prescribed forms have been used and required documentary evidence has been provided. This information will be recorded immediately in the record of the tendering proceedings which will be signed by the legal representatives of both the Procuring Agency and the Contractors who are present at the time of opening. This record is to be communicated on request to Contractors that have submitted tenders but are not present or represented at the opening of tenders.

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#### 4.2.1.12 TECHNICAL EVALUATION

The Procuring Agency will carry out evaluation of 'Technical' bids using only the criteria published in the tender documents and prepare a short-list of qualified Contractors. If the short-list contains less than three (3) Contractors, the Procuring Agency may either re-advertise the Invitation to Tender (ITT) with the same or modified criteria, or choose to continue with the tendering process.

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#### 4.2.1.13 OPENING OF FINANCIAL BID

After completion of technical evaluation, the Procuring Agency will return unopened financial bids of Contractors who have not been qualified, and communicate to them the reasons for not qualifying them.

The Procuring Agency will issue invitations to all qualified Contractors to attend a post-qualification conference at which 'Financial' bids of qualified Contractors will be opened and tender prices will be read out and recorded. This record will be signed by legal representatives of both the Procuring Agency and the Contractors who are present at the time of opening. This record is also to be communicated to qualified Contractors who are not present or represented at the opening of Financial Bids.

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#### 4.2.1.14 EXAMINATION OF FINANCIAL BID

When tender prices are expressed in two or more currencies, the tender prices of all tenders shall be converted to Pak Rupees as stated in the Instructions to Tenderers.

The Procuring Agency shall regard a tender as responsive only if it conforms to all requirements set forth in the tender documents. However, the Procuring Agency may regard a tender as responsive if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the tender documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender.

The Procuring Agency shall correct purely arithmetical errors that are discovered during the examination of tenders. The Procuring Agency shall give prompt notice of any such correction to the Contractor that submitted the tender. If the Contractor that submitted the tender does not accept a correction of an arithmetical error, its tender shall be termed as not responsive.

The Procuring Agency may ask Contractors, in writing, for clarifications of their tenders in order to assist in the examination, evaluation and comparison of tenders. No change in a matter of substance in the tender, including changes in price and changes aimed at making an unresponsive tender responsive, shall be sought, offered or permitted.

At the end of the examination process, the Procuring Agency shall only consider those tenders for selection that are responsive, submitted by qualified Contractors, and are not in violation of the principle of integrity.

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#### 4.2.1.15 SELECTION

The Procuring Agency shall evaluate and compare the tenders in accordance with only the procedures and criteria set forth in the tender documents. The successful tender will be the tender with the lowest price.

The Procuring Agency may require the Contractor, who submitted the successful tender, to demonstrate again its qualifications in accordance with criteria and procedures set forth in the tender documents. If the Contractor is unable to demonstrate its qualifications, the Procuring Agency shall reject its tender and shall select the next lowest tender, subject to the right of the Procuring Agency to reject all tenders, if such a right has been stated in the tender documents.

Information relating to the examination, clarification, evaluation and comparison of tenders shall not be disclosed to Contractors or to any other person not officially involved in the examination, evaluation or comparison of tenders or in the decision on which tender should be accepted.

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#### 4.2.1.16 NEGOTIATIONS

There shall be no negotiations between the Procuring Agency and the successful tenderer or any other tenderer.

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#### 4.2.1.17 AWARD OF CONTRACT

Notice of acceptance of the tender shall be given promptly to the Contractor submitting the successful tender through a letter of acceptance.

The successful tenderer shall submit a performance security in the form and amount stipulated in the tender documents and the conditions of contract within a period of 28 days after the receipt of letter of acceptance.

Between the time of dispatch of the notice of acceptance to the Contractor and the entry into force of the procurement contract, neither the Procuring Agency nor the Contractor shall take any action that interferes with the entry into force of the procurement contract or with its performance.

The procurement contract shall be signed by the Contractor and by the Procuring Agency within 14 days from the submission of performance security. The procurement contract enters into force when the contract is signed.

If the Contractor whose tender has been accepted fails to sign a written procurement contract, or fails to provide any required security for the performance of the contract, the Procuring Agency may annul the award, and select a successful tender from among the remaining tenders that are in force, subject to the right of the Procuring Agency to reject all remaining tenders if such a right has been included in the tender documents.

Upon the entry into force of the procurement contract, notice of the procurement contract shall be given to other tenderers, specifying the name and address of the Contractor that has entered into the contract and the contract price.

A comprehensive evaluation report shall be prepared and circulated among tenderers by the Procuring Agency after the award of the contract, providing details about the qualification process, tender examination and evaluation and selection of final tender.

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## 4.2.2 TENDER WITH PRE-QUALIFICATION

Any interested tenderer may respond to the advertisement for EOI by submitting a responsive tender. The Procuring Agency will prequalify tenderers according to stated qualification criteria. Under this method, only tenders of qualified tenderers will be evaluated and considered for award of contract.

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### 4.2.2.1 APPROVAL OF COST ESTIMATE

See Section

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### 4.2.2.2 PREPARATION OF TENDER DOCUMENTS

See Section

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### 4.2.2.3 PREPARATION OF QUALIFICATION CRITERIA

See Section

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### 4.2.2.4 APPROVAL OF TENDER DOCUMENTS

See Section

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### 4.2.2.5 PREQUALIFICATION

A Procuring Agency shall solicit Expressions of Interest (EOI) by issuing an advertisement containing the Prequalification Criteria (see Section ) in two or more national newspapers of wide circulation. The Procuring Agency may also advertise in international newspapers or magazines if required. Additionally, all EOI notices should be posted on the PPRA website. Sufficient time, not less than two (2) weeks, shall be given to Contractors to submit EOIs.

The advertisement should contain:

- the means of obtaining the prequalification documents and the place from which they may be obtained
- the place and deadline for the submission of applications to prequalify

On expiry of time given for submission of EOI, the Procuring Agency will carry out evaluation using only the criteria published in the advertisement for EOI and prepare a short-list of prequalified Contractors. If the short-list contains less than three (3) Contractors, the Procuring Agency may either re-advertise the EOI with the same or modified criteria, or choose to continue with the tendering process.

The Procuring Agency shall promptly notify each Contractor submitting an EOI whether or not it has been prequalified and shall share the short-list with all Contractors who submitted EOIs. This list shall also be posted on the PPRA website.

The Procuring Agency shall communicate to those Contractors who have not been prequalified, upon request, the reasons for not prequalifying them.

---

#### 4.2.2.6 PROVISION OF TENDER DOCUMENTS

The Procuring Agency shall send out an invitation to each Contractor that has been prequalified to collect the tender documents (see ) after paying the price, if any, charged for those documents. The price that the Procuring Agency may charge for the tender documents shall reflect only the cost of printing them and providing them to Contractors.

The Procuring Agency shall allow enough time for Contractors to prepare tenders. The time allowed shall depend on the nature, size and complexity of the works, and shall range from six (6) to eight (8) weeks.

The tender documents should be provided using the Standard Form of Bidding Documents notified by PPRA.

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#### 4.2.2.7 CLARIFICATION AND MODIFICATION OF TENDER DOCUMENTS

Clarification and modification of tender documents shall follow the same procedure as for open tendering (see Section ) except that all communication in regards to this Section shall be made to prequalified Contractors only.

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#### 4.2.2.8 SUBMISSION OF TENDERS

The procedure for submission of tenders will be the same as for open tendering (see Section ), except that only financial bid will be submitted, and hence tenders will not be required in two separate envelopes.

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#### 4.2.2.9 EXTENSION OF PERIOD OF EFFECTIVENESS OF TENDER

See Section

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#### 4.2.2.10 TENDER SECURITY

See Section

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#### 4.2.2.11 OPENING OF TENDERS

Tender shall be opened at the time specified in the tender documents as the deadline of the submission of tenders, at the place and in accordance with the procedures specified in the tender documents. All Contractors that have submitted tenders or their representatives shall be invited by the Procuring Agency to be present at the opening of tenders. Attendance of the tenderers is optional.

The name, address, and given tender price of each Contractor whose tender is opened shall be read out to those persons present at the opening of tenders, and recorded immediately in the record of the tendering proceedings. This record is to be signed by the legal representatives of both the Procuring Agency and the Contractors who are present at the time of opening, and is to be communicated on request to Contractors that have submitted tenders but are not present or represented at the opening of tenders.

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#### 4.2.2.12 EXAMINATION OF TENDERS

See Section

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#### 4.2.2.13 SELECTION

See Section

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#### 4.2.2.14 NEGOTIATIONS

See Section

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#### 4.2.2.15 AWARD OF CONTRACT

See Section

### 4.3 STANDING OFFER AGREEMENT

Standing Offer Agreements (SOA) may be used for regular, routine works of small value. SOA are for limited time duration, and will require the Procuring Agency to prequalify a number of Contractors suitable for particular kinds of works for this duration. Procuring Agency will sign an SOA with prequalified firms at standard rates.

While the SOA is in effect, the Procuring Agency will engage, at its discretion and according to work requirements, any one of the prequalified firms on the list for work assignment. When awarding contracts to firms under the SOA, the Procuring Agency may choose to re-check qualification criteria. If any Contractor no longer conforms to qualification criteria, the Procuring Agency should remove that Contractor from the list of prequalified Contractors and terminate SOA with that Contractor.

Neither the SOA or the list of prequalified Contractors can be renewed after stated time duration. The Procuring Agency will have to re-initiate prequalification proceedings. The maximum duration of an SOA can be ten months.

## 5 CONTRACTS

Contracts generally fall into one of three broad categories. Each contract type and the specific terms and conditions of the contract establish different degrees of risk assumed by both the Procuring Agency and the Contractor.

In addition to this, the requirements (e.g., standard or custom work specifications, performance reporting) that a Procuring Agency imposes on a Contractor, along with other planning considerations such as the degree of market competition and degree of risk, also determine which type of contract will be used.

### 5.1 FIXED-PRICE OR LUMP-SUM CONTRACTS

Such contracts establish a fixed total price for a well-defined output. Fixed-price contracts can also include incentives for meeting or exceeding selected work objectives, such as schedule targets. The simplest form of a fixed-price contract is a contract for a specified work to be completed by a specified date for a specified price.

### 5.2 COST-REIMBURSABLE CONTRACTS

Such a contract requires payment (reimbursement) to the Contractor for Contractor's actual costs, plus a fee typically representing Contractor's profit. Costs are usually classified as direct costs or indirect costs. Direct costs are costs incurred for the exclusive benefit of the works (e.g., labor, materials, equipment rentals etc). Indirect costs, also called overhead and general and administrative costs, are costs incurred by the Contractor as a consequence of doing business (e.g., salaries of management indirectly involved in the work, maintenance of site office, etc). Indirect costs are usually calculated as a percentage of direct costs.

Cost-reimbursable contracts may include incentive clauses where, if the Contractor meets or exceeds selected work objectives such as schedule targets or total cost, then the Contractor receives an incentive or bonus payment. Three common types of cost-reimbursable contracts are CPF, CPFF, and CPIF.

#### 5.2.1.1 COST-PLUS-FEE (CPF) OR COST-PLUS-PERCENTAGE OF COST (CPPC)

Contractor is reimbursed for allowable costs for performing the contract work and receives a fee calculated as an agreed-upon percentage of the costs. The fee varies with the actual cost.

#### 5.2.1.2 COST-PLUS-FIXED-FEE (CPFF)

Contractor is reimbursed for allowable costs for performing the contract work and receives a fixed fee payment calculated as a percentage of the cost estimate. The fixed fee does not vary with actual costs unless the scope of the works changes.

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### 5.2.1.3 COST-PLUS-INCENTIVE-FEE (CPIF)

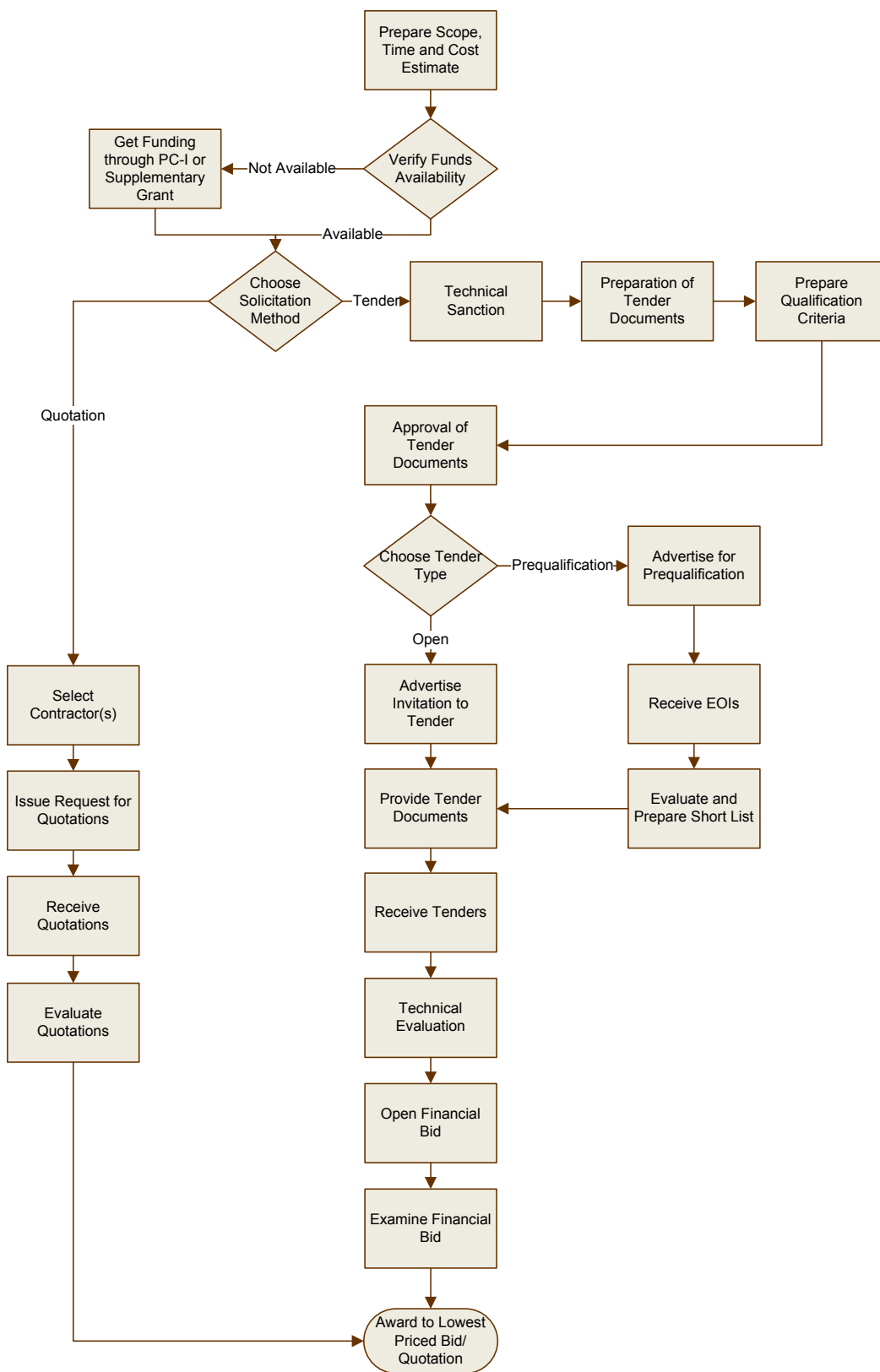
Contractor is reimbursed for allowable costs for performing the contract work and receives a predetermined fee, an incentive bonus, based upon achieving certain performance objective levels set in the contract. In some CPIF contracts, if the final costs are less than the expected costs, then both the Procuring Agency and Contractor benefit from the cost savings based upon a pre-negotiated sharing formula.

## 5.3 RATE CONTRACTS

Rate contracts are a hybrid type of contractual arrangement that contain aspects of both cost-reimbursable and fixed-price type arrangements. These types of contracts resemble cost-reimbursable type arrangements in that they are open ended. The full value of the agreement and the exact quantity of items to be delivered are not defined by the Procuring Agency at the time of the contract award. Thus, Rate contracts can grow in contract value as if they were cost-reimbursable type arrangements.

Conversely, Rate contract arrangements can also resemble fixed-price arrangements. For example, unit rates can be preset by the Procuring Agency and Contractor when both parties agree on the rates for a specific resource category.

**APPENDIX A - WORKS PROCUREMENT PROCESS**



## APPENDIX B - REFERENCE

Guidelines for Procurement Under IBRD Loans and IDA Credits. World Bank. IBRD, 2006.

Procurement Guidelines. Asian Development Bank. Asian Development Bank, 2006.

Standing Offer Agreements. Public Works and Services. Northwest Territories, 2001.

The Public Contracts Regulations 2006. Office of Government Commerce, UK. The Stationery Office, 2006.

UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment. UNCITRAL. UNCITRAL, 1994.

User Friendly Guide Standing Offer Agreement. Queensland Purchasing. Brisbane: Queensland Government, 2006.

## APPENDIX C - ACKNOWLEDGEMENTS

This draft of the Rules for Procurement of Works has been conceptualized and prepared by the Project Management Unit, Planning and Development Department. The following individuals served as team members and contributors.

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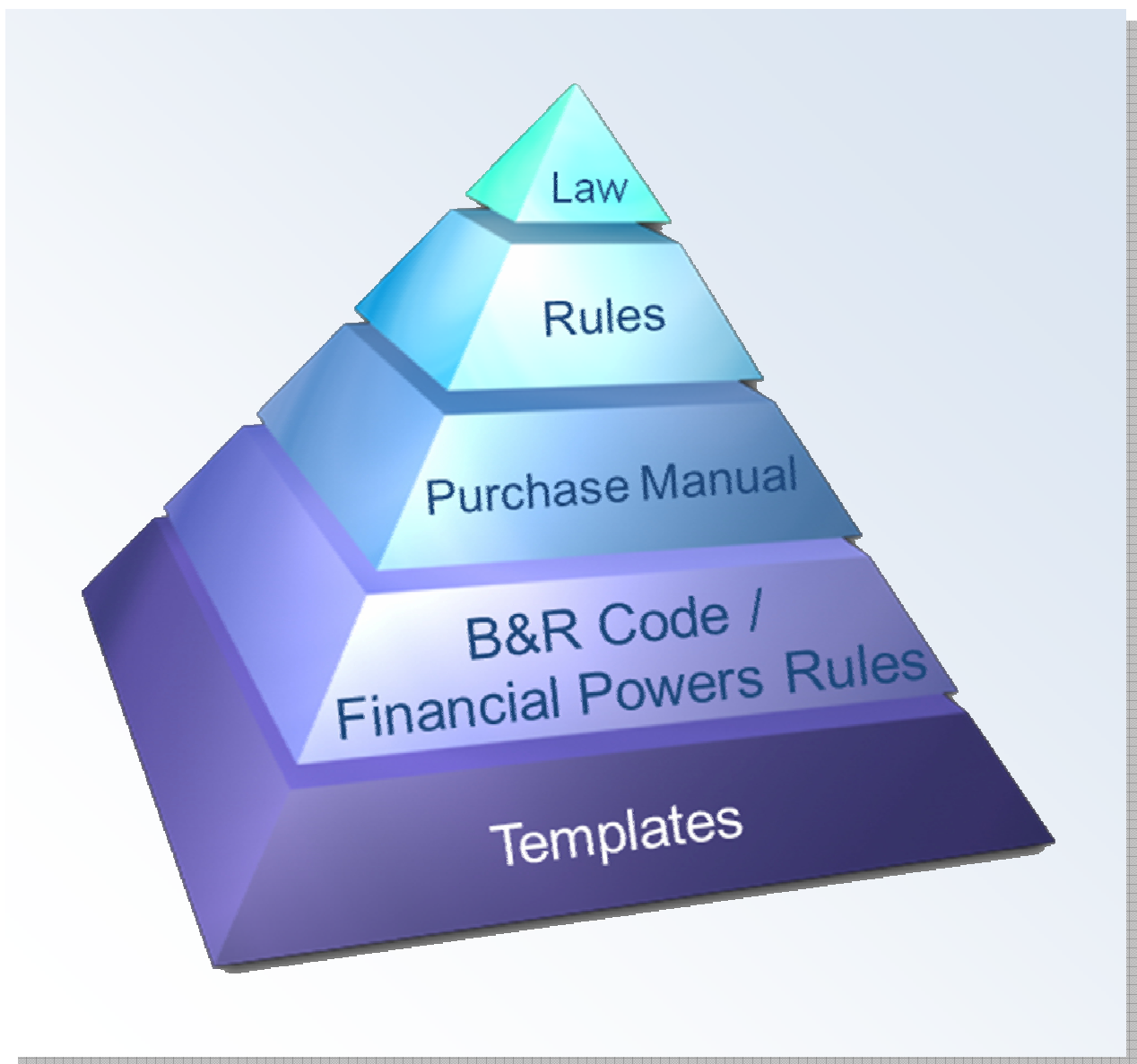
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## PROJECT MANAGEMENT UNIT

### Brief on Punjab Procurement Reform

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## Section

# 1

# Background

## 1.1 Overview

Public procurement reform in Punjab is one in a series of similar reforms, following those undertaken by the federal government, and parallel to those currently underway in Sindh. Punjab procurement reform was initiated through the 'Strategy for Procurement Reform in Punjab' in April 2006 which set the direction for the present reform effort

The experiences of the federal and Sindh governments are particularly valuable since they will help Punjab implement procurement reform as envisaged in the province's strategy. Reforms in the past have shown that despite the provision of a comprehensive legal cover in the form of Law and Rules, the *implementation* of procurement reform has proven to be difficult. Drawing on this experience, the transition associated with the implementation of procurement reform in Punjab may be simplified by approaching the reform as a consolidated framework. To this end, all aspects of procurement reform must be driven toward the achievement of greater standardization, consistency, and uniformity across the government.

This document outlines an action plan identified by PMU that can assist in the achievement of such a consolidated framework. It provides an overview of

the scope of the reform in Punjab (Figure 1), considers lessons learnt from previous reform interventions and proposes various additions to the reform effort that will allow us to benefit from these lessons (refer to Annexure A).

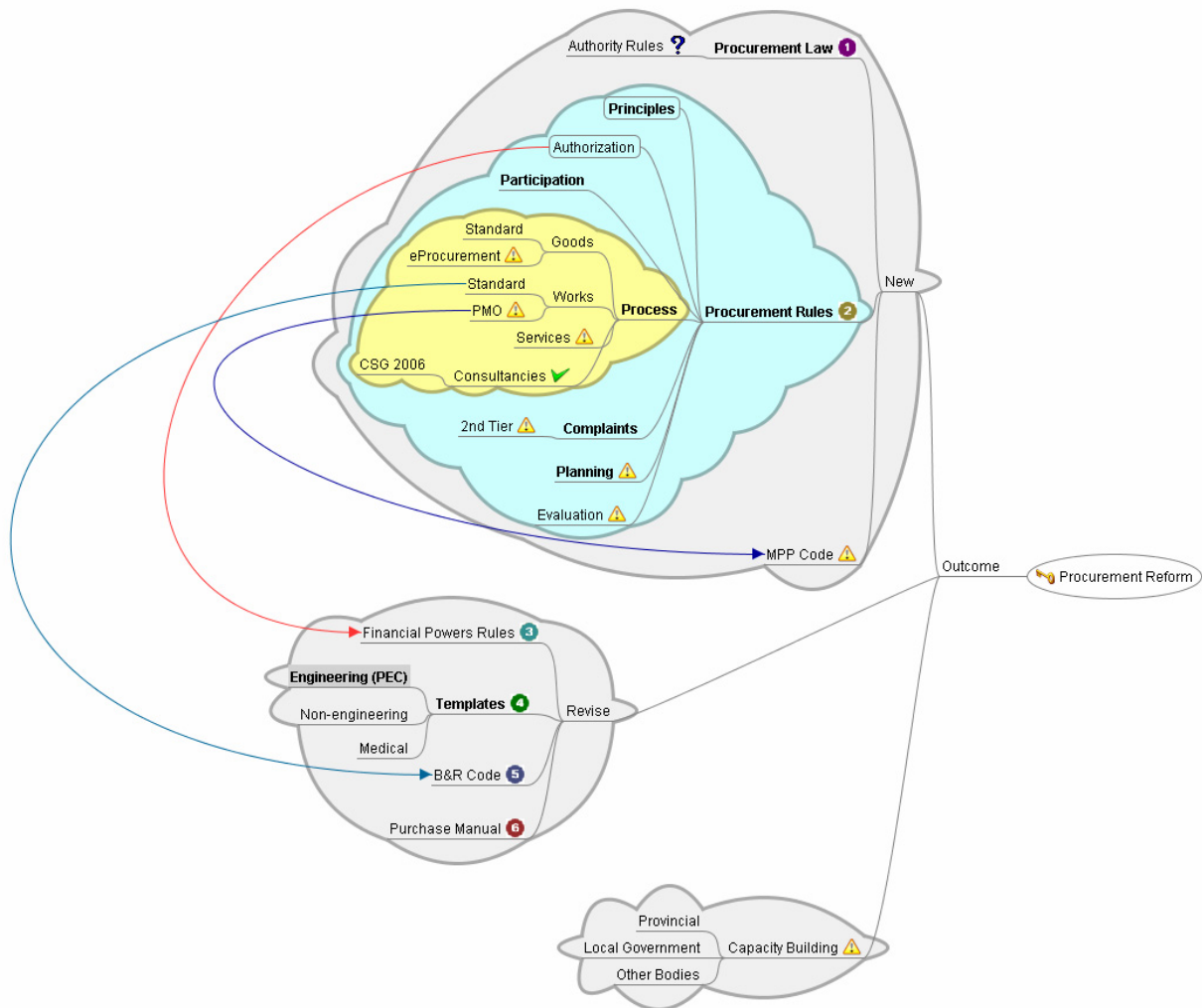


Figure 1 - Scope of Procurement Reforms in Punjab

## 1.2 History of Reform

Procurement reform was initiated by the federal government in 2004 through the implementation of Public Procurement Regulatory Authority Ordinance 2002 (PPRA 2002) and Public Procurement Rules 2004. The federal procurement law (PPRA Ordinance 2002) allows for the establishment of a

federal Procurement Regulatory Authority which has been assigned, as one of its functions, the task of establishing Rules to govern the process of procurement. The Public Procurement Rules 2004 are intended to outline the broad parameters for solicitation procedures. These Rules are modeled after the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Procurement of Goods, Construction and Services. The Rules also draw on World Bank's procurement guidelines (Guidelines for Procurement under IBRD Loans) and ADB's Procurement Guidelines<sup>1</sup>.

The Sindh government adopted and enacted the federal procurement Law/Rules in September 2006.

Government of the Punjab is presently in the process of introducing procurement reform, which is to be modeled on the federal Law/Rules. For this purpose, a draft Law (the Procurement Regulatory Authority of Punjab Act 2007 (PRAP 2007)) has been prepared and is presently under consideration for passage into law<sup>2</sup>. The Punjab Resource Management Program (PRMP) has also prepared draft Public Procurement Rules which are based on the federal Public Procurement Rules 2004<sup>3</sup>.

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<sup>1</sup> Comparison of these international templates and Public Procurement Rules 2004 is included in Annexure B. The annexure treats the Public Procurement Rules 2004 as the baseline for analysis and compares each Rule with the relevant UNCITRAL/World Bank/Asian Development Bank Article that it has originated from. Annexure C provides comparative notes on several of these articles.

<sup>2</sup> Differences between the federal PPRA 2002 and the draft PRAP 2007 are included in Annexure E.

<sup>3</sup> Differences between the federal Public Procurement Rules 2004 and the Draft Procurement Rules prepared by PRMP are included in Annexure B. The Public Procurement Rules 2004 are treated as a baseline and are compared with their equivalent in the PRMP draft Rules. Additions, omissions and modifications are noted in Annexure C.

Section  
2

# Analysis

The lessons learnt from the implementation of procurement reform in the federal and Sindh governments provide important considerations that should guide the procurement reform in Punjab. These lessons need to be considered in light of the procurement practices currently in place in the province.

## 2.1 Lessons from Reforms

In the case of federal procurement reform, both the Law and Rules provide a basic, generalized framework for procurement practices, but require relevant procuring entities to ensure compliance of their procurement procedures with the federal Law/Rules. This approach was adopted by the federal government on account of two considerations: (i) the majority of federal procurement is conducted by numerous autonomous bodies and corporations, each of which has a range of procedural templates, and (ii) each of these bodies possesses the capacity to remodel its procedural templates to comply with Law/Rules. In view of this, the PPRA chose not to build templates, standard documents and procurement procedures itself. The transition experience, however, has shown that those entities which lack capacity to undertake realignment of their procedures have lagged behind

in the implementation of procurement reform and are continuing to use practices inconsistent with the Law/Rules.

In Sindh, the verbatim adoption of federal strategy has proved to be less successful due to the differences in the nature of procurement entities. Unlike federal government, the bulk of public procurement in Sindh is conducted either through departments or through local government offices. These institutions, unlike federal bodies, in general lacked the internal capacity required to bring procurement procedures in conformity with the Law/Rules. As most procedures/templates are presently inconsistent with the Law/Rules, procuring entities have reduced their procurement activity considerably due to lack of legal cover.

Till such time as standard templates/procedural manuals are prepared by the government/departments, the Sindh government has adopted relevant procedural templates used by other agencies, such as the Consultant Selection Guidelines of Punjab, standard documents and templates prepared by the PEC, World Bank, and Transparency International etc. Likewise, it has asked major departments such as the Education and Health departments to prepare templates relating to procurement of goods.

## **2.2 Public Procurement in Punjab**

Traditional procurement practice in Punjab is similar to Sindh, as it is administered under multiple rules, codes, and manuals, some of which are:

- Purchase Manual: provides details on procurement procedures (ranging from procurement planning to execution of procurement contracts), roles and responsibilities of procuring officials, and standard templates/forms to be used in the procurement process. The Purchase Manual does not cover procurements of specialized nature, such as capital works and medical goods.
- B&R Code: pertains to procedural matters of the I&P/C&W department, including, procurement procedures for civil works.

- Departmental templates: The C&W and I&P departments follow their own templates for procurement procedures, such as solicitation documents and contract terms.
- Delegation of Financial Powers Law/Rules: Includes references to procurement related functions e.g. procuring powers of government officials.

Given the multiplicity of procuring entities, it is likely that some bodies will lack the internal capacity to reform procurement procedures and templates of their own accord. Considering the experiences of federal and Sindh procurement reform, and the nature of procuring entities in Punjab, it is likely that introduction of reform in Punjab along the same lines will result in the principal problem faced by Sindh – different levels of maturity in procurement reform evidenced by inconsistent practices across the province.

In light of the above, it would be beneficial for procurement reform to be based on a comprehensive framework that consists of laws/rules which are supplemented by relevant procedural manuals, templates and standard documents. At the same time, it is important that the preparation of this framework be organized as a centralized effort (undertaken by the designated Regulatory Authority itself) and all the components of this framework be prepared before implementation of the reform.

# Recommendations

The following recommendations are proposed after a study of the scope of the current reform and past experiences with an objective to ease the transition from present procurement practices to reform framework.

## **3.1 Framework**

The proposed procurement framework will consist of laws and rules that will provide overall guidance for provincial procurement processes. The framework will also consist of manuals and codes that dictate procurement procedures for individual departments and bodies. As such manuals and codes are already in use (B&R Code, Purchase Manual, Delegation of Financial Powers Rules etc), it is advisable that they be realigned and brought into compliance with the Law/Rules. Lastly, the framework should also include templates and standard documents to be used in procurement proceedings, some of which are already present and require minor realignment while others have to be formulated.

### **3.1.1 Procurement Law**

The law is currently under consideration for enactment and is concerned with the formation and functions of the Punjab Procurement Regulatory Authority.

### 3.1.2 Procurement Rules

The Draft Rules proposed by PRMP, which are presently being considered for implementation, will play an intrinsic role in the success of the reform. Since the draft Rules are based on federal Rules, some areas which are pertinent to our environment that have not been addressed are as follows:

At present, the PRMP draft Rules do not differentiate between procurement procedures on the basis of the object of procurement (goods, works or services) (as advised in international templates such as the UNCITRAL Model Law). Instead, they outline a generic procurement procedure that is to be followed irrespective of the basic nature of procurement. The Rules do attempt to discern among procurement procedures based on the value of procurement, but this is not standard international practice.

Secondly, the Draft Rules are almost exclusively focused on solicitation procedures of procurement. There is inadequate detail regarding procurement planning and post-award procedures. The latter include both the administration of procurement contracts, as well as evaluation mechanism to provide feedback on performance of procurement practices. Likewise, the Rules do not address issues such as those relating to powers of procuring officials and mechanisms to address complaints of all parties involved in the procurement process.

Thirdly, the draft Rules are written in a broad, generalized manner. Even with regards to the solicitation procedures on which it concentrates, the Rules provide insufficient detail on the actual steps to be followed by procuring entities. For instance, with regards to prequalification process and the employment of alternative methods of procurement, the draft Rules offer no instructions as to how and when each of these processes is to be conducted.

In light of the above assessment, the solicitation processes as stated in the draft Rules should be reconfigured so as to establish a primary distinction between processes not on the basis of monetary value but on the object of

procurement. Procurement processes need to be remodeled along the lines of:

- Goods
  - Standard: procedures for procurement of ordinary goods need to be consolidated under the Rules.
  - E-Procurement: procedures for online transactions, online auctions, and reverse auctions need to be outlined.
- Works:
  - Civil Works: development of linkages between Rules and departmental procurement procedures (e.g. B&R Code) is required.
  - Mega Projects: Exclusive Mega Provincial Project Code (MPP) which will be concerned with the solicitation procedures as they relate to such projects is to be formulated.
- Services: selection procedures have to be identified as no relevant documents exist presently.
- Consultancies: selection procedures already covered by Consultant Selection Guidelines of the GoPb which will be so referenced in the Rules.

Other sections of the draft Rules that require modification are those relating to participation in procurement processes, and complaints mechanism (second tier of redressal mechanism must be introduced for benefit of contracting parties). Sections relating to authorization for procurement activity (which should be linked to Financial Powers Rules for instance), procurement planning, and evaluation mechanism, also need to be introduced.

### 3.1.3 Alignment of Existing Documents

Existing departmental manuals and templates that regulate procurement will need to be brought into compliance with Law/Rules. For instance, the draft Rules purport to eliminate practice of registration of suppliers and contractors. This practice is, however, continued under the Purchase Manual which has to

be amended so as to remove sections relating to registration. Likewise, bid evaluation procedures and criteria as conceived in the Purchase Manual are inconsistent with the intended effort to introduce criteria other than lowest evaluated bid in the Rules and should be so reformed. The draft Rules do not, however, provide alternates to procedures that it seeks to invalidate. Therefore, the alignment of existing documents such as the Purchase Manual, involves both the *removal* of inconsistent elements and their *replacement*, either in the Manual or the Rules, of appropriate detailed procedures.

### 3.1.4 Templates

Templates and standard documents (e.g. tender documents, RFPs) employed by individual departments also need to be made consistent with the procurement framework. At present, smaller public entities usually use standard templates prepared by large departments. Due to lack of centralization, changes brought to original templates are not reflected in copies of that template used by smaller entities resulting in a myriad of templates. For this reason, centralized development of standard templates will ensure that the proposed procurement framework is operationalized, there is consistency in procurement transition process, and there is version control of templates being used.

## 3.2 Capacity Building

Successful implementation of the reform framework requires that procuring officials and agencies (provincial departments, local governments, and other bodies) develop suitable capacity. The exercise to build such capacity must be undertaken after the complete formulation of the procurement framework. The required capacity building and training programs should be conceptualized as a long-term, continuous intervention by the provincial government.

## Section

# 4

# Action Plan

The reform framework should be undertaken in the following sequence:

- 1) Completion of the Rules
- 2) Creation of the Procurement Regulatory Authority of Punjab; along with the Authority's Rules of Business
- 3) Standard templates required for operationalization of the Law/Rules
- 4) Capacity building
- 5) Implementation of the reform framework

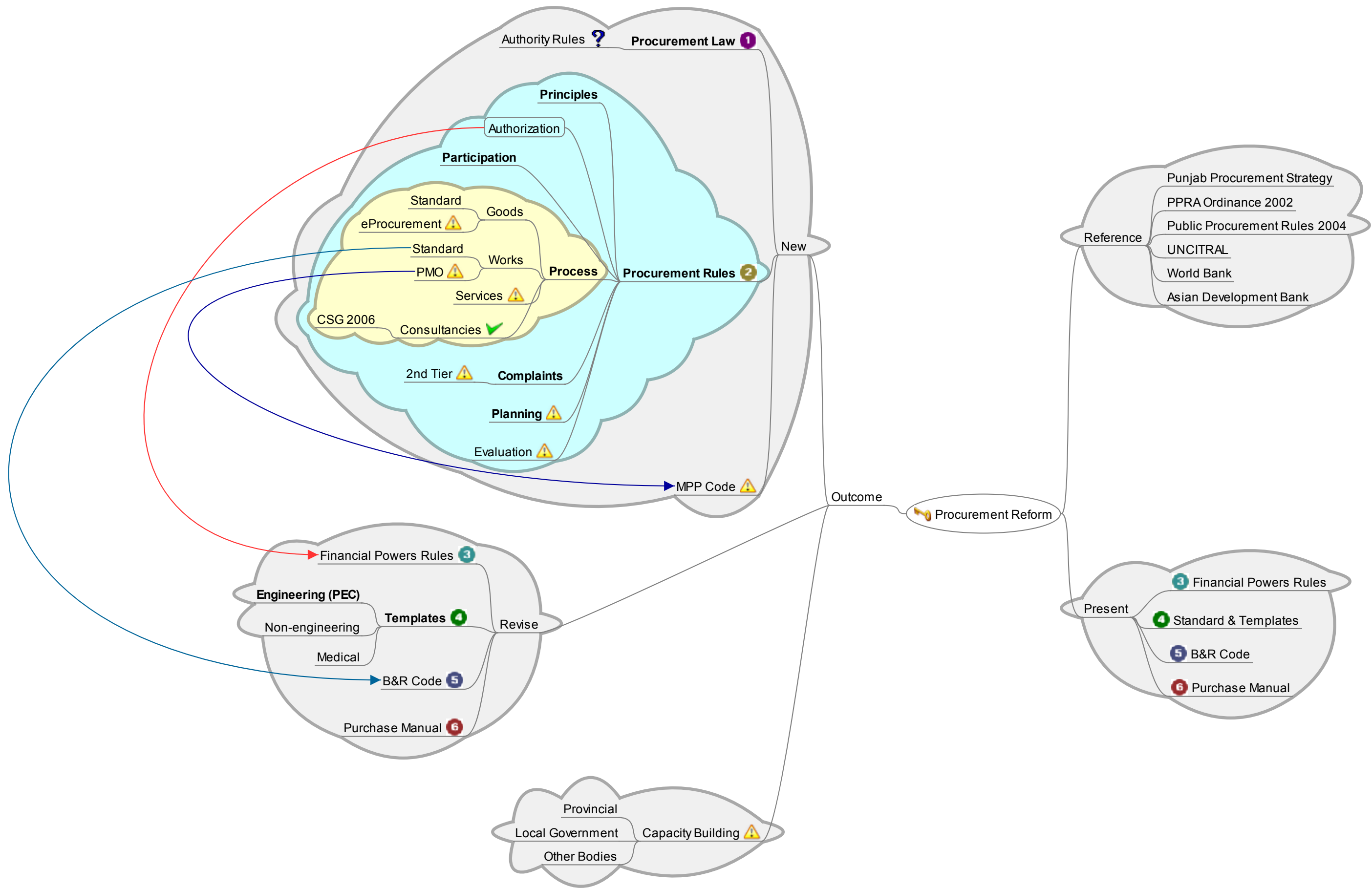
The enactment of the draft Law should be scheduled such that all other constituents of the procurement framework are prepared simultaneously to avoid time lapse between the implementation of the law and the subsequent procedures and templates.

Tasks associated with procurement reform may be broken down into two categories: (i) policy related tasks, and (ii) operations' side tasks. The first include preparation of Rules, realignment of Purchase Manual, B&R Code, and other procedural templates. The second relate to the preparation of templates and standard documents. Some of the groundwork which has already been done by the PMU in regards to policy related tasks is attached as Annexures A-E. With regards to operations' side tasks, several provincial

PMOs are presently involved in the preparation of relevant templates which may be standardized by the Authority. For specialized works, such as engineering and medical goods, templates prepared by relevant agencies may be taken into consideration.



# Reform Mindmap



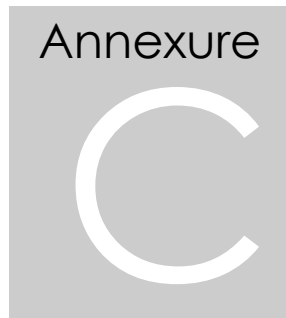
Annexure

B

# Comparison of Rules

**Procurement Rules: Comparison**

Sr. No.	Draft Public Procurement Rules (prepared by Punjab Resource Management Program)	Public Procurement Rules 2004 (federal government)	United Nations Commission on International Trade Law (articles included)	World Bank Procurement Guidelines (articles included)	ADB Procurement Guidelines (articles included)
1	Rule 1 (Short Title and Commencement)	Rule 1 (Short title and commencement)			
2	Rule 2 (Definitions) <sup>1</sup>	Rule 2 (Definitions)	Article 2 <sup>19</sup>	footnote 2 <sup>34</sup>	
3	Rule 3 (Scope and Applicability)	Rule 3 (Scope and Applicability)			
4	Rule 4 (Principles of procurements)	Rule 4 (Principles of procurements)		1.2 <sup>35</sup>	
5	Rule 5 (International and inter-governmental commitments of the Federal Government)	Rule 5 (International and inter-governmental commitments of the Federal Government)	Article 3 <sup>20</sup>		
6	Rule 6 (Language)	Rule 6 (Language)			
7	Rule 7 (Procurement planning)	Rule 7 (Integrity pact)			
8	Rule 8 (Limitation on splitting or regrouping of proposed procurement)	Rule 8 (Procurement planning)			
9	Rule 9 (Competence for procurement)	Rule 9 (Limitation on splitting or regrouping of proposed procurement)			
10	Rule 10 (Specifications) <sup>2</sup>	Rule 10 (Specifications)	Article 16 (1); 16(2) <sup>21</sup>	2.19; 2.20 <sup>36</sup>	
11	Rule 11 (Standardization Criteria)	Rule 11 (Approval mechanism)	Article 16(3)		
12	Rule 12 (Approval mechanism) <sup>3</sup>	Rule 12 (Methods of advertisement)			
13	Rule 13 (Methods of advertisement) <sup>4</sup>	Rule 13 (Response time)		2.44 <sup>37</sup>	
14	Rule 14 (Response time)	Rule 14 (Exceptions)			
15	Rule 15 (Exceptions) <sup>5</sup>	Rule 15 (Pre-qualification of suppliers and contractors)	Article 6 (1)(b)(i) <sup>22</sup>	2.9 <sup>38</sup>	
16	Rule 16 (Pre-qualification of suppliers and contractors) <sup>6</sup>	Rule 16 (Pre-qualification process)	Article 7 (2); 7(3)(i); 7(3)(iii); 7(3)(v); 7(6); 7(7) <sup>23</sup>		
17	Rule 17 (Pre-qualification process) <sup>7</sup>	Rule 17 (Qualification of suppliers and contractors)	Article 6(1)(a); 7(8) <sup>24</sup>		
18	Rule 18 (Qualification of suppliers and contractors)	Rule 18 (Disqualification of suppliers and contractors)	Article 6(6)(a); 6(6)(b)		
19	Rule 19 (Disqualification of suppliers and contractors)	Rule 19 (Blacklisting of suppliers and contractors)			
20	Rule 20 (Blacklisting of suppliers and contractors) <sup>8</sup>	Rule 20 (Principal method of procurement)		1.3 <sup>39</sup>	
21	Rule 21 (Principal method of procurement)	Rule 21 (Open competitive bidding)			
22	Rule 22 (Open competitive bidding) <sup>9</sup>	Rule 22 (Submission of bids)	Article 30(1); 30(5)(a); 27(n)		
23	Rule 23 (Submission of bids)	Rule 23 (Bidding documents)	Article 26 <sup>25</sup> ; 27(a); 27(b); 27(d); 27(e); 27(f); 27(l); 27(z) <sup>26</sup>	2.11 <sup>40</sup> ; 2.16; 2.17; 2.18 <sup>41</sup>	
24	Rule 24 (Bidding documents) <sup>10</sup>	Rule 24 (Reservations and preference)	Article 8(1); 34(4)(d)		
25	Rule 25 (Reservations and preference)	Rule 25 (Bid security)	Article 32(1)(a)	2.14 <sup>42</sup>	
26	Rule 26 (Bid security)	Rule 26 (Bid validity)	Article 31(2)(a); 31(2)(b)	2.57	
27	Rule 27 (Bid validity)	Rule 27 (Extension of time for submission of bids)	Article 30(3); 30(4) <sup>27</sup>		
28	Rule 28 (Extension of time for submission of bids)	Rule 28 (Opening of bids)	Article 33(1); 33(2)	2.45 <sup>43</sup>	
29	Rule 29 (Opening of bids)	Rule 29 (Evaluation criteria)	Article 34(4)(a)		
30	Rule 30 (Evaluation criteria) <sup>11</sup>	Rule 30 (Evaluation of bids)	Article 34(5)	2.31 <sup>44</sup>	
31	Rule 31 (Evaluation of bids)	Rule 31 (Clarification of bids)	Article 34(1)(a)	2.46	
32	Rule 32 (Clarification of bids)	Rule 32 (Discriminatory and difficult conditions)			
33	Rule 33 (Discriminatory and difficult conditions)	Rule 33 (Rejection of bids)	Article 12 <sup>28</sup>		
34	Rule 34 (Rejection of bids)	Rule 34 (Re-bidding)			
35	Rule 35 (Re-bidding)	Rule 35 (Announcement of evaluation reports)		2.54	
36	Rule 36 (Announcement of evaluation reports) <sup>12</sup>	Rule 36 (Procedures of open competitive bidding)			User's Guide for Procurement of Goods, Asian Development Bank, 2004, p. 5-6
37	Rule 37 (Procedures of open competitive bidding) <sup>13</sup>	Rule 37 (Conditions for use of single stage two envelope, and two stage two envelope bidding procedures) <sup>14</sup>			
38	Rule 38 (Conditions for use of single stage two envelope, and two stage two envelope bidding procedures) <sup>14</sup>	Rule 38 (Acceptance of bids)			
39	Rule 39 (Acceptance of bids)	Rule 39 (Performance guarantee)		2.39 <sup>45</sup>	
40	Rule 40 (Performance guarantee)	Rule 40 (Limitation on negotiations)	Article 35 <sup>29</sup>		
41	Rule 41 (Limitation on negotiations) <sup>15</sup>	Rule 41 (Confidentiality)	Article 45 <sup>30</sup>	2.47	
42	Rule 42 (Confidentiality)	Rule 42 (Alternative methods of procurements)	Article 21(1); 50(3); 22(1)(a); 22(1)(c); 22(1)(d); 22(2); 49(1); 19(1)(b); 19(2)(a) <sup>31</sup>	3.5; 3.6 <sup>46</sup>	
43	Rule 43 (Alternative methods of procurements) <sup>16</sup>	Rule 43 (On account payments)			
44	Rule 44 (Payments) <sup>17</sup>	Rule 44 (Entry into force of the procurement contract)	Article 36(1); 36(2b); 36(4) <sup>32</sup>		
45	Rule 45 (Entry into force of the procurement contract)	Rule 45 (Closing of contract)			
46	Rule 46 (Closing of contract)	Rule 46 (Record of procurement proceedings)	Article 11(1)		
47	Rule 47 (Record of procurement proceedings) <sup>18</sup>	Rule 47 (Public access and transparency)	Article 11(2); 11(3)(a) <sup>33</sup>		
48	Rule 48 (Public access and transparency)	Rule 48 (Redressal of grievances by the procuring agency)			
49	Rule 49 (Maintenance of information on website)				
50	Rule 50 (Amendment and Termination of contract)				
51	Rule 51 (Arbitration)	Rule 49 (Arbitration)			
52	Rule 52 (Mis-procurement)	Rule 50 (Mis-procurement)			
53	Rule 53 (Overriding effect)	Rule 51 (Overriding effect)			



# Notes on Comparison

<sup>1</sup> Terms 'Act', 'Authority', defined in PRMP Draft Rules but are not defined in Procurement Rules 2004; Definition of 'corrupt and fraudulent practices' is included in Procurement Rules 2004 but has been excluded from PRMP Draft Rules (it is included in PRAP 2007).

<sup>2</sup> PRMP Draft Rules introduce details regarding types of specifications - functional, performance-oriented, technical, and combination. These are addendums to the equivalent section in Procurement Rules 2004.

<sup>3</sup> PRMP Draft Rules require formation of Tender Evaluation Committee to evaluate procurement contracts above 2 million. This is an addendum to the equivalent section in Procurement Rules 2004.

<sup>4</sup> PRMP Draft Rules fix lower limit for advertisement, while equivalent section in Procurement Rules (12(1)) states this limit but allows option of variation subject to Rule 42(b) of the same Rules.

<sup>5</sup> PRMP Draft Rules fix lower limit for advertisement while this limit is given as variable in equivalent section of Procurement Rules (12(1)) subject to Rule 42(b) of the same Rules.

<sup>6</sup> The term "civil works" as used in equivalent section of Procurement Rules 2004 has been removed; addendum to equivalent section of Procurement Rules 2004 discourages use of prequalification process for procurements below 2 million.

<sup>7</sup> Addendum to equivalent section of Procurement Rules 2004 requires data regarding pre-qualified suppliers' data to be uploaded on website (17(3)).

<sup>8</sup> Addendum to equivalent section of Procurement Rules 2004 states that blacklisting of suppliers shall be for at least 2 years, blacklisting decision to be communicated to PPRA within 15 days of it coming into effect, and list of blacklisted suppliers to be maintained on website.

<sup>9</sup> PRMP Draft Rules fix lower limit for open competitive bidding while this limit is stated as variable in equivalent section of Procurement Rules subject to Rule 42(b) of the same Rules. Addendum to equivalent section of Procurement Rules 2004 includes a generic provision on fair and equitable conduct of procurement proceedings.

<sup>10</sup> Addendum to equivalent section of Procurement Rules requires bidding documents to "contain sufficient information to enable competition...to take place on the basis of complete, neutral and objective terms." It also includes bidding documents relating to final date for receipt of bids, bid opening procedure, bid validity period, procuring agency contact, and notification regarding possibility of rejection of all bids.

<sup>11</sup> Addendum to equivalent section of Procurement Rules includes two criteria for evaluation of bids- lowest priced technically acceptable bid (for lower end procurements) and weighted technical and financial evaluation with 70% weightage given to technical evaluation (for complex procurements).

<sup>12</sup> Addendum to equivalent section of Procurement Rules requires that bid evaluation report be updated on website prior to award of contract.

<sup>13</sup> PRMP Draft Rules introduce financial limits for use of single stage and two stage two envelope bidding procedures; PRMP Draft Rule excludes two stage bidding procedure as included in Procurement Rules 2004 and modifies two-stage two-envelope bidding procedure from that included in the Procurement Rules 2004<sup>4</sup>.

<sup>14</sup> PRMP Draft Rules modify equivalent section of Procurement Rules 2004 to apply conditions for two stage bidding procedure as given in Procurement Rules 2004 to two stage two envelope in PRMP Draft Rules.

<sup>15</sup> PRMP Draft Rules modify equivalent section of Procurement Rules 2004 to allow negotiation for purposes of 'operational refinement/enhancement that may result in cost reduction' while suggesting limitations on the manner of negotiation. Equivalent section of Procurement Rules 2004, suggests a number of limiting factors as well.

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<sup>4</sup> World Bank and ADB have developed four bidding procedures (single stage, single stage two envelope, two stage, two stage two envelope) which have been incorporated verbatim in the PR 2004. The PRMP Draft Rules have redesigned the two stage procedures by combining both the *two stage bidding procedure* and the *two stage two envelope bidding procedure*.

The main difference between the two original procedures is that the two stage bidding procedure did not require a financial proposal to be submitted initially. Only technical proposals would be submitted in the first stage, which would be evaluated and negotiated, after which they could be resubmitted after revision (hence the second stage) at which point the financial proposals would also be submitted. Both would now be simultaneously evaluated.

As opposed to this, the two stage two-envelope bidding procedure requires bidders to submit both financial and technical proposals at the same time, even though the financial proposals are not opened until the second stage. Like the two stage procedure, the technical proposal is evaluated, negotiated, and revised. When revised technical proposals are submitted, bidders also have the option of submitting a supplementary financial proposal which would be read in conjunction with the original financial proposal. In the second stage, both revised technical and financial proposal will be opened together and evaluated at the same time.

The only difference in the two procedures appears to be with regards to the timing of submission of financial proposal. In one case, the proposal is submitted only at second stage, while in the other it is submitted in the first stage, but can be amended in the second.

The PRMP 'two stage two envelope' bidding procedure is in fact a hybrid. In the first stage, bidders submit a technical proposal only (making it similar to the two stage procedure). This is evaluated, negotiated, and revised. In the second stage, bidders submit both a technical and financial proposal but in individual envelopes. The proposals are not opened together in the second stage (deviation from both kinds of WB two stage procedures) but, instead the technical proposal is opened and evaluated first, and then the financial proposals of technically qualified bidders are opened. Lowest evaluated bid is to be selected.

<sup>16</sup> PRMP Draft Rules modify equivalent section of Procurement Rules 2004 to lower limit for petty purchases to 10,000, to allow quotations to be accepted from suppliers other than those offering the lowest price given that reasons for doing so are recorded in writing (16(b)(iii)) while the Procurement Rules 2004 require that lowest priced quotation be accepted (16(b)(iv)), and to treat Repeat Orders and Emergency Procurement as separate methods of procurement (43(c), 43(e)) while both are treated as conditions for using direct contracting in Procurement Rules 2004 (42(c)(iv), 42(c)(v)); addendum to equivalent section of Procurement Rules 2004 requires approval of Head of procuring agency for use of direct contracting; the equivalent sections of Procurement Rules 2004 relating to negotiated tendering (42(d)) and conditions for using direct contracting stated in 42(c)(vi) and 42(c)(vii) have been removed.

<sup>17</sup> Addendum to equivalent section of Procurement Rules 2004 states that payments to contractors/suppliers is contingent upon contract award data having been uploaded onto website.

<sup>18</sup> Addendum to equivalent section of Procurement Rules 2004 details content of procurement proceedings' records, and the procedures for the disclosure of these records.

<sup>19</sup> Only commonly defined term in UNCITRAL and equivalent section of Procurement Rules 2004 is 'supplier/contractor' however, definitions are substantively different with UNCITRAL defining the same as "any potential party or the party to a procurement contract with the procuring entity" and Procurement Rules 2004 defining the same as "person, consultant, firm, company, or an organization who undertakes to supply goods, services, or works."

Since Procurement Rules 2004 also refer to definitions provided in PPRA (Ordinance) 2002, differences in definitions in that document and UNCITRAL Law may also be noted.

For one, the definition of 'goods' as covered in UNCITRAL law states (differences italicized):

“objects of every kind and description including raw materials, products

and equipment and objects in solid, liquid or gaseous form, and electricity, as well as services incidental to the supply of the goods if the value of those incidental services does not exceed that of the goods themselves”

while that of goods in PPRA (Ordinance) states (differences italicized):

“*articles and* objects of every kind and description including raw materials, products, equipment, *machinery, spares and commodities in any form* and includes services incidental to *installation, transport, maintenance, and similar obligations* related to the supply of goods if the value of these services does not exceed the value of such goods”

Secondly, the definition of construction/works is slightly different under both documents.

UNCITRAL defines construction as (differences italicized):

“all work associated with the construction, *reconstruction*, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing, as well as services incidental to construction such as drilling, mapping, satellite photography, seismic investigations and similar services provided pursuant to the procurement contract, if the value of those services does not exceed that of the construction itself”

PPRA (Ordinance) 2002 defines works as:

“*any construction work consisting of* erection, *assembly*, repair, renovation or demolition of a building or structure or part thereof, such as site preparation, excavation, installation of equipment or materials and decoration, finishing and includes incidental services such as drilling, mapping, satellite photography, seismic investigations and similar activities, if the value of those services does not exceed that of the works themselves”

<sup>20</sup> UNCITRAL Model Law Article 3(a) and 3(b) is basis for equivalent article in Procurement Rules 2004.

<sup>21</sup> UNCITRAL Model Law Article 16(1), 16(2) is the basis for equivalent article in Procurement Rules 2004, however substantive differences remain. Firstly, Article 16(1) UNCITRAL Model Law applies to a number of other modes of description of goods, works and services including plans, drawings etc. Procurement Rules 2004 limit scope of Rule 10 to specifications only (It is not clear whether or not the term 'specifications' is being used in a generic sense to cover all manner of descriptions). Secondly, UNCITRAL Model Law Article 16(2) states the basis for descriptions of goods/works/services (that they 'be based on objective technical and quality characteristics') whereas equivalent section of Procurement Rules 2004 does not state such a basis.

<sup>22</sup> UNCITRAL Model Law Article 6(i)(b)(i) is the basis for equivalent article in Procurement Rules 2004 but the later does not include certain criteria mentioned in the UNCITRAL Article including those relating to professional and technical qualifications, professional and technical competence, reliability, and reputation.

<sup>23</sup> UNCITRAL Model Law Articles 7(3)(i), 7(3)(iii) 7(3)(v) are the basis for Rule 16(1), 16(2) in Procurement Rules 2004. Substantive differences include: Article 7(3)(i) refers to submission of 'prequalification applications' while the same is referred to as 'prequalification documents' in Procurement Rules 2004 Rule 16(1).

UNCITRAL Model Law Article 7(6) is the basis for Rule 16(3) in Procurement Rules 2004, however, while UNCITRAL article requires that the names of prequalified bidders be made available 'to any member of the general public upon request', Rule 16(1) of Procurement Rules 2004 limits this availability to 'any person directly involved in the pre-qualification process.'

UNCITRAL Model Law Article 7(7) is the basis for Rule 16(4) in Procurement Rules 2004, however, while Procurement Rules imposes a mandatory requirement that reasons for not prequalifying bidders be communicated to them, UNICTRAL Article imposes no similar obligation on the procuring entity

and states that such reasons be communicated to such bidders as ask for them. Also, UNCITRAL law removes onus from the procuring entity as it states that the entity is not required to justify its reasons for refusing prequalification. The Procurement Rules are silent on this matter.

<sup>24</sup> Procurement Rules 2004 Rule 17 states that qualification proceedings may be initiated at any stage of the procurement proceedings, given 'credible reasons for prima facie evidence of any defect in supplier's or contractor's capacities' and that such reasons must be recorded in writing and kept as part of procurement proceedings' records. Associated Article 6(1)(a) of UNCITRAL Model Law imposes no such limitations on initiation of qualification proceedings.

<sup>25</sup> UNCITRAL Model Law Article 26 is the basis for Rule 23 in Procurement Rules 2004. However, UNCITRAL Law allows more flexibility in the manner of provision of solicitation/tender documents specifying different procedure in case prequalification took place. On the other hand, procurement Rules Rule 23(1) requires that solicitation documents be given to bidders<sup>5</sup> immediately after publication of invitation to bid/tender.

<sup>26</sup> UNCITRAL Model Law Article 27(a); 27(b); 27(d); 27(e); 27(f); 27(l); 27(z) is the basis for Rule 23(2) Procurement Rules 2004. However, Rule 23(2) includes invitation to tender within the tender documents while this is treated as a separate document and process, under UNICTRAL Model Law dealt with in Article 25. Rule 23(2) Procurement Rules 2004 also includes 'form of bid', 'performance criteria' and 'details of standards to be used in assessing quality of goods/works/services specified' as part of bidding documents while these are not included in relevant UNCITRAL article. Likewise, of the UNCITRAL bidding documents' articles that correspond to Procurement Rules 2004, the differences include: UNCITRAL Article 27(e) includes margin of preference as well as relative weight of each criteria to be included in the article relating to evaluation criteria, Procurement Rules 2004 do not include

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<sup>5</sup> Bidder as defined in the Rules as 'person who submits a bid'. This does not automatically refer to those who have been prequalified. Therefore, it is unclear as to which bidder the particular section is referring to.

these. UNCITRAL Article 27(l) as included in Procurement Rules 2004 refers to bid security, the article also makes a reference to performance security (labor and material bonds) which are excluded from Procurement Rules 2004 equivalent section.

<sup>27</sup> UNCITRAL Model Law Article 30(3) allows for extension of deadline 'if it is not possible for one or more suppliers to submit tenders by deadline owing to any circumstance beyond their control'. However, equivalent rule in Procurement Rules 2004 allows for submission of deadline 'due to any reason' but requires that reasons for doing so be recorded in writing.

<sup>28</sup> UNCITRAL Model Law Article 12 is the basis for equivalent rule in Procurement Rules 2004. However, the Model Law requires that there be notification in the solicitation documents of the possibility of rejection of all tenders. Procurement Rules 2004 remove this qualification for the applicability of this Rule.

<sup>29</sup> UNCITRAL Model Law Article 35 is the basis for equivalent article in Procurement Rules 2004. However, the former does not recognize any possibility of negotiation while the latter does recognize such a possibility: "extent of negotiation permissible shall be subject to the regulations issued by the Authority."

<sup>30</sup> UNCITRAL Model Law Article 45 is the basis for equivalent article in Procurement Rules 2004. The UNCITRAL article holds both parties responsible for maintaining the confidentiality of procurement proceedings. While the Procurement Rules 2004 places an onus on the procuring agency to keep information regarding bid evaluation confidential, UNCITRAL holds that both parties to procurement negotiations (in the case of procedures other than tendering) shall not reveal information without consent of other party and that which is not already made public according to rules regarding records of procurement proceedings.

<sup>31</sup> UNCITRAL Model Law Article 21(1) and 50(3) is the basis for equivalent Rule 42(b) in Procurement Rules 2004. UNCITRAL Model Law Article 22(1)(a)(c)(d) and 22(2) is the basis for equivalent Rule 42(c) in Procurement Rules 2004.

UNCITRAL Model Law Article 19(1)(b), 19(2)(a) and 49(1) is the basis for equivalent Rule 42(d) in Procurement Rules 2004.

<sup>32</sup> UNCITRAL Model Law Article 36(1); 36(2b); 36(4) is the basis for equivalent Rule 44 in Procurement Rules 2004. UNCITRAL law provides greater detail as to entry into force of contract. With regards to the instance where no contract is signed, it is said to come into force when notice is dispatched. UNCITRAL states in Article 36(4) that a notice is said to be dispatched when it is properly addressed or otherwise directed and transmitted to supplier/contractor, this is excluded from Rule 44(a).

<sup>33</sup> UNCITRAL Article 11(3)(a) is basis for Rule 47 of Procurement Rules 2004. However, Article 11(3)(a) states a number of exceptions to information disclosure that are not included in Rule 47 such as: impede law enforcement, be contrary to law, prejudice legitimate commercial interests of parties, or inhibit fair competition.

<sup>34</sup> World Bank Procurement Guidelines define 'goods' as commodities, raw materials, machinery, equipment, and industrial plant. 'Works' includes construction and other similar projects that yield a physical output. Services related to 'goods' and 'works' such as transportation, insurance, installation, commissioning, training and initial maintenance, are included within their respective definitions. 'Services' under the Procurement Guidelines include such as are bid and contracted on the basis of performance of a measurable physical output, such as drilling, mapping, and similar operations. Services under the Procurement Guidelines do not include consulting services, which are dealt with separately under 'Guidelines for Selection and Employment of Consultants by World Bank Borrowers'. 'Consulting services' are defined as services of an intellectual and advisory nature.

<sup>35</sup> The World Bank Procurement Guidelines state general considerations for procurement in 1.2, which are in part reflected in Rule 4 Procurement Rules 2004. The considerations of economy and efficiency, and transparency are both mentioned in the equivalent Rule but the considerations relating to equal opportunity and development of domestic industries have been excluded from Rule 4.

<sup>36</sup> World Bank Guidelines 2.19 and 2.20 are the basis for equivalent Rule in Procurement Rules 2004. World Bank guidelines introduce a criterion for description of goods/works: it should 'assure critical performance'. Such a criterion is not included in Procurement Rules. Likewise, other points of World Bank guidelines omitted from Rule 10 include: specification of internationally accepted standards, or national ones where appropriate; goods/works meeting other standards/characteristics which promise 'at least substantial equivalence' also to be acceptable.

<sup>37</sup> World Bank Guideline 2.44 provides different response timeframe. It states that not less than six weeks be given for preparation of bids (international competitive bidding), which period should not be less than 12 weeks in case of large works or complex items of equipment. The equivalent time for ICB in Procurement Rules is stated to be not less than 30 days.

<sup>38</sup> Prequalification criteria in WB Guideline 2.9 are used as such in Procurement Rules 2004. The term 'plant' in Rule 15(2)(b) has been substituted in place of 'construction and manufacturing facilities' in 2.9.

<sup>39</sup> The principal of open competitive bidding as stated in the Procurement Rules 2004 is based largely on the World Bank's insistence on the procedure. A direct reference to the use of open competitive bidding is found in Guideline 1.3.

<sup>40</sup> The contents of the bidding documents as stated in World Bank Guideline 2.11 are produced exactly in Procurement Rules 2004 (23). Contents from Guidelines not included are: relevant technical data (including of geological and environmental nature).

<sup>41</sup> Guideline 2.17 pertains to the statement of bid evaluation criteria in the bidding documents. It states that if factors other than price are to be taken into account, their weightage and method of quantification is to be stated. Also, if alternates to the details provided in bidding documents are permissible, then their method of evaluation should also be stated. These details are excluded from Rule 23.

Also, Guideline 2.18 relates to clarification of bidding documents which is the basis for Rule 23(3) in Procurement Rules 2004. The Guideline does suggest the possibility of extension of bid submission deadline in such a case, which has been excluded from the equivalent Rule.

<sup>42</sup> Guideline 2.14 on bid security includes details which have been omitted from equivalent Rule. Firstly, it states that bid security is to remain valid for a period of four weeks beyond period of bid validity. Secondly, bid security is to be released to unsuccessful bidders after signing of procurement contract. Thirdly, an alternate to bid security could be a declaration signed by bidders in which they accept being suspended from being eligible for bidding for government contracts if they “withdraw or modify their bids during the period of validity or they are awarded the contract and they fail to sign the contract or to submit a performance security before the deadline defined in the bidding documents.”

<sup>43</sup> Guideline 2.45 is basis for Procurement Rules Rule 28. An omission from Rule 28 is that the Guidelines require that once written record is made of bids as they have been opened, this record should be promptly sent to all bidders who submitted bids in time.

<sup>44</sup> While Guideline 2.31 is basis for equivalent Rule, there is difference in the date to be used for ascertaining selling rate. Rule 30(2) states this to be the date of opening of bids, while Guideline 2.31 states this to be any date stated in bidding documents, “provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity.”

<sup>45</sup> Guideline 2.39 on performance security provides details excluded from Rule 29. For one, it is stated that “a portion of security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the Borrower”. Also, an alternate arrangement to performance security could be “contracts (which) provide for a percentage of each periodic payment to be held as retention money until final acceptance.”

<sup>46</sup> Guideline 3.5 suggests 'shopping' as an alternative method of procurement which is equivalent of 'request for quotations (Rule 42(b)). Guideline 3.6 is basis for Rule 42(c). One circumstance that allows for direct contracting under Guideline 3.6 which has been omitted from Rule is where "Contractor responsible for a process design requires the purchase of critical items from a particular Supplier as a condition of a performance guarantee."



# Additional Articles in UNCITRAL Model Law

**UNCITRAL Model Law**

<b>Articles Omitted</b>	<b>Articles Included Partially (Excluded subsections noted here)</b>
Article 1 (Scope of application)	Article 2 (Definitions)
Article 5 (Public accessibility of legal texts)	Article 6 (Qualifications of suppliers and contractors) - 6(1)(b)(ii); 6(1)(b)(iii); 6(1)(b)(iv); 6(1)(b)(v); 6(2); 6(3); 6(4); 6(5); 6(6)(c)
Article 9 (Form of communications)	Article 7 (Prequalification proceedings) - 7(3)(a)(ii); 7(3)(a)(iv); 7(3)(b); 7(4); 7(5)
Article 13 (Entry into force of the procurement contract)	Article 8 (Participation by suppliers or contractors)- 8(2); 8(3)
Article 14 (Public notice of procurement contract awards)	Article 11 (Record of procurement proceedings)- 11(1); 11(3); 11(3)(b); 11(4)
Article 15 (Inducements from suppliers or contractors)	Article 16 (Rules concerning description of goods, construction or services)- 16(3)(a); 16(3)(b)
Article 17 (Language)	Article 19 (Conditions for use of two-stage tendering, request for proposals or competitive negotiation)- 19(1)(a); 19(1)(c); 19(1)(d); 19(2)(b)
Article 18 (Methods of procurement)	Article 22 (Conditions for use of single-source procurement)- 22(1)(b); 22(1)(e); 22(1)(f)
Article 20 (Conditions for use of restricted tendering)	Article 27 (Contents of solicitation documents)- 27(c); 27(g); 27(h); 27(i); 27(j); 27(k); 27(m); 27(o) 27(p); 27(q); 27(r); 27(s); 27(t); 27(u); 27(v); 27(w); 27(x); 27(y)
Article 23 (Domestic tendering)	Article 30 (Submission of tenders)- 30(2); 30(5)(b); 30(5)(c); 30(6)
Article 24 (Procedures for soliciting tenders or applications to prequalify)	Article 31(Period of effectiveness of tenders; modification and withdrawal of tenders)- 31(1); 31(3)
Article 25 (Contents of invitation to tender and invitation to prequalify)	Article 32 (Tender securities)- 32(1)(b); 32(1)(c); 32(1)(d); 32(1)(e); 32(1)(f); 32(2)
Article 28 (Clarifications and modifications of solicitation documents)	Article 33 (Opening of tenders)- 33(3)
Article 29 (Language of tenders)	Article 34 (Examination, evaluation and comparison of tenders)- 34(1)(b); 34(2); 34(3); 34(4)(b); 34(4)(c); 34(4)(d); 34(6); 34(7); 34(8)
Article 37 (Notice of solicitation of proposals)	Article 36 (Acceptance of tender and entry into force of procurement contract)- 36(2)(a); 36(3); 36(5); 36(6)
Article 38 (Contents of requests for proposals for services)	Article 49 (Competitive negotiation)- 49(2); 49(3); 49(4)
Article 39 (Criteria for the evaluation of proposals)	Article 50 (Request for quotations)- 50(1); 50(2)
Article 40 (Clarification and modification of requests for proposals)	
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Article 51 (Single-source procurement)	
Article 52 (Right to review)	
Article 53 (Review by procuring entity (or by approving authority))	
Article 54 (Administrative review)	
Article 55 (Certain rules applicable to review proceedings )	
Article 56 (Suspension of procurement proceedings)	
Article 57 (Judicial review)	

# Comparison: PPRA Ordinance 2002 / PRAP 2007 (draft)

## **Modified sections (Italicized sections are PRAP additions)**

- 5(ii)(l) (PRAP) and 5(2)(j) (PPRA)

Perform any other function assigned to it, by government of the Punjab, or that is incidental or consequential to any of the aforesaid functions *but not including execution of procurement function.*

- (6)(i) (PPRA and PRAP)

General directions and administration of the Authority and its affairs shall vest in a Board which may exercise all powers, perform all functions and do all acts and things which may be exercised, performed or done by the Authority. *The Board shall also notify the independent Appellate panels under the Rules and coordinate their activities.*

- 7(ii) (PPRA and PRAP)

Six members shall constitute a quorum for a meeting of the Board requiring a decision by the Board. *In case any official member of the Board is unable to attend the meeting of the Board, he/she may nominate the Additional Secretary of the Department for this purpose.*

**Additional Sections in PRAP:**

- Definitions of 'corrupt and fraudulent practices', 'head of procuring agency' introduced in PRAP
- (5)(ii)(b) (Authority is to monitor implementation of and evaluate laws, rules, regulations, policies and procedures relating to inspection/quality of goods, works, and services)
- (5)(ii)(e) (Authority is to establish performance indicators for procurement performance of Procuring Agencies, monitor compliance with these indicators through third party evaluation, and propose recommendations on the basis of these evaluation reports)
- (5)(ii)(f) (Authority is to issue guidance and instructions regarding the interpretation and implementation of these Regulations)
- (5)(ii)(h) (Authority is to prepare standard documents to be used in connection with public procurement)
- (5)(ii)(i) (Authority is to present an annual report to the government regarding overall functioning of public procurement system, as well as recommendations for improvement)
- (5)(ii)(k) (Authority is to promote and support training and professional development policy of officials engaged in public procurement)
- Chapter-4 (Third party evaluation, Training and Maintenance of Website)
  - Appointment and remuneration of Third Party Evaluation Firms
  - Procurement Performance Report
  - Training
  - Maintenance of website
- (6)(22) (Dispute Resolution)- Establish a dispute resolution mechanism enabling bidders who may have suffered a loss or damage due to

decision of Procuring Agency to complain in accordance with the Rules notified under this Act.

- (6)(23) (Ethical considerations)- Procuring agency shall observe ethical standards and principles in its conduct.

**PPRA Sections excluded from PRAP:**

- 5(2)(e) (Monitor public procurement and recommend improvements)
- 5(2)(f) (Monitor overall performance of procuring agencies and make recommendations for their improvements)
- 5(2)(h) (submit reports to the Government in respect of public procurement activities of procuring agencies)

21A (Ordinance not to apply to bodies privatized pursuant to Privatization Commission Ordinance)



# Consultant Selection Guidelines

September 2006

Planning & Development Department  
Government of the Punjab



**PREFACE**

These Consultant Selection Guidelines supersede the guidelines governing the use of Consultants by the Government of the Punjab which were developed by the Planning and Development Department (P&D), Government of Punjab and issued on 8th February, 1999. The new guidelines have been developed keeping in view the following objectives:

1. Introduce international best practices in consultant selection.
2. Encourage market competition by eliminating the lengthy process of registration of consultants with P&D. Consultants will be able to use the online Consultant Enrollment System of the P&D to enter and maintain their information.
3. Reduce the time required to engage consultants for short consultancies by eliminating the need to get TOR approval from P&D if funding for the assignment already exists.
4. Provide Fast Track mechanisms, both in the selection of individuals and firms for small or emergency assignments.
5. Introduce the concept of total value instead of lowest cost to ensure the selection of competent consultants for complex assignments. Clients will now be able to use QBS (Quality Based Selection) for complex projects where the impact of failure is high (design of hydro structures, systems design, etc).
6. Encourage the development of the consulting industry by creating opportunities for small to medium sized firms to compete by giving a higher weight to technical capabilities as compared to experience.
7. Ensure the quality of consulting assignments through the creation of a Quality Audit Committee (QAC) at the P&D. The QAC will review assignments to assess the performance of clients/consultants.
8. Improve the overall transparency of the award process.

I am confident that these guidelines will help in developing a competitive consulting sector that will work with the Punjab Government for the successful implementation of its development plans.

Finally I would like to acknowledge the efforts of the PMU (P&D) team led by Khalid Ahmad Khan, Head of PMU, and the P&D team led by Dr. Abid Bodla, Member Engineering, for their work in developing these Consultant Selection Guidelines through the review of best practices and extensive interaction with key stakeholders.

Suleman Ghani  
Chairman  
Planning & Development Board  
Government of the Punjab



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## 1 DEFINITIONS

**Government of the Punjab (GoPb):** Government of the Punjab and all its associated departments, agencies, autonomous/semi-autonomous bodies, district governments, boards, universities and similar other organizations.

**Consulting services:** knowledge and technology based intellectual services for the built and natural environment, which may include:

- preparation, review, supplementation or update of feasibility studies
- project plan development, analysis or review
- Project Monitoring and Control
- Quality Assurance Audit
- Overall Project Management
- project assessment studies including financial analysis
- environmental studies and environmental impact assessments
- sustainability studies
- geological and soil investigations; mapping
- architectural/engineering design
- preparation of tender documents
- evaluation of bids
- construction supervision
- contract management
- quality management
- cost management
- commissioning and decommissioning
- valuation services
- failure investigations
- training content development
- risk analysis and management
- research and development
- technical assistance
- institutional development
- legal advice/consulting
- accounting assignments
- training and capacity building
- policy formulation
- institutional reform management
- social assessment studies
- organizational restructuring

**Individual Consultant:** independent engineer, architect, management consultant, economist, scientist, or any other person who is a specialist in a specific domain and who provides consulting services.

**Consulting firm:** registered legal entity, such as independent firm (or a joint venture partnership), educational institution, public sector organization (for example, non-governmental organization), or private entity which provides consulting services.

**National Consulting Firm (NCF):** a consulting firm with a registered office and centre of activities in Pakistan, in which the majority (more than 50%) of the firm's capital is provided independent of foreign interests by nationals of Pakistan.

**Foreign Consulting Firm (FCF):** a consulting firm which is not a National Consulting Firm, in that it does not comply with either of the two criteria mentioned in NCF.

**Locally Based Foreign Consulting Firm (LFCF):** a Foreign Consulting Firm with a registered office in Pakistan.

**Consultant:** either an Individual Consultant or a Consulting Firm.

**Client:** Individual or organization which employs the Consultant. Client is generally referred to in the contracts and agreements as the Employer.

**Assignment:** the consulting service for which the Client has hired the Consultant.

**Agreement:** contract signed between the Client and the Consultant for carrying out consulting services.

**Contractor:** The firm that has been awarded a tender for the execution and completion of works by the Client.

**Consultant Selection Committee:** Committee formed for the selection of consultant for each assignment consisting of multiple departments and nominated experts. The CSC is responsible for all decisions related to the selection of the consultant.

**PDWP:** Provincial Development Working Party.

**DDSC:** Departmental Development Sub Committee.

**DDC:** District Development Committee.

**SAT:** Services Acquisition Team, Planning & Development Department

**QAC:** Quality Audit Committee

## 2 INTRODUCTION

### 2.1 PURPOSE

These guidelines set forth the GoPb's general policies and procedures concerning the selection and use of consultants. The provision of these guidelines apply to all government departments, agencies, autonomous bodies, district governments, boards, project management units/offices, universities and similar other organizations.

The consulting services to which these guidelines apply do not include services in which the physical aspects of the activity predominate (for example, construction of works, manufacture of goods, operation and maintenance of facilities, exploratory drilling, aerial photography and satellite imagery, etc.)

### 2.2 NEED FOR CONSULTANTS

In the case of projects, the need for consultants should be carefully considered and got approved during the appraisal/formulation of the project through PC-I or PC-II or subsequently as circumstances warrant.

When consultants are used, it should be ensured that the functions and responsibilities to be assigned to the Consultant are adequately defined, that the Consultant is competent for the assignment, that the conditions of the Assignment are satisfactory and that the Assignment is duly performed.

Consultants to be engaged by the Client may, depending on the circumstances, be individual consultants or consulting firms.

#### 2.2.1 USE OF FIRMS

Consulting firms should normally be employed when the assignment requires teams of individuals and where the collective experience of the team, resources and support facilities are important in the execution of the assignment.

Splitting an assignment that requires a team among multiple individual consultants should be avoided because such an arrangement places the undue burden of coordinating the work of individual consultants on the Client.

#### 2.2.2 USE OF INDIVIDUALS

Individual consultants should normally be employed on assignments in which:

- a. the scope of work is such that teams of personnel are not required;
- b. no additional professional support is required; or
- c. the experience and qualifications of the individual are the paramount requirement.

Individual consultants can generally be engaged to carry out the following assignments:

- policy & institutional development, capacity building and training;
- assistance to the Client in carrying out sector studies and development plans;
- peer review of assignments;
- technical advice on a project;
- technical design; value engineering analysis;
- advice to the Client on contract administration (including claim preparation or defense);
- assistance to the Client in the project solicitation process including preparation of TOR, RFP, Tenders, Bid Documents, and the Evaluation Process<sup>1</sup>;
- project management services including scope definition, estimation, preparation of project plans, monitoring & performance analysis and project closeout;
- quantity surveying and measurement of work; and
- assurance review and audit of a project.

## 2.3 FUNDING

A number of funding options are available to the Client for engaging the services of consultants. For development projects, the Client should use a PC-II or PC-I<sup>2</sup> to secure the necessary funds for consulting work. For non-developmental work, the Client can secure funding through an allocation to the Budget Head '*Payment to others for services rendered*'. In addition to the above funding sources, the P&D Fund for Studies & Consultancies (P&D Fund) can also be used for short development/non-development consultancies.

## 2.4 IMPORTANCE OF PROPER CONSULTANT SELECTION

The technical qualifications of consultants to perform the required services are the most important criteria in the selection of consultants by the Client. The selection process should be transparent and should provide opportunity for qualified consultants to compete for providing services to the Client.

### 2.4.1 SELECTION METHODS

The two predominant selection methods are Quality and Cost Based Selection method (QCBS, see Section 4.5.1) and Quality Based Selection method (QBS, see Section 4.5.2). In particular, QBS method should be used for those projects where there is a multiplier effect, complexity, or likelihood of significant damage should the project fail. In the case of QCBS, the weight given to the financial component should be within the range of 10 to 20%.

The selection method should be carefully selected by the Client in view of the general recommendations given in Appendix A.

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<sup>1</sup> These services will be used subject to the provision of Section 2.5.2 – Conflict of Interest

<sup>2</sup> Short Consultancies can be funded from the contingency budget of a PC-I.

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### 2.4.2 TRANSPARENCY

A maximum degree of transparency should be maintained during the consultant selection process regardless of the method used and the source of the project financing. To achieve this, the Client should ensure that the scope of work for each assignment is clearly defined in advance, that the quality standards for all projects are clearly set forth and rigorously enforced, and that risk allocation is fair and clearly understood by all parties. The evaluation system, including weighting, should be disclosed with the Request for Proposals (RFP), and that consultants having submitted proposals have the right to an open briefing following the selection. The Client and selection staff should have the necessary skills and independence to make a fair and proper selection.

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### 2.4.3 INTEGRITY

GoPb's policy requires consultants to observe the highest standard of ethics during the selection process and the execution of assignments. In pursuance of this policy, the GoPb defines, for the purposes of this provision, the terms set forth below as follows:

- a. "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting anything of value to influence the action of any such officials in the selection process or in assignment execution; and
- b. "fraudulent practice" means a misrepresentation of facts in order to influence a selection process or the execution of an assignment to the detriment of the Client, and includes collusive practices among consultants (prior to or after submission of proposals) designed to deprive the Client of the benefits of free and open competition.

In case a consultant is found to engage in corrupt or fraudulent practices:

- a. CSC can reject a proposal for award if it determines that the Consultant recommended for the award has engaged in corrupt or fraudulent practices in competing for the Assignment;
- b. Quality Audit Committee (QAC)<sup>3</sup> can, on receiving a reference from the Consultant Selection Committee (CSC), declare the Consultant ineligible, either indefinitely or for a stated period of time, for the award of GoPb assignments if it at any time it determines that the Consultant has engaged in corrupt or fraudulent practices in competing for, or in executing a contract.
- c. Consultant can appeal against the decision of the CSC or QAC through a reference to the Chairman P&D Board whose decision on the matter will be considered final.

Assignment documents shall include an undertaking by the Consultants that no fees, gratuities, rebates, gifts, commissions or additional payments, other than those shown in the proposal, have been given or received in connection with the selection process or in the execution of the Assignment.

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<sup>3</sup> See section 2.6.1

## 2.5 IMPORTANT CONSIDERATIONS

### 2.5.1 ALLIANCES

Consulting firms may associate with other firms to complement their respective areas of expertise and resources before short-listing. Once the shortlist is finalized and the RFP issued, any association in the form of a joint venture, alliance, consortium or sub-consultancy among short-listed firms shall be permissible only with the approval of the Client, unless otherwise stated in the RFP. Any short-listed firm should be free to establish associations with consulting firms other than the consultants within the short-listed firms before proposal submission, provided that the establishment of any such association is clarified in the proposal and there is no conflict of interest or violation of the terms of the RFP.

Meaningful partnerships between Foreign (FCF) and National (NCF) firms should be encouraged to help promote the development of local consulting capacity. The minimum share of the NCF<sup>4</sup> in a joint venture with a FCF should be 30% subject to the availability of the requisite resources in the local market.

### 2.5.2 CONFLICT OF INTEREST

The Consultant shall not receive any remuneration in connection with the Assignment except as provided in the Agreement. The Consultant and its affiliates shall not engage in consulting activities that conflict with the interest of the Client under the Assignment and shall be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the Assignment other than a continuation of the “Services” under the ongoing Assignment.

Consultants shall not be engaged on a particular project under the circumstances set forth below:

- Consultants previously engaged by the Client for providing consulting services on a specific project shall be disqualified from subsequently providing works or services which conflict with the original assignment. Engagement of a consultant for different components of the same project at different times would not per se be considered a case of conflict of interest.
- Consultants who take a role in the preparation of the RFP for the procurement of consulting services of a specific project may be restricted from offering any other kind of consulting services described in the TOR, for that same project.
- Consultants, or any affiliates assigned for a specific project, shall not undertake any other assignment which, by its nature, may be in conflict with any of their other past or present assignments.
- Consultants must notify the Client if they own any proprietary products or systems which they may recommend to a Client, or if they hold any interest in such products, to ensure transparency and to ensure that no conflict shall arise in the evaluation and application of their recommendations.

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<sup>4</sup> Preference should be given to participation of NCF in a joint venture instead of individuals

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### 2.5.3 LIMITATION OF LIABILITY

Consultants are expected to carry out their assignments with due diligence and in accordance with prevailing professional standards. The contractual conditions dealing with Consultant's liability should ensure that:

- a. there must be no limitation in case of the Consultant's gross negligence or willful misconduct;
- b. the Consultant's liability to the Client may in no case be limited to less than the total payments expected to be made under the Consultant's assignment, or the proceeds the Consultant is entitled to receive under its insurance, whichever is higher;
- c. provisions in the assignment can stipulate liquidated damages to be imposed on the Consultant for missing deadlines or failing to meet the requirements of the job; and
- d. any such limitation may deal only with the Consultant's liability towards the Client and not with the Consultant's liability towards third parties.

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### 2.5.4 BID AND PERFORMANCE SECURITIES

Bid and performance securities are not recommended for the Consultant's services.

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### 2.5.5 PAYMENTS

Payment provisions, including amounts to be paid, schedule of payments, and payment procedures, shall be agreed upon during negotiations. Payments may be made at regular intervals (as under time-based contracts) or for agreed outputs (as under lump sum contracts). Payments for advances (e.g. mobilization costs) up to 10 percent of the contract amount must be backed by a valid Bank Guarantee from a scheduled bank. The advance should be adjusted in the first 5 payments/running bills of the Consultant.

Payments shall be made promptly in accordance with the contract provisions. To that end, only disputed amounts shall be withheld, with the remainder of the invoice paid in accordance with the Agreement. In case payments are withheld by the Client without justification, the Consultant can appeal to the P&D for resolving the matter.

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### 2.5.6 STAFF SUBSTITUTION

During an assignment, if substitution is necessary (for example, because of ill health or because a staff member proves to be unsuitable), the Consultant shall propose other staff of at least the same level of qualifications for approval by the Client (also see Section 2.6.2).

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### 2.5.7 CONSULTANT'S RESPONSIBILITY & AUTHORITY

Consultants shall be responsible for the accuracy and suitability of their work. Although the Client will supervise and review the Consultant's work, no modifications shall be made in the final documents prepared by the Consultant without mutual agreement. In the case of supervision of works, the

Consultant authority may vary from supervision with full responsibility as an independent engineer, to that of adviser to the Client with limited authority to make decisions.

### 2.5.8 INTELLECTUAL PROPERTY RIGHTS

All work prepared by the Consultant during the execution of the Assignment shall be considered works made for hire and shall belong exclusively to the Client and its designees, unless specifically provided otherwise by mutual agreement of the Consultant and the Client. This includes, but is not limited to, new business processes created, planning and design work performed, technology developed, source and object code of software programs and systems, business objects or databases created, related documentation (written or automated), and documents and reports. If by operation of law any of the works, including all related intellectual property rights are not owned in their entirety by the Client automatically upon creation thereof, the Consultant will agree to assign to the Client and its designees the ownership of such work, including all related intellectual property rights.

The Consultant shall agree that they will not furnish or disclose any items owned by the Client to a third party without the written permission of the Client. This includes both items created as part of the Agreement and items owned by the Client that are incidental to the Agreement. The Consultant shall also agree not to use items owned by the Client for other purposes without the prior written permission of the Client.

## 2.6 MONITORING & EVALUATION

The P&D may review any/all assignments and their performance to ensure compliance with terms laid out in these Guidelines. Detailed records of all assignment, deliverables and performance evaluation should be maintained by the Client to facilitate review by the P&D.

### 2.6.1 QUALITY AUDIT COMMITTEE (QAC)

The Quality Audit Committee (QAC) at P&D will monitor and assess the competency, performance and work quality of consultants. The QAC can take action against any consultant found to be in violation of the GoPb rules of conduct, including those defined in this document.

The QAC may choose to conduct audits itself or appoint independent auditors to prepare audit reports for review by it on any assignment. In cases where an auditor is appointed it will be assured that the Quality Auditor does not have any association, relationship, or alliance with the Consultant.

Consultants will be required to cooperate with QAC and its appointed auditors. If the Consultant fails to provide information requested by the Quality Auditor, it shall be considered non-compliant with the terms and conditions of the Assignment and can be declared ineligible for award of future assignments.

The composition of the QAC will be as follows:

- 1) Chairman: Member Engineering P&D Board
- 2) Members:
  - a. Chief Services Acquisition Team (SAT), P&D Department
  - b. Nominee of the Finance Department

- c. Technical Co-opted Member(s) – These members will be selected from a panel of subject matter experts maintained by the P&D.

The QAC can co-opt observers from any department/organization or engage individuals/firms keeping in view the nature of the project to solicit technical advice for reviewing assignments.

A quorum of three members will be necessary for conducting the business of the QAC. This must include the QAC Chairman, and representatives of the P&D and the Finance Departments.

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### 2.6.2 CONSULTANT ENROLLMENT SYSTEM (CES)

All consultants working on assignments under these Guidelines should be enrolled with the P&D on its Consultant Enrollment System (CES). CVs of all individuals whether engaged individually or through firms shall be maintained with reference to their Computerized National Identity Card (CNIC) for nationals and Passport Number for foreigners. Information on companies will be maintained with reference to their National Income Tax Number (NTN). Any individual substitution made during the currency of an assignment shall be reflected accordingly in the CES by the Client.

The CES can be accessed to retrieve details of all assignments let out under these Guidelines and the list of individuals currently working on these assignments. The CES should be used by the Client to verify the availability of proposed consulting staff during evaluation.

### 3 COMPETENT AUTHORITY FOR CONSULTANT SELECTION

#### 3.1 PROVINCIAL GOVERNMENT/AUTONOMOUS BODIES

##### 3.1.1 SHORT CONSULTANCIES

Short Consultancies are consultancies with a value under Rs. 0.5 million for Individual Consultants and Rs. 2.0 million for Consulting Firms. The duration of an assignment for an individual consultant cannot exceed six months. The Competent Authority for selection will be as follows:

Organization	Competent Authority
Department	Secretary
Autonomous Body, University, Board or other similar body	Chief Executive
Project Management Unit or Project Management Office	Project Director

The Competent Authority may refer any short consulting assignment to the Consultant Selection Committee (CSC) for carrying out the selection process.

##### 3.1.2 MEDIUM TO LARGE CONSULTANCIES

Medium to Large Consultancies are consultancies with a value of Rs. 0.5 million or more for Individual Consultants and Rs. 2.0 million or more for Consulting Firms. The Competent Authority for selection will be the CSC. Similar to short consultancies, the duration of medium-to-large assignments for individual consultants cannot exceed six months, unless specifically permitted by the PDWP.

##### 3.1.3 COMPOSITION OF CSC

- 1) Chairman: Administrative Secretary for Departments, Chief Executive for Autonomous Bodies/Universities or other similar organizations, and Project Director for Project Management Units or Project Management Offices.
- 2) Members:
  - d. Nominee of the P&D Department<sup>5</sup>
  - e. Nominee of the Finance Department<sup>5</sup>
  - f. One technical member from the concerned department (C&W, HUD&PHE, I&P) for consultation related to infrastructure/engineering development works

<sup>5</sup> Not below BPS-18

- g. Technical Co-opted Member(s) (optional) – The CSC can co-opt up to two technical members<sup>6</sup> for assistance in a given assignment that requires technical input. (Additional members can be co-opted by the permission of P&D).

#### 3.1.4 WORKING OF CSC

- 1) The CSC will determine the basis for prequalification/short-listing, technical evaluation and financial rating subject to the default parameters or those approved by the PDWP for the Assignment
- 2) In case the CSC is unable to take a decision, the matter will be referred to Chairman, P&D Board for final decision
- 3) The composition of the CSC will remain the same for both local and foreign-funded projects
- 4) A quorum of 4 members will be necessary for conducting the business of the CSC, which must include the CSC Chairman, and representatives of the P&D and Finance Departments
- 5) CSC will decide whether the pre-qualification exercise or technical evaluation would be carried out by each member of the committee individually or an evaluation sub-committee constituted. In case an evaluation sub-committee is constituted, the convener of the committee will be from the client department and must include a representative of the P&D or Finance Department (in case of District Governments, Executive District Officer Finance & Planning (EDO F&P) or District Officer Planning (DOP))
- 6) The minimum qualifying marks for pre-qualification/technical qualification will be 65%. The shortlist should consist of a minimum of three firms. In case less than three of the firms obtain the desired minimum marks during pre-qualification, the CSC may re-advertise or seek the approval of P&D or DDC<sup>7</sup> to proceed with the selection process (on the basis of necessary justification). The maximum number of firms should not exceed seven. In case, the short list is greater than this, the top-ranking seven should be short-listed.

### 3.2 DISTRICT GOVERNMENTS

#### 3.2.1 SHORT CONSULTANCIES

Short Consultancies are consultancies with a value under Rs. 100,000 for both Individual Consultants and Consulting Firms. Duration for an assignment for an Individual Consultant cannot exceed six months. The Competent Authority for selection will be the Consultant Selection Committee.

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<sup>6</sup> Members can be selected from the public and/or private sector. Conflict of Interest provisions will apply to co-opted members (Section 2.5.1).

<sup>7</sup> In case of funding by District Government

### 3.2.2 MEDIUM TO LARGE CONSULTANCIES

Medium to Large Consultancies for both Individual Consultants and Consultant Firms are consultancies with a value of Rs. 100,000 or more. The Competent Authority for selection will be the Consultant Selection Committee (CSC).

### 3.2.3 COMPOSITION OF CSC

- 1) Chairman: District Coordination Officer (DCO)
- 2) Secretary: District Officer (Planning)
- 3) Members:
  - a. Executive District Officer of concerned group of offices
  - b. Executive District Officer - Finance & Planning [EDO (F&P)]
  - c. Executive District Officer -Works & Services [EDO (W&S)]
  - d. Tehsil Municipal Officer of the concerned Tehsil Municipal Administration in case the project relates to Tehsil Municipal Administration.
  - e. Representative of Irrigation & Power Department or HUD&PHE Department not below the rank of XEN, if required
  - f. Technical Co-opted Member(s) (optional) – The CSC can co-opt up to two technical members<sup>8</sup> for assistance in a given assignment that requires technical input.

### 3.2.4 WORKING OF CSC

*See Section 3.1.4*

## 3.3 OTHERS

Any other entity, not falling in the above two categories (sections 3.1 and 3.2), should seek the directions of the Chairman P&D, who may delegate the selection process to a Department or District or constitute a Consultant Selection Committee for that specific request.

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<sup>8</sup> Members can be selected from the public/private sectors. Conflict of Interest provisions will apply to co-opted members (Section 2.5.1).

## 4 SELECTION OF CONSULTING FIRMS

### 4.1 PREPARATION OF TERMS OF REFERENCE (TOR)

Before the actual process of selection of a consultant (see Appendix C for schematic representation of the selection process) starts, the objective and scope of the proposed work and the functions and duties to be assigned to the Consulting Firm should be clearly and adequately defined in the 'Terms of Reference'.

The Client and the Consultant's respective responsibilities should be clearly defined in the TOR. The typical information required in the TOR is summarized below:

- objectives, goals of the project;
- scope of services compatible with available budget;
- background information (listing of existing studies, data, etc.);
- terms for transfer of know-how/training requirements (if applicable);
- list of services, surveys necessary;
- expected deliverables (reports, designs, tender documents, maps, etc.);
- a time schedule and phasing of the assignment, duration of commission;
- list of expected key professional staff indicating minimum experience, academic degrees, additional qualifications, etc
- respective roles and responsibilities of the Client and the Consulting Firm;
- regional factors such as geographic location, language,

### 4.2 PREPARATION OF COST ESTIMATE AND BUDGET

Preparation of a well thought-out cost estimate is essential if realistic budgetary resources are to be earmarked. The cost estimate shall be based on the assessment of the resources needed to carry out the assignment: staff time, logistical support, and physical inputs (for example, equipment, software tools, etc). The budget request should be compatible with the scope of the services described in the TOR.

### 4.3 APPROVAL OF TOR AND BUDGET

#### 4.3.1 PROVINCIAL GOVERNMENT FUNDING

All PC-IIs and any PC-I with a consultancy component should be sent to P&D for approval by the PDWP. Client should furnish to the P&D the proposed TOR, Budget Estimate, Evaluation Criterion (see Appendix B), Selection Method (see Appendix A) and the justification for engaging the Consultant with any additional supporting documents for funding (see section 2.3). In case the PC-I/PC-II has been approved without the TOR, the Client should furnish the proposed TOR, Budget Estimate, Evaluation Criterion (see Appendix B), Selection Method (see Appendix A), to the P&D for approval.

In case of Short Consultancies where funding is already available (see section 2.3) the TORs for the assignment should be approved by the CSC.

### 4.3.2 DISTRICT GOVERNMENT FUNDING

In consultancies where the funding is by the District Government the approval for the PC-I of the assignment will be given by the DDC. Client should furnish to the DDC the proposed TOR, Budget Estimate, Evaluation Criterion (see Appendix B), Selection Method (see Appendix A) and the justification for engaging the Consultant with any additional supporting documents for funding (see section 2.3).

## 4.4 SOLICITATION

### 4.4.1 SHORT ASSIGNMENTS

In case of Short Assignments the assignment will be advertised on the P&D Website and optionally in one or more local newspapers. Firms meeting the basic qualification criterion for the assignment (as specified in the advertisement) will be issued the Request for Proposal (RFP). Selection will proceed as given in Section 4.5.

### 4.4.2 MEDIUM/LARGE ASSIGNMENTS

A two-step process will be used in Medium/Large Assignments. In the first step firms will be asked to submit Expression of Interests (EOI) on the basis of which a short list will be prepared. In the second step, the short listed firms will be invited to submit proposals against an RFP.

#### 4.4.2.1 ANNOUNCEMENT AND LONG LISTING

All Medium-Large Assignments should be advertised in one or more national newspapers. The Client may also advertise assignments in international newspapers or technical magazines, seeking EOI. The Client may also contact professional organizations and firms that it knows from previous assignments. All assignments will be listed on the P&D Website.

The information requested shall be the minimum required to make a judgment on the firm's suitability and not be so complex as to discourage consultants from expressing interest. Sufficient time (not less than two weeks) shall be provided for the submission of the EOI.

The following information should be included in the announcement (advertisement) which invites consultants to submit their EOI for the assignment:

- information about the Client and the contact person;
  - i. name, location and size of the project
  - ii. limitations on eligibility
  - iii. type and scope of services required (a brief summary of the job)
  - iv. areas of expertise deemed to be critical
  - v. estimated time schedule for the project
  - vi. the forms of agreement and any special terms or conditions
  - vii. method of consultant selection
  - viii. deadline for the submission of EOI

- ix. limit of page count for submittals (when appropriate)
- x. any limit on the number of members in a consortium
- information required from the applicant consulting firms
  - i. legal entity, registration with Income Tax Department
  - ii. registration with relevant professional bodies supported by latest / updated renewal
  - iii. profile of core staff relevant to the assignment
  - iv. audited accounts for up to three years
  - v. list of similar works (completed or in-hand) with Client, scope, cost of project, cost of consultancy and period<sup>9</sup> details
  - vi. undertaking by the firm that it has not been black listed by any Government Agency/Authority.

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#### 4.4.2.2 PREPARATION OF SHORT LIST

The CSC shall examine the EOI submitted by eligible consultants, and prepare a short list. There will be no consideration of firms other than those that have expressed interest in accordance with the Client's specifications.

The short list should consist of a minimum of three firms. If less than three firms are available, the CSC may re-advertise or seek the approval of P&D or DDC<sup>10</sup> to proceed with the selection process (on the basis of necessary justification). The maximum number of firms should not exceed seven. In case, the short list is greater than this, the top-ranking seven should be short-listed.

As applicable, the CSC should consider the following factors during short-listing, ensuring that it is done in accordance with instructions given when requesting EOI:

- Valid legal entity of the firm i.e. registration with Securities & Exchange Commission or Registrar of Firms, etc
- List/CVs of key relevant staff available with the firm
- general and relevant experience – technical competency
- capacity to complete the work – skills and expertise available
- financial capability of the firm with reference to the value of the assignment
- past performance on similar assignments
- in case of FCFs, meaningful partnerships with NCFs<sup>11</sup>

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<sup>9</sup> Starting and completion dates of assignment

<sup>10</sup> In case of funding by District Government

<sup>11</sup> See Section 2.5.1

- registration of the firm with relevant professional institutions
- undertaking that the firm has not been blacklisted or debarred by any Government/Semi-Government organization

The CSC should have access to appropriately experienced and knowledgeable people when creating the short list. Where the resources are not available in-house, experts from other departments/organizations can be acquired.

#### 4.4.2.3 FAST TRACK

The Long Listing and Short Listing processes as given in Sections 4.4.2.1 and 4.4.2.2 can be bypassed with the approval of the PDWP or DDC<sup>10</sup> if time is of essence or the assignment is of a complex nature where potential consultants are limited. In this case the assignment will be advertised and RFPs will be issued to all consultants who meet the advertised requirements.

### 4.5 SELECTION METHOD

Once the short listing has been completed, the remaining processes will depend on the default method of selection for the assignment given in Appendix A or specific approval given by the PDWP.

#### 4.5.1 QUALITY AND COST BASED SELECTION (QCBS)

QCBS uses a competitive process among short-listed firms that takes into account both the technical quality and the cost of the services proposed in the selection of the Consulting Firm (alternatively referred to as the 'two envelope system').

The default value for the relative weight of cost is 15%. In case of Simple or Complex assignments, clients should get approval of the PDWP during the approval process to use alternate relative weights as given below.

Type of Assignment	Financial Weight
Simple	20%
Standard (Default)	15%
<b>Complex</b>	10%

Firms should receive a minimum of 65% points in the technical evaluation to be considered for selection. Financial Proposals of firms which receive less than the minimum score will be returned unopened, and the firms will be excluded from the evaluation process.

The Client shall publish the results of the short listing process on the P&D website to facilitate those that were unsuccessful in qualifying.

##### 4.5.1.1 REQUEST FOR PROPOSAL (RFP)

The Client will formally write to each of the firms on the short list and invite proposals.

The RFP should contain the following:

- a. Letter of invitation
- b. Terms of Reference (TOR)
- c. Information to Consultants (ITC)
- d. Proposed Agreement
- e. Project Data Sheet

The RFP has to be approved by the CSC before being issued to the firms.

#### 4.5.1.1.1 LETTER OF INVITATION (LOI)

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The Letter of Invitation shall state the intention of the Client to enter into an agreement for the provision of consulting services and the date, time and address for the submission of proposals.

#### 4.5.1.1.2 TERMS OF REFERENCE (TOR)

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*See Section 4.1.*

#### 4.5.1.1.3 INFORMATION TO CONSULTANTS (ITC)

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The ITC shall contain all necessary information that would help the consulting firms prepare responsive proposals and, without being limited to the following list, shall include adequate information on the following aspects of the assignment:

- a short statement of the assignment;
- the contact person(s) of the Client whom the Consultants should apply/refer to, when and if necessary;
- the list of invited firms along with clarification about whether or not short-listed firms can collaborate to submit a proposal;
- formalities in preparing and submitting the proposal, such as (and when applicable): language, number of copies, maximum page number, size – format or other limitations on the submissions;
- standard formats to be used in the proposals (for joint-venture agreement, presentation of past experience, CVs, Financial Proposal, etc); envelopes or the like to be used and their labeling or other identification;
- last date and time for submission; address for submission; method or means of submission; requirement for numbering of the pages to be submitted;
- the form of agreement which will apply;
- details of the evaluation and selection procedures to be followed, including a listing of the technical evaluation criteria and the weight given to each criterion (see Appendix B);
- the total budget (optional, if a fixed budget cannot be exceeded);

- currency(ies) in which the costs of services shall be paid;
- terms of payment including any retention requirements
- a request for the receipt of the RFP and notification to the Client whether or not the short-listed (invited) firm will be submitting a proposal;
- the period for which the consultants' proposals shall be held valid (normally 90 days) and during which the Consultant shall undertake to maintain, without change, the proposed key staff;
- any conditions for subcontracting parts of the assignment (if applicable);
- the expected date of commencement of the Assignment;
- a statement of encouragement to visit the site and meet the Client, in order to better evaluate the scope of work, and the conditions for such visits (see section 4.5.1.2);
- request for comments on the TOR (this will normally be related to the evaluation criteria);
- a clear Statement of the Information required from the Consulting Firm. This would normally include details such as:
  - past experience with projects of a similar nature;
  - details of organization;
  - availability of resources;
  - the alternatives to be considered (invitation for innovation);
  - level of participation and roles of National Consulting Firms;
  - compliance with the desired time schedule.

*Note: this Statement of Information required from the Consultant should clearly align with the technical evaluation criteria for selection.*

#### 4.5.1.1.4 PROPOSED AGREEMENT

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The short-listed firms should be provided with a full copy of the Agreement which is to apply to the commission.

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#### 4.5.1.2 PREPARATION AND SUBMISSION OF PROPOSALS

The Client shall allow enough time for the firms to prepare proposals. The time allowed shall depend on the nature of the assignment and shall range from three weeks to three months. During this time, firms may request, in writing, clarification about the information provided in the RFP. The Client shall provide this clarification in writing, and copy it to all firms on the short list.

The Client should make arrangements for site visits by the Consultants' as stated in the Information to Consultants (ITC), and for providing additional information on the project, as applicable, well before the last day for submission of proposals.

All Consultants invited to submit proposals must be given fair and equal opportunity to participate and to obtain information. A 'pre-proposal' conference may be convened by the Client and attended by the representatives of all short-listed bidders.

The proposals shall be prepared according to the requirements set out in the RFP. They must be accurate, complete and duly signed by (an) authorized official(s) of the Consulting Firm and, in the case of CVs, by the Individual proposed.

Both technical and financial proposals shall be submitted in separate, sealed and correspondingly marked envelopes, normally put together in one outer envelope.

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#### 4.5.1.3 RECEIPT AND OPENING OF PROPOSALS

The proposals submitted shall be registered by the officer-in-charge at the time they are submitted. They shall be kept safe until they are to be opened. Any proposal received after the announced closing time for submission of proposals shall be returned unopened.

Only where there is good reason, should the Client extend the deadline for the submission of proposals. No amendments shall be given and/or accepted after the agreed deadline.

When the deadline has passed, the proposals submitted shall be opened without any inordinate delay by the Competent Authority. The envelopes containing the technical proposals shall be opened first; while financial envelopes shall be retained unopened until the technical evaluation is completed.

The consultants who have submitted proposals should be invited to attend the opening of both technical and financial proposals; attendance of the consultants is optional. Minutes shall be prepared and signed by the legal representatives of both the Client and Consultants who are present at the time of opening.

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#### 4.5.1.4 EVALUATION OF PROPOSALS

The evaluation of proposals shall be carried out in three stages:

- a. evaluation of the technical proposals (quality)
- b. evaluation of the financial proposals (cost)
- c. calculation of combined technical and financial score

CSC may be assisted in this evaluation process by technical/domain experts. In case of Medium/Large assignments the CSC can include in the evaluations: interviews of key Consultant team members; a visit to the Consultant's premises; discussions with the Consultant's past clients and project end users; and inspections of past projects<sup>12</sup>.

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<sup>12</sup> If this option is used it should be part of the evaluation criterion shared with the consultants as part of the RFP.

These activities can be carried out by teams of experts including Client representatives and individual consultants<sup>13</sup>. Care must be taken to ensure that such measures are carried out in a perfectly fair and equitable manner, and with appropriate transparency. It is important that the Client should accurately follow the steps described in the RFP to evaluate proposals, and not create other measurement methods.

Evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation (including any clarification, Client reviews, etc) is completed, after which they should announce a date for the opening of financial proposals.

#### 4.5.1.4.1 EVALUATION OF TECHNICAL PROPOSALS

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The CSC shall systematically evaluate and rank each proposal against the basis for selection outlined in the RFP. The evaluation process will include:

- a. a weighting or score for each criteria, as set down in the RFP;
- b. evaluation of each proposal and preparation of a collated score sheet
- c. preparing documented record of the selection process

The following steps shall be taken during technical evaluation:

- The CSC shall evaluate each technical proposal, taking into account several criteria, as set out in the RFP:
  - a. the consulting firm's relevant experience;
  - b. the assignment;
  - c. the quality of the methodology proposed;
  - d. the qualifications and availability of the key staff proposed; the availability of the proposed staff should be checked using the Consultant Enrollment System at P&D
  - e. training or transfer of know-how provisions (if applicable);
  - f. the extent and quality of participation by National Consulting Firms in the assignment;
  - g. the support facilities (if applicable) of the Consultant;
  - h. overall quality of the proposal; and
  - i. quality of the oral presentation (if applicable) - firms may be asked to make short oral presentation outlining the key aspects of their proposal to assess their knowledge and ability to handle the proposed assignment. In cases where oral presentation are included in the evaluation process, the presentations should be made at the start of the technical evaluation process;

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<sup>13</sup> In cases where consultants are used, the provisions on Conflict of Interest given in section 2.5.1 will apply.

- After the technical quality is evaluated, firms whose technical proposals did not meet the minimum qualifying score (excluding points for presentation) or were considered non-responsive to the invitation requirements and the terms of reference will be intimated upon completion of the selection process and their financial proposals will be returned unopened.
- At the end of the process, the CSC shall prepare an evaluation report of the 'quality' of the proposals. The report shall substantiate the results of the evaluation and describe the relative strengths and weaknesses of the proposals. All records relating to evaluation, such as individual marking sheets, shall be retained until the completion of the assignment and its audit.

#### 4.5.1.4.2 EVALUATION OF FINANCIAL PROPOSALS

Firms that have secured the minimum qualifying technical score will be advised of the location, date, and time set for opening of financial proposals. Adequate notice will be given to allow interested consultants or their representatives to attend the opening of the financial proposals.

The financial proposals will be opened in the presence of representatives of the firms that choose to attend. The name of the firms, the technical quality scores, and the proposed prices will be read aloud and recorded when financial proposals are opened.

CSC will review the financial proposals and any computational errors will be corrected. For the purpose of evaluation, "cost" will include taxes, as well as all other costs involved in performing the services.

The proposal with the lowest cost will be given a financial score of 100, and the other proposals given scores that are inversely proportional to their prices, i.e., if the lowest conforming price is A, then the score for price B is  $(A/B) \times 100\%$ .

#### 4.5.1.4.3 FINAL EVALUATION OF QUALITY AND COST

The total score shall be obtained by weighting the technical and financial scores and adding them. The respective weightings for quality and cost shall be as specified in the RFP.

If the scores for quality and cost as percentages are Q and C and the weighting for cost is W (e.g., if the weighting is 10%, '0.1' is used in the formula for W) then the combined score becomes:

$$\text{Score} = (1 - W)Q + WC$$

#### 4.5.1.5 SELECTION OF THE CONSULTING FIRM & NEGOTIATIONS

Negotiations shall include discussions of the TOR, the methodology, staffing, Client's inputs, and special conditions of the Assignment. These discussions shall not substantially alter the original TOR or the Terms of the Agreement, lest the quality of the final product, its cost, and the relevance of the initial evaluation be affected.

The selected Firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the

process continued with the next ranked firm. The key staff proposed for substitution should have qualifications equal to or better than the key staff initially proposed.

Proposed staffing, unit rates for staff-months and reimbursable can be negotiated if there is a revision of scope or if the bid rate exceeds the available budget. However, major reductions in work inputs should not be made solely to meet the budget.

If the negotiations fail to result in an acceptable agreement, the CSC can after reaching a unanimous decision terminate further negotiations with the Consultant. If the CSC cannot reach a unanimous decision the case can be referred to Chairman P&D to take a decision on terminating further negotiations. In case of termination the consultant shall be informed of the reasons for termination of negotiations and a copy of the decision will be sent to P&D. The CSC will invite the next ranked firm for negotiations. Once negotiations are commenced with the next ranked firm, the CSC shall not reopen the earlier negotiations.

Negotiations should be conducted in an atmosphere of cooperation. This should strengthen and build the confidence and trust which are absolutely essential to a healthy Client – Consultant relationship.

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#### 4.5.1.6 REJECTION OF ALL PROPOSALS

All the proposals can be rejected only if they are non-responsive and unsuitable either because they present major deficiencies in complying with the TOR or because they involve costs substantially higher than the original estimate. In the later case, the feasibility of increasing the budget, or scaling down the scope of the services with the firm should be investigated before rejecting all proposals.

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#### 4.5.1.7 CONFIDENTIALITY

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the Award of Assignment is notified to the successful firm, except as provided in Sections 4.5.1.4.1 and 4.5.1.4.2.

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#### 4.5.1.8 AGREEMENT

The final TOR and the agreed methodology shall be incorporated in 'Description of Services' and the key staff proposed for the Assignment shall be reflected in a 'Resource Allocation Matrix' which shall form part of the Agreement.

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#### 4.5.1.9 NOTIFICATION

When the agreement has been signed, firms which submitted proposals but were not intimated under Section 4.5.1.4.1 should be informed by the Client within 2 weeks if they were not successful.

All proponents should receive the following:

- a. name of the successful Consultant and its overall score;

- b. price of the Assignment; and
- c. number of proposals received.

In order to maintain transparency (and to promote competition), all interested parties will be provided with the evaluation results by the Client. Information provided can include Technical and Financial Scores, Ranking of Bids and Name of the successful Consultant.

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#### 4.5.1.10 DEBRIEFING

If, after notification of award, a consulting firm wishes to ascertain the grounds on which its proposal was not selected, it should address its request to the Client within 30 days. The Client should then invite the firm without delay to discuss the issues. In this discussion, only the merits or shortcomings of the consulting firm's own proposal should be discussed and not those of competitors.

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### 4.5.2 QUALITY BASED SELECTION (QBS)

In the Quality Based Selection (QBS) method, the Consulting Firm is selected on the basis of professional competence and experience, managerial ability, availability of resources, professional independence, fairness of fee structure, professional integrity, and quality management systems. The Client prepares the Terms of Reference (TOR) together with a budget for the consulting services. Consultants submit technical and financial proposals, in separate envelopes. Only the technical proposals are evaluated and used for the selection. However, if a financial proposal exceeds the maximum financing available, and this amount and its importance have been clearly stated in the Request for Proposals, then the Consultant's proposal can be rejected. The procedures to be followed are explained in the following sections.

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#### 4.5.2.1 REQUEST FOR PROPOSAL (RFP)

*See Section 4.5.1.1*

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##### 4.5.2.1.1 LETTER OF INVITATION

*See Section 4.5.1.1.1*

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##### 4.5.2.1.2 TERMS OF REFERENCE (TOR)

*See Section 4.1*

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##### 4.5.2.1.3 INFORMATION TO CONSULTANTS (ITC)

*See Section 4.5.1.1.3*

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##### 4.5.2.1.4 PROPOSED AGREEMENT

*See Section 4.5.1.1.4*

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#### 4.5.2.2 PREPARATION AND SUBMISSION OF PROPOSALS

*See Section 4.5.1.2*

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#### 4.5.2.3 RECEIPT AND OPENING OF PROPOSALS

*See Section 4.5.1.3*

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#### 4.5.2.4 EVALUATION OF PROPOSALS

Technical proposals will be evaluated and ranked in terms of their scores. Financial-proposals will only be opened for the top ranked firm during the negotiations phase.

CSC may be assisted in this evaluation process by technical/domain experts. If the project size and complexity warrants it, the CSC can include in the evaluations: interviews of key Consultant team members; a visit to the Consultant's premises; discussions with the Consultant's past clients and project end users; and inspections of past projects<sup>12</sup>.

These activities can be carried out by teams of experts including Client representatives and individual consultants. Care must be taken to ensure that such measures are carried out in a perfectly fair and equitable manner, and with appropriate transparency. It is important that the CSC should accurately follow the steps described in the RFP to evaluate proposals and not create other measurement methods.

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##### 4.5.2.4.1 EVALUATION OF TECHNICAL PROPOSALS

*See Section 4.5.1.4.1*

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##### 4.5.2.4.2 OPENING OF FINANCIAL PROPOSALS

The financial proposal of the top ranked firm (the firm with the highest overall technical score) shall be opened and the firm invited for negotiations. Once an agreement has been concluded the financial proposals of all the other firms must be returned unopened.

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#### 4.5.2.5 SELECTION OF THE CONSULTING FIRM & NEGOTIATIONS

*See Section 4.5.1.5*

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#### 4.5.2.6 REJECTION OF ALL PROPOSALS

*See Section 4.5.1.6*

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#### 4.5.2.7 CONFIDENTIALITY

*See Section 4.5.1.7*

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#### 4.5.2.8 AGREEMENT

*See Section 4.5.1.8*

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#### 4.5.2.9 NOTIFICATION

*See Section 4.5.1.9*

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#### 4.5.2.10 DEBRIEFING

*See Section 4.5.1.10*

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### 4.5.3 OTHER SELECTION METHODS

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#### 4.5.3.1 BUDGET METHOD

The Budget Method can be adopted where outputs are difficult for the Client to specify or quantify and a limited budget exists. The types of agreements suited to this method are strategic studies, feasibility studies, transportation studies, and site investigations.

The Client supplies a budget figure to short-listed firms accompanied by Terms of Reference (TOR) outlining the consulting services required. These TOR need to be flexible enough to enable Consultants to meet the requirements of the Client in an optimum way, and they should clearly state what the Client expects the Consultant's proposal to contain.

Selection is then made on the basis of the Quality Based Selection procedures (see Section 4.5.2 above).

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#### 4.5.3.2 DESIGN COMPETITION

On some very large and critical projects, Clients may feel that, to obtain the best benefit from the available technology, a design competition should take place between a small group of short-listed firms (see Section 4.4.2.2 for preparation of short list). Short-listed firms will be requested to submit their fee proposals and/or estimates of construction costs with the design proposal. In addition, the form of presentation (i.e., proposal, computer generated graphics, models, etc.) should be specifically limited in size and magnitude (number and scale of drawings, scale of model, etc.). The preliminary design services of all competing firms can be paid for, at cost.

Designs will be evaluated and rated by the CSC and negotiations will proceed with the top rated firm as given in section 4.5.2.5.

In design competitions, the intellectual property will remain with the consulting firms and only be transferred if the submitting firm is awarded a contract to continue with the design.

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#### 4.5.3.3 SINGLE SOURCE SELECTION

Single sourcing is neither encouraged nor recommended. However, there could be some exceptional cases where single sourcing could be utilized upon approval of the PDWP. Consultants approached to submit proposals under this method will normally be known to the Client, or may have previously been short listed for a similar assignment.

Single-source selection may be appropriate only if it presents a clear advantage over competition: (a) for tasks that represent a natural continuation of previous work carried out by the firm, (b) in emergency cases, such as in response to disasters and for consulting services required during the period of time immediately following the emergency or (c) when only one firm is qualified or has experience of exceptional worth for the assignment.

When continuity for downstream work is essential, the initial RFP shall outline this prospect. Continuity in the technical approach, experience acquired, and continued professional liability of the initial Consultant may make continuation preferable to a new selection (subject to satisfactory performance in the initial assignment). For such downstream assignments, the Client shall ask the initially selected Consultant to prepare technical and financial proposals on the basis of TOR furnished by the Client, which shall then be negotiated.

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#### 4.5.3.4 LEAST-COST SELECTION (LCS)

This method is only appropriate for selecting Consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, and so forth) where well-established practices and standards exist. Under this method, the minimum qualifying marks shall be established, with the understanding that all proposals above the minimum will compete only on 'cost'. The minimum qualifying marks shall be stated in the RFP.

Proposals, to be submitted in two envelopes, are invited from short-listed firms. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying marks are rejected, and the financial proposals of the rest are opened. The firm with the lowest price is selected.

### 4.6 EVALUATION OF THE PERFORMANCE OF CONSULTANTS

The Client shall evaluate the performance of the Consultant on an Assignment in a fair and confidential manner. The performance ratings will be an input for future short-listing. In the case of repeated poor performance, the Consultant will be notified and provided an opportunity to respond. If poor performance persists, the Client in consultation with P&D may bar the firm from participating in new assignments for a stated period.

The Client shall submit quarterly evaluation reports on consultants currently engaged by it to the P&D. A final close out report will be prepared at the end of each consulting assignment. This report will rate the performance of the Consultant against the TOR of the Assignment. A copy of this closeout report will be forwarded to the P&D for information and review.

## 5 SELECTION OF INDIVIDUAL CONSULTANTS

The procedures for selection of individual Consultants are simpler than those applicable to the selection of consulting firms (schematic of the selection process is given in Appendix D).

Individual consultants should be selected on the basis of their qualifications and related experience for the assignment. When coordination, administration, or collative responsibility becomes difficult because of the number of individuals, it is advisable to employ a firm.

Except as otherwise agreed by the P&D in a particular case, the procedures set forth in the following paragraphs of this Section shall apply in the selection of individual consultants by the Client.

### 5.1 PREPARATION OF TERMS OF REFERENCE

Before the actual process of selection of a consultant starts in each case, the objective and scope of the proposed work and the functions and duties to be assigned to the Consultant should be clearly and adequately defined in the TOR by the Client.

The scope of the services described in the TOR shall be compatible with the budget request. The TOR shall clearly define the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data). The TOR shall list the services and studies necessary to carry out the assignment and the expected outputs (for example, reports, data, etc).

### 5.2 APPROVAL OF TOR AND BUDGET

#### 5.2.1 PROVINCIAL GOVERNMENT FUNDING

*See Section 4.3.1*

#### 5.2.2 DISTRICT GOVERNMENT FUNDING

*See Section 4.3.2*

### 5.3 SOLICITATION

Individual consultants should be enrolled in the Consultant Enrollment System (CES) to be eligible for assignments. While short listing, individual capability should be judged on the basis of academic background, skills, experience, and, as appropriate, knowledge of the local conditions<sup>14</sup>, and availability, etc.

Individual consultants may be independent or part of an organization, such as an academic institution, a governmental or international agency or a consulting firm. In cases where the Consultant engaged is not independent, the Conflict of Interest provisions described in these guidelines shall apply to the parent firm (see Section 2.5.2).

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<sup>14</sup> Such as building codes, practices, administrative systems

### 5.3.1 SHORT ASSIGNMENTS

The Client may directly select a qualified Individual Consultant for negotiations if the value of the assignment is under Rs. 200,000. For assignments over this value, client should review potential candidates on the basis of their suitability, interest in the assignment and availability, and make a short-list of three or more candidates.

Assignments will be advertised on the P&D Website and optionally one or more national newspapers if a reasonable list cannot be prepared with available information. In case of advertising a minimum of one week should be given for response.

### 5.3.2 MEDIUM/LARGE ASSIGNMENTS

Assignments should be advertised on the P&D Website as well as one or more national newspapers. The following information may be included in the announcement (advertisement) which invites individuals to submit their proposals.

- i. information about the Client and the contact person;
- ii. name, location and size of the project;
- iii. limitations on eligibility (academic qualifications and experience requirements, etc) ;
- iv. type and scope of services required (a brief summary of the job);
- v. area of expertise deemed to be critical;
- vi. estimate duration of the Assignment;
- vii. the forms of agreement and any special terms or conditions;
- viii. undertaking by the individual that he/she has not been black listed by the Government

Sufficient time (not less than one week) shall be provided for submission of proposals. The proposal will be brief and will include the CV and a brief outline of the consultant's experience and skills relevant to the assignment.

## 5.4 SELECTION PROCESS

The short listed candidates should be ranked on the basis of their qualifications and experience. In preparing the short list, the availability of the candidates should be checked using the Consultant Enrollment System at P&D. The Assignment should be negotiated with the first-ranked individual by the Competent Authority. If an agreement cannot be reached, the next ranked individual can be contacted (and so on, if necessary, until an agreement is reached).

### 5.4.1 AGREEMENT

The TOR and the agreed methodology shall be incorporated in 'Description of Services' for the assignment which shall form part of the Agreement. Particulars of the Assignment including the CV of the Consultant, the TOR, and the Agreement should be forwarded to the P&D.

## 5.5 EVALUATION OF THE PERFORMANCE OF CONSULTANTS

*See Section 4.6.*

## 6 CONTRACT TYPES

### 6.1 LUMP SUM (FIXED PRICE)

Lump sum contracts are used mainly for assignments in which the content and the duration of the services and the required output of the consultants are clearly defined. They are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, and so forth. Payments are linked to outputs (deliverables), such as reports, drawings, bills of quantities, bidding documents, and software programs. Lump sum contracts are easy to administer because payments are made on clearly specified outputs.

### 6.2 TIME BASED CONTRACTS

This type of contract is appropriate when it is difficult to define the scope and the length of services, either because the services are related to activities by others for which the completion period may vary, or because the input of the consultants required to attain the objectives of the assignment is difficult to assess. This type of contract is widely used for complex studies, supervision of construction, advisory services, and most training assignments. Payments are based on agreed hourly, daily, weekly, or monthly rates for staff (which is normally named in the contract) and on reimbursable items using actual expenses and/or agreed unit prices.

The rates for staff include salaries, social costs, overheads, fees (or profits), and, where appropriate, special allowances. This type of contract shall include a maximum amount of total payments to be made to the consultants. This ceiling amount should include a contingency allowance for unforeseen work and duration, and provision for price adjustments where appropriate. Time-based contracts need to be closely monitored and administered by the Client to ensure that the assignment is progressing satisfactorily and that payments claimed by the consultants are appropriate. Since the contract does not end after a definite time-period, special attention should be given to ensure that the contract does not continue indefinitely.

### 6.3 PERCENTAGE CONTRACTS

These contracts are commonly used for architectural services. They may also be used for procurement and inspection agents. Percentage contracts directly relate the fees paid to the Consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected. The contracts are negotiated on the basis of market norms for the services and/or estimated staff-month costs for the services, or competitively bid. It should be borne in mind that in the case of architectural or engineering services, percentage contracts implicitly lack incentive for economic design and are hence discouraged. Therefore, the use of such a contract for architectural services is recommended only if it is based on a fixed target cost and covers precisely defined services (e.g., not works supervision).

### 6.4 INDEFINITE DELIVERY CONTRACT (PRICE AGREEMENT).

These contracts are used when Clients need to have “on call” specialized services to provide advice on a particular activity, the extent and timing of which cannot be defined in advance. These are commonly used to retain ‘advisers’ for implementation of large or complex projects, expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical

troubleshooting, and so forth, normally for a period of a year or more. The Client and the firm agree on the unit rates to be paid for the experts, and payments are made on the basis of the time actually used.

**7 GENERAL REFERENCE**

1. Guidelines: Selection and Employment of Consultants by World Bank borrowers, The World Bank, May, 2004.
2. Guidelines on the use of Consultants by the Asian Development Bank and its borrowers, Asian Development Bank, April, 2002.
3. FIDIC Guidelines for the Selection of Consultants, International Federation of Consulting Engineers, 2003.

**APPENDIX A - DETERMINATION OF SELECTION METHOD**

Consultant selection can be made on the basis of Quality Based Selection (QBS) or Quality and Cost Based Selection (QCBS). The use of either method should be based on the nature of the assignment with the following factors playing a key role in the selection of QBS:

- **Potential damage if the project fails**
  - There can be little doubt that if failure of the project, such as in the case of a dam, would lead to catastrophic financial or social loss, the Client should never select a design and construction administration services for the project on the basis of price. Thus, the Client should examine the consequences of failure of the project, and if the consequences prove to be too high, selection of the Consultant for design (and hopefully subsequent construction supervision), should be done by Quality Based Selection (QBS).
- **Complexity of the project**
  - If the project is highly complex or specialized, again the Client should be using the QBS system for consultant selection.
- **Multiplier effect**
  - If the Consultant's assignment has a major impact, such as in a strategic study for the development of a sector, or of a large project, or for government decision-making purposes that will have long term effects, again the Consultant should be selected by QBS.

'QBS Assignments' can include those that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis)."

Therefore, assignments with high complexity, or requiring specialization; or leading to a high multiplier effect or downstream impact; or having disastrous impact if the related project fails; or assignments that are difficult to compare; should all be assigned on the basis of QBS.

**Choice of Selection Method**

QBS is the default selection method for engaging individual consultants. And, QCBS is the default selection method for engaging consulting firms. If the client wishes to use a selection method other than the default method then approval for the proposed method should be obtained at the time of getting the PC-I/PC-II approved.

For complex projects where similar work has not been carried out before or where the impact of failure is high, Clients can opt for QBS for the following representative list of assignments with the approval of the PDWP:

1. To prepare, review, supplement or update feasibility studies

2. Project Management Services including plan development, monitoring, and performance analysis for large or complex projects
3. Project assessment studies including financial analysis
4. Environmental studies and environmental impact assessments
5. Sustainability studies
6. Architectural/engineering design for projects where there is little previous experience available
7. Failure investigation
8. Risk analysis and management
9. Research & Development and technical assistance
10. Legal services for cases where specialized experience or expertise is required

Clients can also choose to use selections methods other than QBS and QCBS given in these guidelines to address the specific needs of a given assignment.

## APPENDIX B - SCORING MATRIX

## Matrix of attributes for scoring at the evaluation phase

Evaluation criterion	Project category				
	General			Innovative - complex	
Value of Consulting Assignment (Pak Rs.)	Less than 3 million	3 to 10 million	Over 10 million	Up to 10 million	More than 10 million
<b>Company profile</b> (similar to below) No of similar projects Value of previous assignments Organizational structure	15%	20%	35%	10%	30%
<b>Project team</b> (similar to below) Team leader Key personnel	70%	60%	45%	50%	35%
<b>Approach &amp; Methodology</b> (similar to below) Understanding / Innovativeness Statement of Work/ Work plan	15%	20%	20%	40%	35%

- 1) Each criterion shall be marked on a scale of 1 to 100, which will then be weighted to become scores.<sup>15</sup>
- 2) Criteria will normally be split into sub-criteria. For example, sub-criteria under methodology might be innovation and level of detail. However, the number of sub-criteria should be kept to the essential. Use of

<sup>15</sup> Government of the Punjab 'Handbook for Consultant Selection' may be referred to for creating an evaluation system.

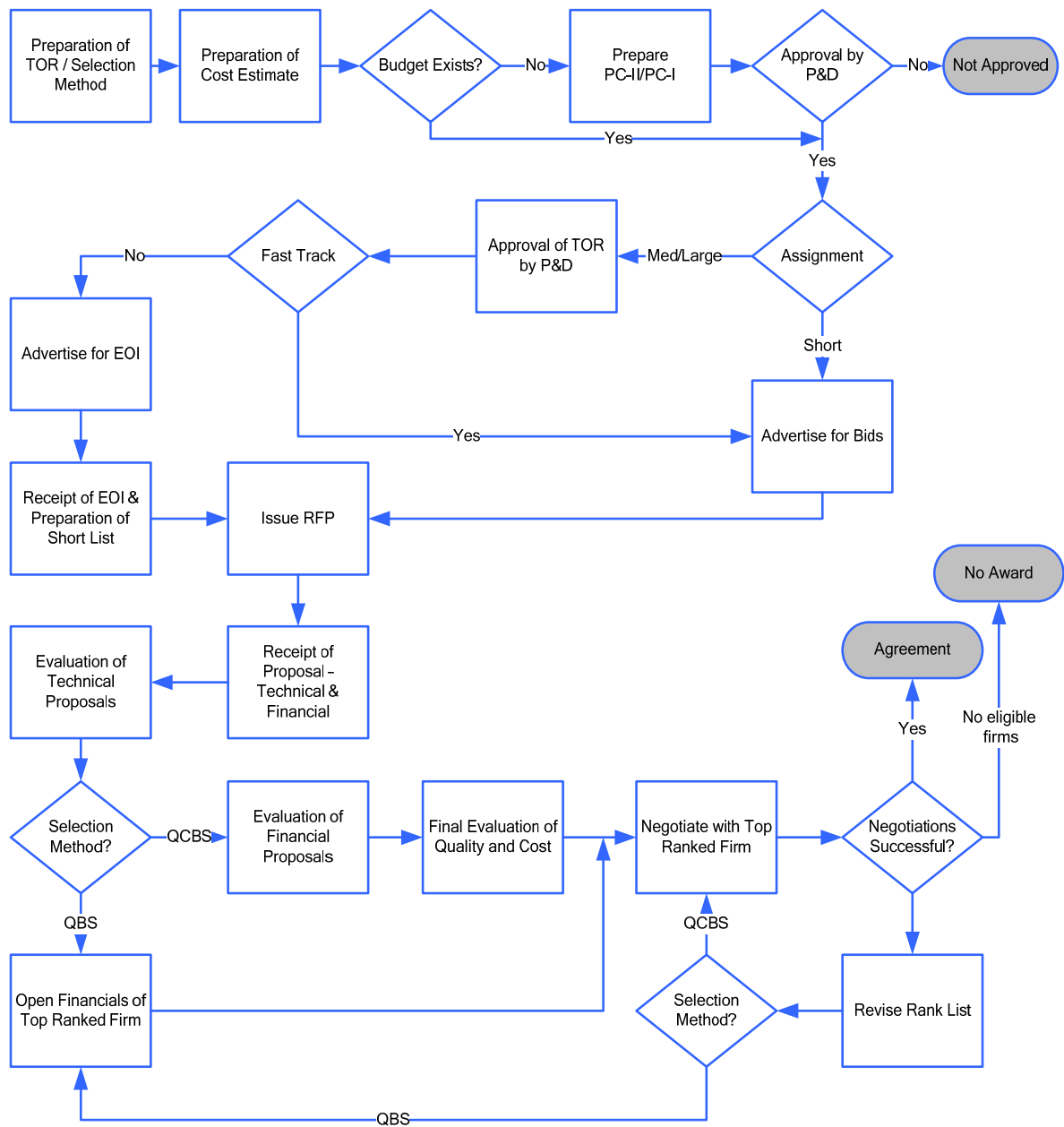
excessively detailed lists of sub-criteria should be avoided as this may render the evaluation process into a mechanical exercise instead of the professional assessment desired.

- 3) The aim in evaluating proposals should be to select the most suitable technical proposal on the basis of technical qualifications to perform the work, rather than the best known or most experienced firm. Of all evaluation factors, primary emphasis should be given to the personnel assigned to the work.
- 4) Evaluation of only the key personnel is recommended. Since key personnel ultimately determine the quality of performance, more weight shall be assigned to this criterion if the proposed assignment is complex. Review the qualifications and experience of proposed key personnel in their curricula vitae, which must be accurate, complete, and signed by an authorized official of the Firm. When the assignment depends critically on the performance of key staff, such as a Project Manager in a large team of specified individuals, it may be desirable to conduct interviews. The individuals shall be rated in the following three sub-criteria, as relevant to the task:
  - a. general qualifications: general education and training, length of experience, positions held, time with the Consulting Firm as staff, local experience, and so forth;
  - b. adequacy for the assignment: education, training, and experience in the specific sector, field, subject, and so forth, relevant to the particular assignment; and
  - c. familiarity with the domain in which the work is to be performed: knowledge of the administrative system, government organization, and so forth.

APPENDIX C - CONSULTANT SELECTION PROCESS – FIRMS

Consultant Selection Guidelines 2006

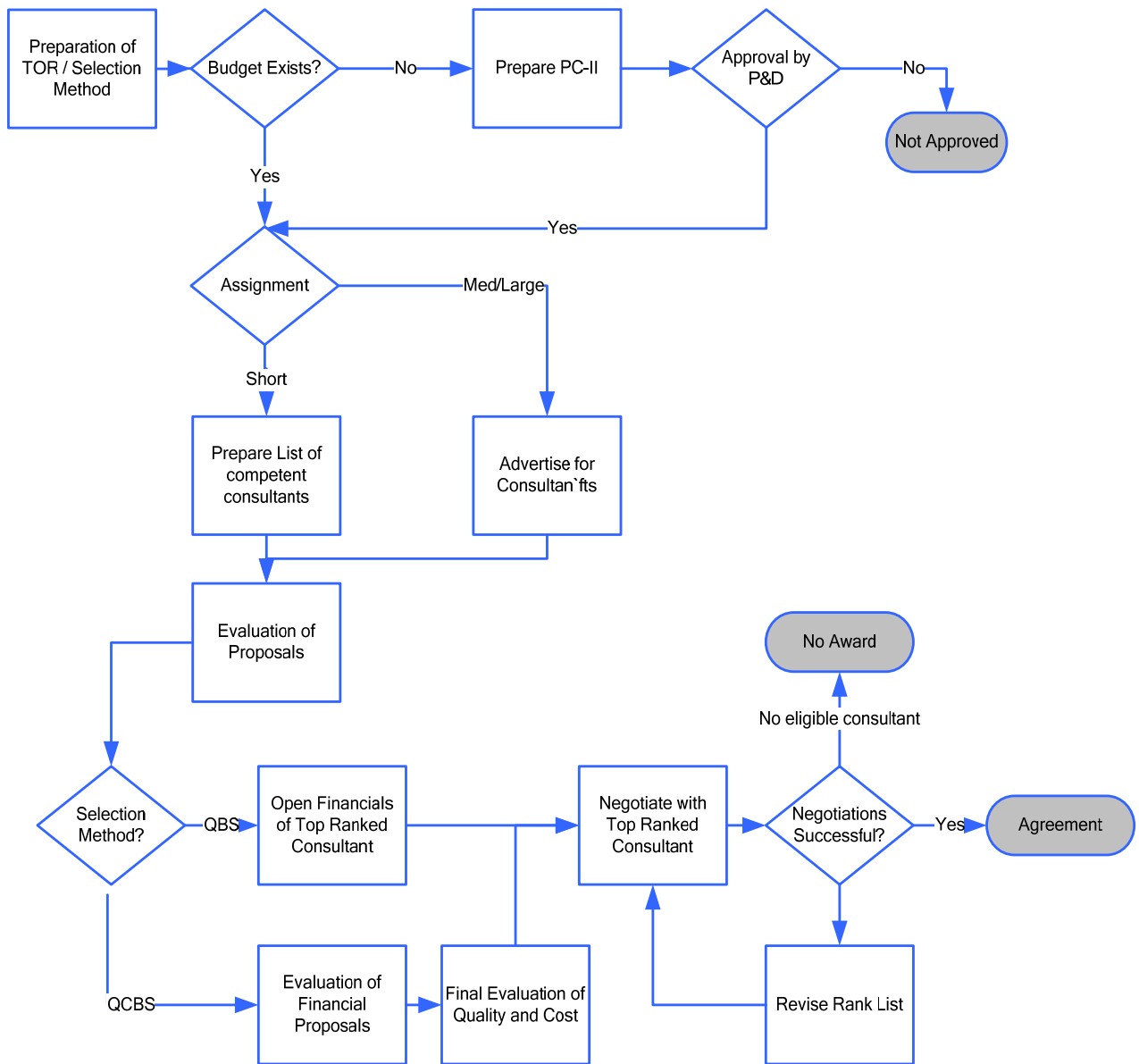
Consulting Firm



APPENDIX D - CONSULTANT SELECTION PROCESS – INDIVIDUALS

# Consultant Selection Guidelines 2006

## Individual Consultants



**NO. 4(1) P.O (Cons) P&D/04  
GOVERNMENT OF THE PUNJAB  
PLANNING & DEVELOPMENT DEPARTMENT**

**Dated Lahore, 1<sup>st</sup> September, 2006**

To,

1. Senior Member, Board of Revenue, Lahore.
2. All Administrative Secretaries to Govt. of the Punjab, Lahore.
3. Registrar, Lahore High Court, Lahore.
4. All Heads of Autonomous Bodies in the Punjab.
5. All Heads of Attached Departments in the Punjab.
6. All Vice Chancellors of Universities in the Punjab.
7. All District Coordination Officers in the Punjab.

Subject: - **CONSULTANT SELECTION GUIDELINES 2006**

I am directed to inform that the existing Guidelines for Selection of Consultants which were issued by P&D Department on 08-02-1999 are being **replaced** with the **Consultant Selection Guidelines 2006**. The revised Guidelines have been approved by Chief Minister Punjab and are applicable with immediate effect. The new version of the Guidelines can be downloaded from the website of P&D Department i.e.

[www.pndpunjab.gov.pk](http://www.pndpunjab.gov.pk)

2. I am further directed to inform that the existing procedure for enlistment of consulting firms with P&D Department has been discontinued with immediate effect. Client Department shall now onwards be responsible to verify the credentials/profile of the participating firms at pre-qualification stage. However, P&D Department will maintain a voluntary online consultant enrollment system on its website.




**ASSISTANT CHIEF (CONSULTANCY)**

**NO. & DATE EVEN**

A copy is forwarded for information to:

1. Principal Secretary to Chief Minister Punjab, Lahore.
2. Secretary to Governor Punjab, Lahore.
3. Staff Officer to Chief Secretary Punjab.
4. Head PMU, P&D Department,  
8<sup>th</sup> Floor, LDA Plaza, Egerton Road, Lahore.



**ASSISTANT CHIEF (CONSULTANCY)**

**NO. & DATE EVEN**

A copy is forwarded to:

1. All Sr. Chiefs/Chiefs of Section in P&D Department.
2. P.S to Chairman P&D Board.
3. P.S to Secretary P&D Department.
4. P.S to Chief Economist, Punjab.
5. P.S to all Members of P&D Department.
6. All Consulting firms currently enlisted with P&D Department.



**ASSISTANT CHIEF (CONSULTANCY)**

Revision 1.03.1

These Guidelines are accompanied by the 'Handbook for Consultant Selection'. Both documents can be found online at <http://www.pndpunjab.gov.pk>

Your feedback on these Guidelines are valued. For comments or assistance on the use of this document please contact:

Project Management Unit,  
Planning & Development Department,  
Government of the Punjab.

8<sup>th</sup> Floor, LDA Plaza, Edgerton Road,  
Lahore, Pakistan.

☎ (042) 920-3931-4

☎ (042) 920-3935

✉ [csg@pmupunjab.gov.pk](mailto:csg@pmupunjab.gov.pk)

🌐 [www.pmupunjab.gov.pk](http://www.pmupunjab.gov.pk)



**H A N D B O O K**  
**F O R**  
**C O N S U L T A N T**  
**S E L E C T I O N**

Planning & Development Department

**GOVERNMENT OF THE PUNJAB**

February, 2007



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# 1 Introduction

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## 1.1 PURPOSE OF THIS HANDBOOK

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This Handbook is a working guide for engaging and managing consultants for the Government of the Punjab using the Punjab Consultant Selection Guidelines (CSG) issued in 2006. It provides the templates, evaluation tables and tender documents that are necessary to effectively implement the approved guidelines.

It is important to note that unlike the CSG, this handbook serves only as additional help and is not a policy document with binding powers. Other than the Standard RFP, also included in the Handbook, all content is recommended practice and likely to evolve with due course of implementation. The scoring and weight-ages mentioned here, beyond those included in the Consultant Selection Guidelines, serve as a reference for the Competent Authority, which has the responsibility of devising the evaluation criteria that correctly assess proposals for each specific assignment. Although, the proposed evaluation system will be suitable for most assignments, cases may arise where other criteria may be required. If the Competent Authority feels this is the case, and decides to change any aspect of the evaluation system, it must be clearly documented in the Information to Consultants section of the Standard RFP.

## 1.2 WHO SHOULD READ THIS HANDBOOK?

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All Government of Punjab officers who are involved in engaging, managing or evaluating should familiarize themselves with the evaluation procedure presented in this Handbook, as well as the Standard Request For Proposal. Consultants interested in responding to a government consultancy assignment should read and understand the evaluation system in detail, and do a self assessment before submitting proposals to get a fair estimate of how they will score in the selection process.

## 1.3 FURTHER ASSISTANCE

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In case further help is required in engaging and evaluation consultants, preparing RFP documents or training of departmental staff, the following people can be contacted:

Chief (Consultancies)  
Planning & Development Department,  
Government of the Punjab  
Phone: (042) 921-0358

## 2 Standard Evaluation Criteria (Firms)

### 2.1 SHORT-LISTING

The presence of the following items have to be checked before firms are evaluated for short-listing.

- Valid legal entity of the firm i.e. registration with Securities & Exchange Commission or Registrar of Firms, etc
- CVs of key relevant staff permanently employed with the firm
- List of relevant past experiences
- National Tax Number
- Audited statements of accounts
- Annual turnover (at least same as assignment cost)
- Meaningful partnership with National Consulting Firm in case of Foreign Consulting Firm
- Registration of firm with relevant professional body
- Undertaking that the firm has not been blacklisted or debarred by any Government/Semi-Government organization

Once all firms that have not submitted these items, or those that are non-compliant to the terms laid out in the Standard RFP – Information to Consultants are removed from the list, remaining firms are evaluated according to the following criteria:

	MAX SCORE
Experience & standing	20
Personnel	80

Any firm that scores less than 65 is removed from the list.

#### 2.1.1 Experience & Standing

A firm's ability to undertake any given assignment successfully can be estimated by whether it has successfully executed a similar assignment with the same value in the past,. For this, it is sufficient to evaluate only the largest similar assignment completed successfully by the firm in the last 10 years. After selecting a suitable assignment, a corresponding weight is selected from the table below:

		RELATIVE SIZE OF ASSIGNMENT		
		80% or more	50% - 80%	Less than 50%
SIMILARITY	Strong	1	0.65	0.3
	Medium	0.65	0.4225	0.195
	Weak	0.3	0.195	0.09

Component Score = Weight from table x 20 (max score)

### 2.1.2 Personnel

The total marks for this section will be divided between proposed experts in equal proportions. The number of experts that will be evaluated should be standard for all firms (i.e. same number for all) and should be decided by the Competent Authority considering the complexity and magnitude of the assignment. Any experts with level of qualification below Bachelors shall be excluded from the evaluation.

Each expert proposed by the firm will be evaluated out of 100 on his/her relevant practical experience in a similar type of consultancy assignment:

	MAX SCORE
Educational qualifications	20
Number of years working on similar assignments	50
Number of projects on which similar tasks have been undertaken	30

For educational qualifications, 20 points will be awarded for a post-graduate or doctoral degree or equivalent, 18 points for Masters degree or equivalent and 16 points for Bachelors degree or equivalent. 0 points will be given for any degree below Bachelors.

A maximum of 50 will be awarded for 10 years experience in the relevant field, i.e. 5 per year.

A maximum of 30 will be awarded for working in 5 projects of a similar nature, i.e. 6 marks per project.

The total score for the CV is added up to get T, after which the component score is calculated as follows:

$$\text{Component score} = \frac{T}{100} \times 80$$

## 2.2 EVALUATION OF TECHNICAL PROPOSALS

Consultancy assignments can be generally classified in two types: General and Innovative/Complex. Innovative/Complex assignments are those that have not been undertaken before in the province or were previously completed using foreign expertise. Generally, a consultant is required to develop a new concept or process which has no precedent. Sometimes though, consultancies for similar projects differ substantially each time they are conducted, and thus can be considered complex due to their impact on the project outcome. Mostly all other assignments which require implementation or assistance with an existing process under supervision to deliver a known outcome are General assignments.

Evaluation will depend on the size of the Assignment and what category it belongs to. The following scoring matrix (Appendix B - Consultant Selection Guidelines 2006) provides weights for each of the 3 aspects the Assignment will be evaluated upon. – Company Profile, Project Team and Approach & Methodology.

	Evaluation criterion	Project category				
		General			Innovative - complex	
	Value of Consulting Assignment (Pak Rs.)	Less than 3 million	3 to 10 million	Over 10 million	Up to 10 million	More than 10 million
<b>W<sub>1</sub></b>	<b>Company Profile</b>	<b>15%</b>	<b>20%</b>	<b>35%</b>	<b>10%</b>	<b>30%</b>
<b>W<sub>2</sub></b>	<b>Project Team</b>	<b>70%</b>	<b>60%</b>	<b>45%</b>	<b>50%</b>	<b>35%</b>
<b>W<sub>3</sub></b>	<b>Approach &amp; Methodology</b>	<b>15%</b>	<b>20%</b>	<b>20%</b>	<b>40%</b>	<b>35%</b>

Each criterion shall be marked on a scale of 1 to 100, which will then be weighted to become scores, i.e.

Company Profile	(Max: 100 points)	
.		.
.		.
	Total	$\frac{\quad}{A_1}$

Project Team	(Max: 100 points)	
.		.
.		.
	Total	$\frac{\quad}{A_2}$

Approach & Methodology	(Max: 100 points)	
.		.
.		.
	Total	$\frac{\quad}{A_3}$

The Technical Score will then be obtained by the following formula:

$$\frac{A_1 W_1}{100} + \frac{A_2 W_2}{100} + \frac{A_3 W_3}{100}$$

### 2.2.1 Firm Profile

Each firm will be evaluated on three factors: a) number of similar projects, b) value of similar assignments, and c) organizational profile.

		MAX SCORE	COMPONENT SCORE (to be filled in)
1	Number of similar assignments	45	
2	Value of similar assignments	45	
3	Organizational structure	10	

#### 2.2.1.1 Number of Similar Assignments

Scoring in this segment is done on the basis of the similarity of the assignments in respect to their age (how long ago they were executed). The scoring is done in four steps.

Step 1:

The total number of assignments ( $T_s$ ) that were requested from the firm for technical evaluation (through the Request for Proposal) is distributed in the following table. ( $T_s$  is decided beforehand by the Competent Authority and should be at least 5 or higher (i.e. 10, 15, ...) depending on the type of assignment).

		AGE		
		0-5 years ago	6-10 years ago	10+ years ago
SIMILARITY	Strong			
	Medium			
	Weak			

Total number of projects (T): \_\_\_\_\_

## Step 2:

Each number in the former table (Step 1) is then multiplied with the weight in its corresponding cell from the table below.

<b>WEIGHT (W)</b>		1	0.65	0.3
		0-5 years	6-10 years	10 + years
1	Strong	1	0.65	0.3
0.65	Medium	0.65	0.4225	0.195
0.3	Weak	0.3	0.195	0.09

## Step 3:

The score in each box is summed up to get a total score (N) for the projects. N is then divided by  $T_s$  to get a standardized value ( $N_s$ ), i.e.

$$N_s = \frac{N}{T_s}$$

## Step 4:

$N_s$  is then multiplied with the following weights according to the value of T to get the component score.

T	WEIGHT (W)
1-3	0.3
4	0.65
5 or more	1

$$\text{Component Score} = N_s \times W \times 45$$

### 2.2.1.2 Consultancy Value of Similar Assignments

One aspect of the firm's ability to undertake any given assignment successfully is whether the similar assignments it executed were also comparable in value to the present assignment.

Step 1:

The same assignments as in 2.2.1.1 are distributed in the following table.

		RELATIVE SIZE OF ASSIGNMENT		
		80% or more	50% - 80%	Less than 50%
SIMILARITY	Strong			
	Medium			
	Weak			

Total number of projects (T): \_\_\_\_\_

Step 2:

Each number in the former table (Step 1) is then multiplied with the weight in its corresponding cell from the table below.

WEIGHT (w)		1	0.65	0.3
		80% or more	50% - 80%	Less than 50%
1	Strong	1	0.65	0.3
0.65	Medium	0.65	0.4225	0.195
0.3	Weak	0.3	0.195	0.09

Step 3:

The score in each box is summed up to get a total score (N) for the projects. N is then divided by  $T_s$  to get a standardized value ( $N_s$ ), i.e.

$$N_s = \frac{N}{T_s}$$

Step 4:

$N_5$  is then multiplied with the following weights according to the value of T to get the component score

T	WEIGHT (W)
1-3	0.3
4	0.65
5 or more	1

$$\text{Component Score} = N_5 \times W \times 45$$

### 2.2.1.3 Organizational Profile

Organizational profile will be measured by two components: a) quality management system and b) organizational structure.

Quality management system is marked on the basis of compliance to international quality standards such as ISO, CMM, or other relevant certifications.

Organizational structure will be marked if the firm has a well-defined departmental structure, such as Accounts, Support, Design, Sales, Quality Management, R&D etc

Both components have equal scores, i.e. 5 points each, and will get a 0 for 'no', or a 5 for 'yes' (i.e. no partial marks), depending on whether the firm meets the given criteria.

### 2.2.2 Project Team

This section of the evaluation rates the team nominated by the firm to execute the assignment. For this, each CV will be evaluated separately on the basis of education and past experience. Marks for each individual are decided beforehand by the Competent Authority and published in the RFP. During evaluation, these percentages cannot be altered.

Marks are divided between proposed project team members by the Competent Authority keeping in view the relative role of the staff member and its man-month contribution. Since the team leader is the key factor in successfully executing the assignment, he/she should be given the largest percentage of points.

All firms are to be evaluated for a similar sized project team.

Each CV submitted by the firm is evaluated on three criteria:

		MAX SCORE	COMPONENT SCORE <i>(to be filled in)</i>
1	Education and qualifications	25	
2	Relevant background	70	
3	Time with firm	5	

### 2.2.2.1 Education and Qualifications

Each individual is ranked on:

Academic qualifications	80%
Relevant professional certification	20%

#### 2.2.2.1.1 Academic Qualifications

	Grade (G)
Bachelors Degree or equivalent	80%
Masters Degree or equivalent	90%
Post-graduate/Doctorate or equivalent	100%

Sub-component score = G of 80%

#### 2.2.2.1.2 Relevant Professional Certification

If the individual has a professional certification by a recognized body that is relevant to his/her role in the assignment, full score (20%) will be given.

### 2.2.2.2 Relevant Background

Relevant background for each individual is evaluated on five factors:

1	Number of similar assignments (in past 10 yrs)	25%
2	Value of largest similar assignments (in past 10 yrs)	15%
3	Role in similar assignments	30%
4	Time Spent in similar assignments (in past 5 yrs)	30%

#### 2.2.2.2.1 Number of Similar Assignments

The number of similar projects (N) listed on the individual's CV for the past 5 or 10 years (as decided by the Competent Authority) is compared with a base value ( $T_s$ ) decided by the Competent Authority.

$$\text{Sub-component score} = \frac{N}{T_s} \times 25\%$$

#### 2.2.2.2.2 Value of Largest Similar Assignment

The value of the largest similar assignment listed on the individual's CV for the past 5 or 10 years (as decided by the Competent Authority) is compared to the present assignment. The grading is then done according to the following table:

Value in comparison to present assignment	Grade (G)
80%+	100%
50%-80%	65%
<50%	30%

$$\text{Sub-component score} = G \text{ Of } 15\%$$

### 2.2.2.2.3 Role in Similar Assignments

The role of the individual in previous similar assignments listed on his/her CV is compared to the proposed role in the present assignment. The grading is then done according to the following table:

GRADE (G)		ROLE IN NO. OF SIMILAR PROJECTS	
		2 or more	1
COMPARISON OF ROLE	Exactly similar	100%	65%
	Support role to similar	65%	42.25%
	Slightly similar	30%	19.5%

Sub-component score = G of 30%

### 2.2.2.2.4 Time Spent in Similar Assignments

Time spent by the individual on similar projects in man-months (N) will be compared with the total number of possible man-months in the past 5 years, i.e. 60 months.

$$\text{Sub-component score} = \frac{N}{60} \times 30\%$$

### 2.2.2.3 Time Spent with Firm

If an individual has been working with the bidding firm for 12 or more months, he/she will be given 5 marks, otherwise 0.

## 2.2.3 Approach & Methodology

This section will evaluate the firm's solution to the given problem, i.e. the consultancy assignment. This sections, which comprises two sections, i.e. a) Understanding & Innovativeness, and b) Methodology, should be completed by the domain specialists or experts engaged by the Competent Authority.

	MAX SCORE
Understanding & Innovativeness	40
Methodology	60

Each section contains several questions that can be given either of the following grades depending on the content of the technical proposal:

GRADE (G)	QUALITY	WEIGHT (W)
A	Excellent	1
B	Good	0.65
C	Average/Below Average	0.3
D	Absent	0

### 2.2.3.1 Understanding & Innovativeness

	CRITERIA	GRADE
1)	What is the depth of the firm's understanding of the requirements and objectives of the consultancy assignment?	
2)	What is the quality of the improvements to the TOR suggested by the consultant to improve the outcome of the assignment? OR If an alternate proposal is presented, what is the quality of that?	
3)	What is the level of identification of potential risks that will affect the execution of the assignment, and what is the quality of the mitigation strategies proposed?	
4)	What is the usage of background studies or analysis of existing works in the proposal?	
5)	How suitable are the assumptions regarding the consulting assignment?	

Step 1:

Each grade is converted into its weight (W) and added up to get a total score (N).

Step 2:

N is divided by 5, i.e. the maximum attainable score, and multiplied with the component weight to get the component score:

$$\text{Component score} = \frac{N}{5} \times 40$$

### 2.2.3.2 Methodology

	CRITERIA	GRADE
1)	How in-depth is the Statement of Work: does it fully cover the scope of the assignment and is it sufficiently developed to ensure assignment completion?	
2)	How developed is the Work Breakdown Structure (WBS) for the assignment?	
3)	How clear is the mapping of the WBS to the given deliverables?	
4)	How suitable is the Resource Assignment Matrix (RAM) and its linkage with the WBS?	
5)	How suitable is the Work Plan (staffing schedule): is the resource utilization sufficient and practical?	

Step 1:

Each grade is converted into its weight (W) and added up to get a total score (N).

Step 2:

N is divided by 5, i.e. the maximum attainable score, and multiplied with the component weight to get the component score:

$$\text{Component score} = \frac{N}{5} \times 60$$

### 3 Standard Evaluation Criteria (Individuals)

The evaluation of individuals as consultants is generally similar in nature to the evaluation of project team members for firms, except for the inclusion of interview/presentation marks.

		MAX SCORE	COMPONENT SCORE <i>(to be filled in)</i>
1	Education and qualifications	20	
2	Relevant background	65	
3	Interview / Presentation	15	

#### 3.1.1.1 Education and Qualifications

Each individual is ranked on:

Academic qualifications	80%
Relevant professional certification	20%

##### 3.1.1.1.1 Academic Qualifications

	Grade (G)
Bachelors Degree or equivalent	80%
Masters Degree or equivalent	90%
Post-graduate/Doctorate or equivalent	100%

Sub-component score = G of 80%

### 3.1.1.1.2 Relevant Professional Certification

If the individual has a professional certification by a recognized body that is relevant to his/her role in the assignment, full score will be given.

### 3.1.1.2 Relevant Background

Relevant background for each individual is evaluated on four factors:

1	Number of similar assignments (in past 10 yrs)	25%
2	Value of largest similar assignments (in past 10 yrs)	15%
3	Role in similar assignments	30%
4	Time Spent in similar assignments (in past 5 yrs)	30%

#### 3.1.1.2.1 Number of Similar Assignments

The number of similar projects (N) listed on the individual's CV for the past 5 or 10 years (as decided by the Competent Authority) is compared with a base value (T<sub>s</sub>) decided by the Competent Authority.

$$\text{Sub-component score} = \frac{N}{T_s} \times 25\%$$

#### 3.1.1.2.2 Value of Largest Similar Assignment

The value of the largest similar assignment listed on the individual's CV for the past 5 or 10 years (as decided by the Competent Authority) is compared to the present assignment. The grading is then done according to the following table:

Value in comparison to present assignment	Grade (G)
80%+	100%
50%-80%	65%
<50%	30%

$$\text{Sub-component score} = G \text{ of } 15\%$$

### 3.1.1.2.3 Role in Similar Assignments

The role of the individual in previous similar assignments listed on his/her CV is compared to the proposed role in the present assignment. The grading is then done according to the following table:

GRADE (G)		ROLE IN NO. OF SIMILAR PROJECTS	
		2 or more	1
COMPARISON OF ROLE	Exactly similar	100%	65%
	Support role to similar	65%	42.25%
	Slightly similar	30%	19.5%

Sub-component score = G of 30%

### 3.1.1.2.4 Time Spent in Similar Assignments

Time spent by the individual on similar projects in man-months (N) will be compared with the total number of possible man-months in the past 5 years, i.e. 60 months.

$$\text{Sub-component score} = \frac{N}{60} \times 30\%$$

### 3.1.1.3 Interview and/or Presentation

The Competent Authority will interview the individual or take a presentation on the individual's solution to the proposed problem, i.e. the consultancy assignment. In case of presentation, the individual should be asked to present aspects such as approach, methodology, understanding of problem, risks, deliverables etc. The individual should be marked on the quality of content, presentation style and knowledge of topic.

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# Sample Advertisement



PRE-QUALIFICATION/SHORTLISTING OF (TYPE OF FIRM)  
CONSULTING FIRMS

Government of the Punjab (name of client) Department intends to hire services of (type of firm) consulting firms for (description of services required) of (Name of Project along with estimated cost).

Expression of Interest (EOI) are invited from the firms registered with (Name of relevant Professional Institute) with following information /documents:

1. Certificate of registration with (Name of relevant professional institution) along with the latest renewal letter.
2. Copy of Registration with Securities & Exchange Commission or Registrar of Firms.
3. Copy of Registration with Income Tax Department
4. List of permanent professional staff along with C.Vs of relevant core staff showing project wise experience with exact time duration for each project.
5. List of similar works completed by the firm during last ten (10) years and similar works in hand, indicating total cost of such works and cost of consultancy services received against those works along with date of start and completion or expected date of completion.
6. A certificate / affidavit that the firm is not blacklisted by any Govt./Autonomous Body.
7. (Name of Client) Department reserves the right to reject one or all proposals without assigning any reason.
8. Audited statements of accounts for the last three (3) years.

The EOI must reach the office of (Addressee) up to (give last date with a margin of 15 days).

(ADDRESSEE)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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# Punjab Standard Request For Proposal (RFP)



## Section 1: Letter of Invitation

Letter No: \_\_\_\_\_

Date: \_\_\_\_\_

*[Name and Address of Consultant]*

### **SUBJECT: LETTER OF INVITATION**

Dear Mr./Ms.:

1. The Government of Punjab invites proposals to provide the following consulting services: *[Title of Consultancy]*. Details on the services are provided in the Terms of Reference.
3. This Request for Proposal (RFP) has been addressed to the following shortlisted Consultants:

*[List of Shortlisted Consultants]*

It is not permissible to transfer this invitation to any other firm.

4. The Consultant will be selected under the Selection Method: *[Type of Selection]* and procedures described in this RFP, in accordance with the policies of the Government of Punjab detailed in the Consultant Selection Guidelines issued by the Planning & Development Department.
5. The RFP includes the following additional documents:
  - Section 2 - Instructions to Consultants (including Data Sheet)
  - Section 3 - Technical Proposal - Standard Forms
  - Section 4 - Financial Proposal - Standard Forms
  - Section 5 - Terms of Reference
6. It is mandatory for proposals to be made using the Standard Forms of the RFP. Proposals that are not in the prescribed format may be discarded. If any information required in the forms is found missing, or written elsewhere, no credit will be given in the relevant section of the evaluation.
7. Firms should submit details of *[No. of assignments]* of their most relevant assignments for technical evaluation using the prescribed format. Assignments submitted beyond the given number will not be considered.

8. CVs of key personnel corresponding to the list given in the Data Sheet should provide details of [No. of assignments] projects done by the individual in the past [5 or 10] years.
9. Please inform us in writing about the following upon receipt of this letter:
  - a) that you received the Letter of Invitation; and
  - b) whether you will submit a proposal alone or in association.

This information should be sent to the following address:

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Address: \_\_\_\_\_

If no acknowledgment is received, it will be presumed that you are not interested in undertaking the assignment.

Yours sincerely,

*[Signature, name, and title of Client's representative]*

## Section 2: Instructions to Consultants

*[Note: Instructions to Consultants shall not be modified. Any necessary changes, acceptable to the Government of Punjab, to address specific issues, shall be introduced only through the Data Sheet (e.g., by adding new reference paragraphs)]*

### Definitions

- (a) “Agreement” means the Agreement signed by the Parties and all the attached documents.
- (b) “Client” means the organization with which the selected Consultant signs the Agreement for the Services.
- (c) “Consultant” means any entity or person that may provide or provides the Services to the Client under the Agreement.
- (d) “Data Sheet” means such part of the Instructions to Consultants used to reflect specific conditions.
- (e) “Day” means calendar day.
- (f) “Government” means the Government of the Punjab and all its associated departments, agencies, autonomous/semi-autonomous bodies, local governments, boards, universities and similar other organizations.
- (g) “Instructions to Consultants” means the document which provides shortlisted Consultants with all information needed to prepare their Proposals.
- (h) “LOI” means the Letter of Invitation included in the RFP as Section 1 being sent by the Client to the shortlisted Consultants.
- (i) “Personnel” means professionals and support staff provided by the Consultant or by any Sub-Consultant and assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside Pakistan; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile inside Pakistan.
- (j) “Proposal” means the Technical Proposal and the Financial Proposal.
- (k) “RFP” means the Request for Proposal to be prepared by the Client for the selection of Consultants, based on the Standard RFP.
- (l) “Services” means the work to be performed by the Consultant pursuant to the Agreement.
- (m) “SRFP” means the Standard Request for Proposals, which

must be used by the Client as a guide for the preparation of the RFP.

- (n) “Sub-Consultant” means any person or entity with whom the Consultant subagreements any part of the Services.
- (o) “Terms of Reference” (TOR) means the document included in the RFP as Section 5 which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

## **1. Introduction**

- 1.1 The Client named in the Data Sheet will select a consulting firm/organization (the Consultant) from those listed in the Letter of Invitation, in accordance with the method of selection specified in the Data Sheet.
- 1.2 The shortlisted Consultants are invited to submit a Technical Proposal and a Financial Proposal for consulting services required for the assignment named in the Data Sheet. The proposals should be in separate marked and sealed envelopes. The Proposal will be the basis for agreement negotiations and ultimately for a signed Agreement with the selected Consultant.
- 1.3 Consultants should familiarize themselves with assignment conditions and take them into account in preparing their Proposals. To obtain first-hand information on the assignment, Consultants are encouraged to visit the Client before submitting a proposal and to attend a pre-proposal conference if one is specified in the Data Sheet. Attending the pre-proposal conference is optional. Consultants should contact the Client’s representative named in the Data Sheet to obtain additional information on the pre-proposal conference. Consultants should ensure these officials are informed well-ahead of time in case they wish to visit the Client.
- 1.4 The Client will timely provide at no cost to the Consultants the inputs and facilities specified in the Data Sheet, assist the firm in obtaining licenses and permits needed to carry out the services, and make available relevant project data and reports.
- 1.5 Consultants shall bear all costs associated with the preparation and submission of their proposals and agreement negotiation. The Client is not bound to accept any proposal, and reserves the right to annul the selection process at any time prior to Agreement award, without thereby incurring any liability to the Consultants.
- 1.6 **Conflict of Interest** Government of Punjab policy requires that Consultants provide professional, objective, and impartial advice and

at all times hold the Client's interests paramount, strictly avoid conflicts with other assignments or their own corporate interests and act without any consideration for future work.

1.6.1 Without limitation on the generality of the foregoing, Consultants, and any of their affiliates, shall be considered to have a conflict of interest and shall not be recruited, under any of the circumstances set forth below:

**Conflicting activities**

(i) A firm that has been engaged by the Client to provide goods, works or services other than consulting services for a project, and any of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, and any of its affiliates, shall be disqualified from subsequently providing goods or works or services other than consulting services resulting from or directly related to the firm's consulting services for such preparation or implementation. For the purpose of this paragraph, services other than consulting services are defined as those leading to a measurable physical output, for example surveys, exploratory drilling, aerial photography, and satellite imagery.

**Conflicting assignments**

(ii) A Consultant (including its Personnel and Sub-Consultants) or any of its affiliates shall not be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant to be executed for the same or for another Client. For example, a Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and a Consultant assisting a Client in the privatization of public assets shall not purchase, nor advise purchasers of, such assets. Similarly, a Consultant hired to prepare Terms of Reference for an assignment should not be hired for the assignment in question.

**Conflicting relationships**

- (iii) A Consultant (including its Personnel and Sub-Consultants) that has a business or family relationship with a member of the Client’s staff who is directly or indirectly involved in any part of (i) the preparation of the Terms of Reference of the assignment, (ii) the selection process for such assignment, or (iii) supervision of the Agreement, may not be awarded an Agreement, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the Government of Punjab throughout the selection process and the execution of the Agreement.

1.6.2 Consultants have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its Agreement.

1.6.3 No agency or current employees of the Client shall work as Consultants under their own ministries, departments or agencies. Recruiting former government employees of the Client to work for their former ministries, departments or agencies is acceptable provided no conflict of interest exists. When the Consultant nominates any government employee as Personnel in their technical proposal, such Personnel must have written certification from their government or employer confirming that they are on leave without pay from their official position and allowed to work full-time outside of their previous official position. Such certification shall be provided to the Client by the Consultant as part of his technical proposal.

**Unfair Advantage**

1.6.4 If a shortlisted Consultant could derive a competitive advantage from having provided consulting services related to the assignment in question, the Client shall make available to all shortlisted Consultants together with this RFP all information that would in that respect give such Consultant any competitive advantage over competing Consultants.

**Fraud and Corruption**

1.7 The Government of Punjab requires Consultants participating in its projects to adhere to the highest ethical standards, both during the selection process and throughout the execution of an agreement. In pursuance of

this policy, the Government of Punjab:

- (b) defines, for the purpose of this paragraph, the terms set forth below as follows:
    - (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the selection process or in agreement execution;
    - (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a agreement;
    - (iii) “collusive practices” means a scheme or arrangement between two or more consultants with or without the knowledge of the Client, designed to establish prices at artificial, noncompetitive levels;
    - (iv) “coercive practices” 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 agreement.
  - (c) will reject a proposal for award if it determines that the Consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the agreement in question;
  - (d) will sanction a Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded a Government of Punjab agreement if at any time it determines that the Consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing, a Government of Punjab agreement; and
  - (e) will have the right to require that a provision be included requiring Consultants to permit the Government of Punjab to inspect their accounts and records and other documents relating to the submission of proposals and agreement performance, and have them audited by auditors appointed by the Government of Punjab.
- 1.8 Consultants, their Sub-Consultants, and their associates shall not be under a declaration of ineligibility for corrupt

and fraudulent practices issued by the Government of Punjab in accordance with the above para. 1.7. Furthermore, the Consultants shall be aware of the provisions on fraud and corruption stated in the specific clauses in the General Conditions of Agreement.

- 1.9 Consultants shall furnish information on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal and during execution of the assignment if the Consultant is awarded the Agreement, as requested in the Financial Proposal submission form (Section 4).
- Only one Proposal** 1.10 Shortlisted Consultants may only submit one proposal. If a Consultant submits or participates in more than one proposal, such proposals shall be disqualified.
- Proposal Validity** 1.11 The Data Sheet indicates how long Consultants' Proposals must remain valid after the submission date. During this period, Consultants shall maintain the availability of Professional staff nominated in the Proposal. The Client will make its best effort to complete negotiations within this period. Should the need arise, however, the Client may request Consultants to extend the validity period of their proposals. Consultants who agree to such extension shall confirm that they maintain the availability of the Professional staff nominated in the Proposal, or in their confirmation of extension of validity of the Proposal, Consultants could submit new staff in replacement, who would be considered in the final evaluation for agreement award. Consultants who do not agree have the right to refuse to extend the validity of their Proposals.
- Eligibility of Sub-Consultants** 1.12 In case a shortlisted Consultant intends to associate with Consultants who have not been shortlisted and/or individual expert(s), such other Consultants and/or individual expert(s) shall be subject to the eligibility criteria set forth in the Guidelines.
- 2. Clarification and Amendment of RFP Documents** 2.1 Consultants may request a clarification of any of the RFP documents up to the number of days indicated in the Data Sheet before the proposal submission date. Any request for clarification must be sent in writing, or by standard electronic means to the Client's address indicated in the Data Sheet. The Client will respond in writing, or by standard electronic means and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all Consultants. Should the Client deem it necessary to amend the RFP as a result of a clarification, it shall do so following the procedure under para. 2.2.
- 2.2 At any time before the submission of Proposals, the Client

may amend the RFP by issuing an addendum in writing or by standard electronic means. The addendum shall be sent to all Consultants and will be binding on them. Consultants shall acknowledge receipt of all amendments. To give Consultants reasonable time in which to take an amendment into account in their Proposals the Client may, if the amendment is substantial, extend the deadline for the submission of Proposals.

### **3. Preparation of Proposals**

3.1 The Proposal (see para. 1.2), as well as all related correspondence exchanged by the Consultants and the Client, shall be written in the language (s) specified in the Data Sheet.

3.2 In preparing their Proposal, Consultants are expected to examine in detail the documents comprising the RFP. Material deficiencies in providing the information requested may result in rejection of a Proposal.

3.3 While preparing the Technical Proposal, Consultants must give particular attention to the following:

(a) If a shortlisted Consultant considers that it may enhance its expertise for the assignment by associating with other Consultants in a joint venture or sub-consultancy, it may associate with either (a) non-shortlisted Consultant(s), or (b) shortlisted Consultants if so indicated in the Data Sheet. A shortlisted Consultant must first obtain the approval of the Client if it wishes to enter into a joint venture with any other shortlisted Consultant(s). In case of association with non-shortlisted Consultant(s), the shortlisted Consultant shall act as association leader. Any associations must be clearly indicated in the technical proposal. In case of a joint venture, all partners shall be jointly and severally liable and shall indicate who will act as the leader of the joint venture.

(b) For fixed-budget-based assignments, the available budget is given in the Data Sheet, and the Financial Proposal shall not exceed this budget.

(c) Alternative professional staff shall not be proposed, and only one curriculum vitae (CV) may be submitted for each position.

### **Technical Proposal Format and Content**

3.4 The Technical Proposal shall provide the information indicated in the following paras from (a) to (g) using the attached Standard Forms (Section 3). Paragraph (c) (ii) indicates the recommended number of pages for the description of the approach, methodology and work plan

of the Technical Proposal. A page is considered to be one printed side of A4 or letter size paper.

- (a) A brief description of the Consultants' organization and an outline of recent experience of the Consultants (each partner in case of joint venture) on assignments of a similar nature is required in Form TECH-2 of Section 3. For each assignment, the outline should indicate the names of Sub-Consultants/ Professional staff who participated, duration of the assignment, agreement amount, and Consultant's involvement. Information should be provided only for those assignments for which the Consultant was legally engaged by the Client as a firm or as one of the major firms within a joint venture. Assignments completed by individual Professional staff working privately or through other consulting firms cannot be claimed as the experience of the Consultant, or that of the Consultant's associates, but can be claimed by the Professional staff themselves in their CVs. Consultants should be prepared to substantiate the claimed experience if so requested by the Client.
- (b) Comments and suggestions on the Terms of Reference including workable suggestions that could improve the quality/ effectiveness of the assignment; and on requirements for counterpart staff and facilities including: administrative support, office space, local transportation, equipment, data, etc. to be provided by the Client (Form TECH-3 of Section 3).
- (c) A description of the approach, methodology and work plan for performing the assignment covering the following subjects: technical approach and methodology, work plan, and organization and staffing schedule. Guidance on the content of this section of the Technical Proposals is provided under Form TECH-4 of Section 3. The work plan should be consistent with the Work Schedule (Form TECH-8 of Section 3) which will show in the form of a bar chart the timing proposed for each activity.
- (d) The list of the proposed Professional staff team by area of expertise, the position that would be assigned to each staff team member, and their tasks (Form TECH-5 of Section 3).
- (e) Estimates of the staff input (staff-months of

foreign and local professionals) needed to carry out the assignment (Form TECH-7 of Section 3). The staff-months input should be indicated separately for home office and field activities, and for foreign and local Professional staff.

- (f) CVs of the Professional staff signed by the staff themselves or by the authorized representative of the Professional Staff (Form TECH-6 of Section 3) along with their Computerized National Identity Card numbers (if local) or Passport numbers (if foreign).
- (g) A detailed description of the proposed methodology and staffing for training, if the Data Sheet specifies training as a specific component of the assignment.

3.5 The Technical Proposal shall not include any financial information. A Technical Proposal containing financial information may be declared non responsive.

## **Financial Proposals**

3.6 The Financial Proposal shall be prepared using the attached Standard Forms (Section 4). It shall list all costs associated with the assignment, including (a) remuneration for staff (foreign and local, in the field and at the Consultants' home office), and (b) reimbursable expenses indicated in the Data Sheet. If appropriate, these costs should be broken down by activity and, if appropriate, into foreign and local expenditures. All activities and items described in the Technical Proposal must be priced separately; activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items.

## **Taxes**

3.7 The Consultant may be subject to local taxes (such as: value added or sales tax or income taxes on non resident Foreign Personnel, duties, fees, levies) on amounts payable by the Client under the Agreement. The Client will state in the Data Sheet if the Consultant is subject to payment of any taxes. Any such amounts shall not be included in the Financial Proposal as they will not be evaluated, but they will be discussed at agreement negotiations, and applicable amounts will be included in the Agreement.

3.8 Consultants should express the price of their services in Pakistan Rupees. Prices in other currencies should be converted to Pakistan Rupees using the selling rates of exchange given by the State Bank of Pakistan for the date indicated in the Data Sheet.

- 3.9 Commissions and gratuities, if any, paid or to be paid by Consultants and related to the assignment will be listed in the Financial Proposal Form FIN-1 of Section 4.
- 4. Submission, Receipt, and Opening of Proposals**
- 4.1 The original proposal (Technical Proposal and, if required, Financial Proposal; see para. 1.2) shall contain no interlineations or overwriting, except as necessary to correct errors made by the Consultants themselves. The person who signed the proposal must initial such corrections. Submission letters for both Technical and Financial Proposals should respectively be in the format of TECH-1 of Section 3, and FIN-1 of Section 4.
- 4.2 An authorized representative of the Consultants shall initial all pages of the original Technical and Financial Proposals. The authorization shall be in the form of a written power of attorney accompanying the Proposal or in any other form demonstrating that the representative has been duly authorized to sign. The signed Technical and Financial Proposals shall be marked “ORIGINAL”.
- 4.3 The Technical Proposal shall be marked “ORIGINAL” or “COPY” as appropriate. The Technical Proposals shall be sent to the addresses referred to in para. 4.5 and in the number of copies indicated in the Data Sheet. All required copies of the Technical Proposal are to be made from the original. If there are discrepancies between the original and the copies of the Technical Proposal, the original governs.
- 4.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked “TECHNICAL PROPOSAL” Similarly, the original Financial Proposal (if required under the selection method indicated in the Data Sheet) shall be placed in a sealed envelope clearly marked “FINANCIAL PROPOSAL” followed by the name of the assignment, and with a warning “**DO NOT OPEN WITH THE TECHNICAL PROPOSAL.**” The envelopes containing the Technical and Financial Proposals shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and title of the Assignment, clearly marked “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE OFFICIAL APPOINTED, BEFORE SUBMISSION DEADLINE**”. The Client shall not be responsible for misplacement, losing or premature opening if the outer envelope is not sealed and/or marked as stipulated. This circumstance may be case for Proposal rejection. If the Financial Proposal is not submitted in a separate sealed envelope duly marked as indicated above, this will constitute grounds for declaring

the Proposal non-responsive.

- 4.5 The Proposals must be sent to the address/addresses indicated in the Data Sheet and received by the Client no later than the time and the date indicated in the Data Sheet, or any extension to this date in accordance with para. 2.2. Any proposal received by the Client after the deadline for submission shall be returned unopened.
- 4.6 The Client shall open the Technical Proposal immediately after the deadline for their submission. The envelopes with the Financial Proposal shall remain sealed and securely stored.

## **5. Proposal Evaluation**

- 5.1 From the time the Proposals are opened to the time the Agreement is awarded, the Consultants should not contact the Client on any matter related to its Technical and/or Financial Proposal. Any effort by Consultants to influence the Client in the examination, evaluation, ranking of Proposals, and recommendation for award of Agreement may result in the rejection of the Consultants' Proposal.

Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation is concluded.

### **Evaluation of Technical Proposals**

- 5.2 The evaluation committee shall evaluate the Technical Proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria, subcriteria, and point system specified in the Data Sheet. Each responsive Proposal will be given a technical score (St). A Proposal shall be rejected at this stage if it does not respond to important aspects of the RFP, and particularly the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Data Sheet.

### **Financial Proposals for QBS**

- 5.3 Following the ranking of technical Proposals, when selection is based on quality only (QBS), the first ranked Consultant is invited to negotiate its proposal and the Agreement in accordance with the instructions given under para. 6 of these Instructions.

### **Public Opening and Evaluation of Financial Proposals (only for QCBS, Fixed Budget Selection, and Least-Cost Selection)**

- 5.4 After the technical evaluation is completed, the Client shall inform the Consultants who have submitted proposals the technical scores obtained by their Technical Proposals, and shall notify those Consultants whose Proposals did not meet the minimum qualifying mark or were considered non responsive to the RFP and TOR, that their Financial Proposals will be returned unopened after completing the selection process. The Client shall simultaneously notify in writing Consultants that have secured the minimum qualifying mark, the date, time and

location for opening the Financial Proposals. Consultants' attendance at the opening of Financial Proposals is optional. The opening date shall be set so as to allow interested Consultants sufficient time to make arrangements for attending the opening.

- 5.5 Financial Proposals shall be opened publicly in the presence of the Consultants' representatives who choose to attend. The name of the Consultants, and the technical scores of the Consultants shall be read aloud. The Financial Proposal of the Consultants who met the minimum qualifying mark will then be inspected to confirm that they have remained sealed and unopened. These Financial Proposals shall be then opened, and the total prices read aloud and recorded.
- 5.6 The Evaluation Committee will correct any computational errors. When correcting computational errors, in case of discrepancy between a partial amount and the total amount, or between word and figures, the formers will prevail. In addition to the above corrections, as indicated under para. 3.6, activities and items described in the Technical Proposal but not priced, shall be assumed to be included in the prices of other activities or items. In case an activity or line item is quantified in the Financial Proposal differently from the Technical Proposal, (i) if the Time-Based form of agreement has been included in the RFP, the Evaluation Committee shall correct the quantification indicated in the Financial Proposal so as to make it consistent with that indicated in the Technical Proposal, apply the relevant unit price included in the Financial Proposal to the corrected quantity and correct the total Proposal cost, (ii) if the Lump-Sum form of agreement has been included in the RFP, no corrections are applied to the Financial Proposal in this respect.
- 5.7 In case of QCBS, the lowest evaluated Financial Proposal (Fm) will be given the maximum financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in the Data Sheet. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in the Data Sheet:  $S = St \times T\% + Sf \times P\%$ . The firm achieving the highest combined technical and financial score will be invited for negotiations.
- 5.8 In the case of Fixed-Budget Selection, the Client will select the firm that submitted the highest ranked Technical Proposal within the budget. Proposals that exceed the

indicated budget will be rejected. In the case of the Least-Cost Selection, the Client will select the lowest proposal among those that passed the minimum technical score. In both cases the evaluated proposal price according to para. 5.6 shall be considered, and the selected firm is invited for negotiations.

- 6. Negotiations**
- 6.1 Negotiations will be held at the date and address indicated in the Data Sheet. The invited Consultant will, as a prerequisite for attendance at the negotiations, confirm availability of all Professional staff. Failure in satisfying such requirements may result in the Client proceeding to negotiate with the next-ranked Consultant. Representatives conducting negotiations on behalf of the Consultant must have written authority to negotiate and conclude an Agreement.
- Technical negotiations**
- 6.2 Negotiations will include a discussion of the Technical Proposal, the proposed technical approach and methodology, work plan, and organization and staffing, and any suggestions made by the Consultant to improve the Terms of Reference. The Client and the Consultants will finalize the Terms of Reference, staffing schedule, work schedule, logistics, and reporting. These documents will then be incorporated in the Agreement as “Description of Services”. Special attention will be paid to clearly defining the inputs and facilities required from the Client to ensure satisfactory implementation of the assignment. The Client shall prepare minutes of negotiations which will be signed by the Client and the Consultant.
- Financial negotiations**
- 6.3 If applicable, it is the responsibility of the Consultant, before starting financial negotiations, to determine the tax amount to be paid by the Consultant under the Agreement. The financial negotiations will reflect the agreed technical modifications in the cost of the services. In the cases of QCBS, Fixed-Budget Selection, and the Least-Cost Selection methods, financial negotiations can involve the remuneration rates for staff or other proposed unit rates if there is a revision of scope or if the bid rate exceeds the available budget. For other methods, Consultants will provide the Client with the information on remuneration rates described in the Appendix attached to Section 4 - Financial Proposal - Standard Forms of this RFP.
- Availability of Professional staff/experts**
- 6.4 Having selected the Consultant on the basis of, among other things, an evaluation of proposed Professional staff, the Client expects to negotiate an Agreement on the basis of the Professional staff named in the Proposal. Before agreement negotiations, the Client will require assurances

that the Professional staff will be actually available. The Client will not consider substitutions during agreement negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. If this is not the case and if it is established that Professional staff were offered in the proposal without confirming their availability, the Consultant may be disqualified. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and be submitted by the Consultant within the period of time specified in the letter of invitation to negotiate.

- |                                       |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------------------------------------|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Conclusion of the negotiations</b> | 6.5 | Negotiations will conclude with a review of the draft Agreement. To complete negotiations the Client and the Consultant will initial the agreed Agreement. If negotiations fail, the Client will invite the Consultant whose Proposal received the second highest score to negotiate an Agreement.                                                                                                                                                                                                                       |
| <b>7. Award of Agreement</b>          | 7.1 | After completing negotiations the Client shall award the Agreement to the selected Consultant and publish details on the Planning & Development Department website and promptly notify all Consultants who have submitted proposals. After Agreement signature, the Client shall return the unopened Financial Proposals to the unsuccessful Consultants.                                                                                                                                                                |
|                                       | 7.2 | The Consultant is expected to commence the assignment on the date and at the location specified in the Data Sheet.                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>8. Confidentiality</b>             | 8.1 | Information relating to evaluation of Proposals and recommendations concerning awards shall not be disclosed to the Consultants who submitted the Proposals or to other persons not officially concerned with the process, until the publication of the award of Agreement. The undue use by any Consultant of confidential information related to the process may result in the rejection of its Proposal and may be subject to the provisions of the Consultant Selection Guidelines relating to fraud and corruption. |

# Instructions to Consultants

## DATA SHEET

*[Comments in brackets provide guidance for the preparation of the Data Sheet; they should not appear on the final RFP to be delivered to the shortlisted Consultants]*

Paragraph Reference	
1.1	Name of the Client: _____ _____ Method of selection: _____
1.2	Financial Proposal to be submitted together with Technical Proposal: Yes ___ No ___ Name of the assignment is: _____
1.3	A pre-proposal conference will be held: Yes ___ No ___ <i>[If yes, indicate date, time, and venue]</i> _____ _____ _____ The Client's representative is: _____ Address: _____ Telephone: _____ Facsimile: _____ E-mail: _____
1.4	The Client will provide the following inputs and facilities: _____ _____ _____ _____
1.6.1 (a)	The Client envisages the need for continuity for downstream work: Yes ___ No ___ <i>[If yes, outline in the TOR the scope, nature, and timing of future work]</i>
1.12	Proposals must remain valid _____ <i>[Insert number: normally between 60 and 90 days]</i> days after the submission date, i.e. until: _____ <i>[Insert date]</i>
2.1	Clarifications may be requested not later than [Insert number] days before the submission date. The address for requesting clarifications is: Facsimile: _____ E-mail: _____

3.1	Proposals shall be submitted in the following language: _____ [English, or English and Urdu]
3.3 (a)	Shortlisted Consultants may associate with other shortlisted Consultants: Yes ____ No ____
3.3 (b)	[In the case of Selection under a Fixed Budget (FBS), select the following sentence] The Financial Proposal shall not exceed the available budget of: _____
3.4 (a)	Firms should submit details of _____ [Number of assignments] assignments.
3.4 (f)	CVs should contain details on _____ [Number of assignments] projects done by the individual in the past _____ [5 or 10] years.
3.4 (g)	Training is a specific component of this assignment: Yes ____ No ____ [If yes, provide appropriate information]: _____ _____
3.6	<p>[List the applicable Reimbursable expenses in foreign and in local currency. A sample list is provided below for guidance: items that are not applicable should be deleted, others may be added. If the Client wants to define ceilings for unit prices of certain Reimbursable expenses, such ceilings should be indicated in this SC 3.6]</p> <ol style="list-style-type: none"> <li>(1) a per diem allowance in respect of Personnel of the Consultant for every day in which the Personnel shall be absent from the home office;</li> <li>(2) cost of necessary travel, including transportation of the Personnel by the most appropriate means of transport and the most direct practicable route;</li> <li>(3) cost of office accommodation, investigations and surveys;</li> <li>(4) cost of applicable international or local communications such as the use of telephone and facsimile required for the purpose of the Services;</li> <li>(5) cost, rental and freight of any instruments or equipment required to be provided by the Consultants for the purposes of the Services;</li> <li>(6) cost of printing and dispatching of the reports to be produced for the Services;</li> <li>(7) other allowances where applicable and provisional or fixed sums (if any); and</li> <li>(8) cost of such further items required for purposes of the Services not covered in the foregoing.</li> </ol>

3.7	<p>Amounts payable by the Client to the Consultant under the agreement to be subject to local taxation: Yes ____ No ____</p> <p>If affirmative, the Client will <i>[indicate which of the two options applies]</i>:</p> <p>(a) reimburse the Consultant for any such taxes paid by the Consultant: <i>[insert Yes or No]</i>; or</p> <p>(b) pay such taxes on behalf of the Consultant: <i>[insert Yes or No]</i></p>																																				
3.8	<p>The date of exchange rates is: _____</p>																																				
4.3	<p>Consultant must submit the original and ____ <i>[Insert number]</i> copies of the Technical Proposal, and the original of the Financial Proposal.</p>																																				
4.5	<p>The Proposal submission address is: _____</p> <p>_____</p> <p>Proposals must be submitted no later than the following date and time: _____</p> <p>_____</p>																																				
5.2 (a)	<p>Criteria, sub-criteria, and point system for the evaluation of Technical Proposals are (<i>using Handbook weights – can be adjusted in conformance with the CSG</i>):</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 80%;"></th> <th style="text-align: right; border-bottom: 1px solid black;"><u>Points</u></th> </tr> </thead> <tbody> <tr> <td>(i) Company Profile:</td> <td style="text-align: right;">[100]</td> </tr> <tr> <td style="padding-left: 20px;">a) Number of similar assignments</td> <td style="text-align: right;">[45]</td> </tr> <tr> <td style="padding-left: 20px;">b) Value of similar assignments</td> <td style="text-align: right;">[45]</td> </tr> <tr> <td style="padding-left: 20px;">c) Organizational structure</td> <td style="text-align: right;">[10]</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black;">Total = A<sub>1</sub></td> </tr> <tr> <td> (ii) Project Team:</td> <td style="text-align: right; vertical-align: bottom;"> [100]</td> </tr> <tr> <td style="padding-left: 20px;">a) Team Leader</td> <td style="text-align: right;">[Insert points]</td> </tr> <tr> <td style="padding-left: 20px;">b) <i>[Insert position or discipline as appropriate]</i></td> <td style="text-align: right;">[Insert points]</td> </tr> <tr> <td style="padding-left: 20px;">c) <i>[Insert position or discipline as appropriate]</i></td> <td style="text-align: right;">[Insert points]</td> </tr> <tr> <td style="padding-left: 20px;">d) <i>[Insert position or discipline as appropriate]</i></td> <td style="text-align: right;">[Insert points]</td> </tr> <tr> <td style="padding-left: 20px;">e) <i>[Insert position or discipline as appropriate]</i></td> <td style="text-align: right;">[Insert points]</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black;">Total = A<sub>2</sub></td> </tr> <tr> <td colspan="2" style="padding-top: 20px;"> <p>The number of points to be assigned to each of the above positions or disciplines shall be determined considering the following three subcriteria and relevant score:</p> <table style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 80%;">1) Education and qualifications</td> <td style="text-align: right;">[25]</td> </tr> <tr> <td>2) Relevant background</td> <td style="text-align: right;">[70]</td> </tr> <tr> <td>3) Time with firm</td> <td style="text-align: right;">[5]</td> </tr> <tr> <td style="text-align: right; border-top: 1px solid black;">Total score:</td> <td style="text-align: right; border-top: 1px solid black;">100</td> </tr> </tbody> </table> </td> </tr> </tbody> </table>		<u>Points</u>	(i) Company Profile:	[100]	a) Number of similar assignments	[45]	b) Value of similar assignments	[45]	c) Organizational structure	[10]		Total = A <sub>1</sub>	 (ii) Project Team:	 [100]	a) Team Leader	[Insert points]	b) <i>[Insert position or discipline as appropriate]</i>	[Insert points]	c) <i>[Insert position or discipline as appropriate]</i>	[Insert points]	d) <i>[Insert position or discipline as appropriate]</i>	[Insert points]	e) <i>[Insert position or discipline as appropriate]</i>	[Insert points]		Total = A <sub>2</sub>	<p>The number of points to be assigned to each of the above positions or disciplines shall be determined considering the following three subcriteria and relevant score:</p> <table style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 80%;">1) Education and qualifications</td> <td style="text-align: right;">[25]</td> </tr> <tr> <td>2) Relevant background</td> <td style="text-align: right;">[70]</td> </tr> <tr> <td>3) Time with firm</td> <td style="text-align: right;">[5]</td> </tr> <tr> <td style="text-align: right; border-top: 1px solid black;">Total score:</td> <td style="text-align: right; border-top: 1px solid black;">100</td> </tr> </tbody> </table>		1) Education and qualifications	[25]	2) Relevant background	[70]	3) Time with firm	[5]	Total score:	100
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	<p>(ii) Approach &amp; Methodology: [100]</p> <p>a) Understanding &amp; Innovativeness [40]</p> <p>b) Methodology &amp; Work plan [60]</p> <p style="text-align: right;">Total = <math>\overline{A_3}</math></p> $\text{Technical Score}^* = \frac{A_1[W_1]}{100} + \frac{A_2[W_2]}{100} + \frac{A_3[W_3]}{100}$ <p style="text-align: center;">[* Replace weights (<math>W_x</math>) from Appendix B of CSG]</p> <p>The minimum technical score <math>St</math> required to pass is: _____ Points [Insert number of points]</p>
5.7	<p>The formula for determining the financial scores is the following: [Insert either the following formula]</p> <p><math>Sf = 100 \times Fm / F</math>, in which <math>Sf</math> is the financial score, <math>Fm</math> is the lowest price and <math>F</math> the price of the proposal under consideration.</p> <p>The weights given to the Technical (T) and Financial Proposals (F) are:  <math>T = \underline{\hspace{2cm}}</math> [Insert weight: normally 0.8], and  <math>P = \underline{\hspace{2cm}}</math> [Insert weight: normally 0.2]</p>
6.1	<p>Expected date and address for agreement negotiations:</p> <p>_____</p>
7.2	<p>Expected date for commencement of consulting services</p> <p>_____ [Insert date] at:  _____ [Insert location]</p>

## Section 3: Technical Proposal - Standard Forms

*[Comments in brackets [ ] provide guidance to the shortlisted Consultants for the preparation of their Technical Proposals; they should not appear on the Technical Proposals to be submitted.]*

Refer to Reference Paragraph 3.4 of the Data Sheet for format of Technical Proposal to be submitted, and paragraph 3.4 of Section 2 of the RFP for Standard Forms required and number of pages recommended.

- TECH-1 Technical Proposal Submission Form
- TECH-2 Consultant's Organization and Experience
  - A Consultant's Organization
  - B Consultant's Experience
- TECH-3 Comments or Suggestions on the Terms of Reference and on Counterpart Staff and Facilities to be provided by the Client
  - A On the Terms of Reference
  - B On the Counterpart Staff and Facilities
- TECH-4 Description of the Approach, Methodology and Work Plan for Performing the Assignment
- TECH-5 Team Composition and Task Assignments
- TECH-6 Curriculum Vitae (CV) for Proposed Professional Staff
- TECH-7 Staffing Schedule
- TECH-8 Work Schedule

## FORM TECH-1 TECHNICAL PROPOSAL SUBMISSION FORM

---

[Location, Date]

To: [Name and address of Client]

Dear Sir,

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope<sup>1</sup>.

We are submitting our Proposal in association with: [Insert a list with full name and address of each associated Consultant]<sup>2</sup>

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

If negotiations are held during the period of validity of the Proposal, i.e., before the date indicated in Paragraph Reference 1.12 of the Data Sheet, we undertake to negotiate on the basis of the proposed staff. Our Proposal is binding upon us and subject to the modifications resulting from Agreement negotiations.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph Reference 7.2 of the Data Sheet.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

---

1 [In case Paragraph Reference 1.2 of the Data Sheet requires to submit a Technical Proposal only, replace this sentence with: "We are hereby submitting our Proposal, which includes this Technical Proposal only."]

2 [Delete in case no association is foreseen.]

## FORM TECH-2 CONSULTANT'S ORGANIZATION AND EXPERIENCE

---

### A - Consultant's Organization

*[Provide here a brief (two pages) description of the background and organization of your firm/entity (including organogram) and each associate for this assignment.]*

Firm Background:

Chief Executive Officer:

Chief Financial Officer:

Chief Technical Officer (or equivalent):

## B - Consultant's Experience

*[Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this Assignment. Use maximum 20 pages. Please provide Client's certification and/or evidence of the contract agreement.]*

Assignment name:	Value of the agreement (in current PKR or US\$):
Country: Location within country:	Duration of assignment (months):
Name of Client:	Total N <sup>o</sup> of staff-months (by your firm) on the assignment:
Start date (month/year): Completion date (month/year):	Value of consultancy services provided by your firm under the agreement (in current PKR or US\$):
Name of associated Consultants, if any:	N <sup>o</sup> of professional staff-months provided by associated Consultants:
Name of senior professional staff of your firm involved and functions performed (indicate most significant profiles such as Project Director/Coordinator, Team Leader):	
Narrative description of Project:	
Description of actual services provided by your staff within the assignment:	

**FORM TECH-3 COMMENTS AND SUGGESTIONS ON THE TERMS OF  
REFERENCE AND ON COUNTERPART STAFF AND FACILITIES TO BE PROVIDED  
BY THE CLIENT**

---

**A - On the Terms of Reference**

*[Present and justify here any modifications or improvement to the Terms of Reference you are proposing to improve performance in carrying out the assignment (such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities). Such suggestions should be concise and to the point, and incorporated in your Proposal.]*

## **B - On Counterpart Staff and Facilities**

*[Comment here on counterpart staff and facilities to be provided by the Client according to Paragraph Reference 1.4 of the Data Sheet including: administrative support, office space, local transportation, equipment, data, etc.]*

## FORM TECH-4 DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

---

*[Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal (50 pages, inclusive of charts and diagrams) divided into the following three chapters:]*

- a) Technical Approach and Methodology,
- b) Work Plan, and
- c) Organization and Staffing,

a) Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.

b) Work Plan. In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Client), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form TECH-8.

c) Organization and Staffing. In this chapter you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.]

**FORM TECH-5 TEAM COMPOSITION AND TASK ASSIGNMENTS**

<b>Professional Staff</b>					
Name of Staff	CNIC No./Passport No.	Firm	Area of Expertise	Position Assigned	Task Assigned

**FORM TECH-6 CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF**

**1. Proposed Position** [*only one candidate shall be nominated for each position*]: \_\_\_\_\_

**2. Name of Firm** [*Insert name of firm proposing the staff*]: \_\_\_\_\_

**3. Name of Staff** [*Insert full name*]: \_\_\_\_\_

**4. Date of Birth:** \_\_\_\_\_ **Nationality:** \_\_\_\_\_

**5. CNIC No (if Pakistani):** \_\_\_\_\_ **or Passport No:** \_\_\_\_\_

**6. Education :**

<i>Degree</i>	<i>Major/Minor</i>	<i>Institution</i>	<i>Date (MM/YYYY)</i>

**7. Membership of Professional Associations:** \_\_\_\_\_

**8. Other Training** [*Indicate significant training since degrees under 6 - Education were obtained*]: \_\_\_\_\_

**9. Languages** [*For each language indicate proficiency: good, fair, or poor in speaking, reading, and writing*]: \_\_\_\_\_

**10. Employment Record** [*Starting with present position, list in reverse order every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, positions held.*]:

<i>Employer</i>	<i>Position</i>	<i>From (MM/YYYY)</i>	<i>To (MM/YYYY)</i>

## 11. Detailed Tasks Assigned

*[List all tasks to be performed under this assignment]*

## 12. Work Undertaken that Best Illustrates Capability to Handle the Tasks Assigned

*[Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 11.]*

- 1) Name of assignment or project: \_\_\_\_\_  
Year: \_\_\_\_\_  
Location: \_\_\_\_\_  
Client: \_\_\_\_\_  
Main project features: \_\_\_\_\_  
Positions held: \_\_\_\_\_  
Activities performed: \_\_\_\_\_
  
- 2) Name of assignment or project: \_\_\_\_\_  
Year: \_\_\_\_\_  
Location: \_\_\_\_\_  
Client: \_\_\_\_\_  
Main project features: \_\_\_\_\_  
Positions held: \_\_\_\_\_  
Activities performed: \_\_\_\_\_

3) Name of assignment or project: _____
Year: _____
Location: _____
Client: _____
Main project features: _____
Positions held: _____
Activities performed: _____
<i>[Unroll the project details group and continue numbering (4, 5, ...) as many times as is required]</i>

**13. Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Signature of staff member or authorized representative of the staff]* *Day/Month/Year*

Full name of authorized representative: \_\_\_\_\_

# FORM TECH-7 STAFFING SCHEDULE<sup>1</sup>



Full time input  
Part time input

Year: _____		Staff input (in the form of a bar chart) <sup>2</sup>												Total staff-month input		
N°	Name of Staff	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Home	Field <sup>3</sup>	Total
		<b>Foreign</b>		[Home] [Field]												
1																
2																
3																
n																
<b>Subtotal</b>																
<b>Local</b>		[Home] [Field]														
1																
2																
n																
<b>Subtotal</b>																
<b>Total</b>																

- 1 For Professional Staff the input should be indicated individually; for Support Staff it should be indicated by category (e.g.: draftsmen, clerical staff, etc.).
- 2 Months are counted from the start of the assignment. For each staff indicate separately staff input for home and field work.
- 3 Field work means work carried out at a place other than the Consultant's home office.

## FORM TECH-8 WORK SCHEDULE

**Year:** \_\_\_\_\_

N°	Activity <sup>1</sup>	Months <sup>2</sup>											
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1													
2													
3													
4													
5													
n													

1 Indicate all main activities of the assignment, including delivery of reports (e.g.: inception, interim, and final reports), and other benchmarks such as Client approvals. For phased assignments indicate activities, delivery of reports, and benchmarks separately for each phase.  
 2 Duration of activities shall be indicated in the form of a bar chart.

## Section 4: Financial Proposal - Standard Forms

*[Comments in brackets [ ] provide guidance to the shortlisted Consultants for the preparation of their Financial Proposals; they should not appear on the Financial Proposals to be submitted.]*

Financial Proposal Standard Forms shall be used for the preparation of the Financial Proposal according to the instructions provided under para. 3.6 of Section 2. Such Forms are to be used whichever is the selection method indicated in para. 4 of the Letter of Invitation.

*[The Appendix “Financial Negotiations - Breakdown of Remuneration Rates” is to be only used for financial negotiations when Quality-Based Selection, Selection Based on Qualifications, or Single-Source Selection method is adopted, according to the indications provided under para. 6.3 of Section 2.]*

FIN-1 Financial Proposal Submission Form

FIN-2 Summary of Costs

FIN-3 Breakdown of Costs by Activity

FIN-4 Breakdown of Remuneration

FIN-5 Reimbursable expenses

Appendix: Financial Negotiations - Breakdown of Remuneration Rates

## FORM FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM

---

[Location, Date]

To: [Name and address of Client]

Dear Sir,

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal. Our attached Financial Proposal is for the sum of [Insert amount(s) in words and figures<sup>1</sup>]. This amount is exclusive of the taxes, which shall be identified during negotiations and shall be added to the above amount.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Agreement negotiations, up to expiration of the validity period of the Proposal, i.e. before the date indicated in Paragraph Reference 1.12 of the Data Sheet.

No commissions or gratuities have been or are to be paid by us to agents relating to this Proposal and Agreement execution.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

---

## FORM FIN-2 SUMMARY OF COSTS

---

<b>Item</b>	<b>Costs</b>	
	<i>[Indicate Foreign Currency # 1]</i> <sup>1</sup>	Pak Rupees
Total Costs of Financial Proposal <sup>2</sup>		

- 1 Indicate between brackets the name of the foreign currency.
- 2 Indicate the total costs, net of local taxes, to be paid by the Client in each currency. Such total costs must coincide with the sum of the relevant Subtotals indicated in all Forms FIN-3 provided with the Proposal.

## FORM FIN-3 BREAKDOWN OF COSTS BY ACTIVITY<sup>1</sup>

<b>Group of Activities (Phase):</b> <sup>2</sup>  _____	<b>Description:</b> <sup>3</sup>  _____	
<b>Cost component</b>	<b>Costs</b>	
	<i>[Indicate Foreign Currency # 1]</i> <sup>4</sup>	Pak Rupees
Remuneration <sup>5</sup>		
Reimbursable Expenses <sup>5</sup>		
Subtotals		

- 1 Form FIN-3 shall be filled at least for the whole assignment. In case some of the activities require different modes of billing and payment (e.g.: the assignment is phased, and each phase has a different payment schedule), the Consultant shall fill a separate Form FIN-3 for each group of activities. For each currency, the sum of the relevant Subtotals of all Forms FIN-3 provided must coincide with the Total Costs of Financial Proposal indicated in Form FIN-2.
- 2 Names of activities (phase) should be the same as, or correspond to the ones indicated in the second column of Form TECH-8.
- 3 Short description of the activities whose cost breakdown is provided in this Form.
- 4 Indicate between brackets the name of the foreign currency.
- 5 For each currency, Remuneration and Reimbursable Expenses must respectively coincide with relevant Total Costs indicated in Forms FIN-4, and FIN-5.

## FORM FIN-4 BREAKDOWN OF REMUNERATION<sup>1</sup>

(This Form FIN-4 shall only be used when the Time-Based Form of Agreement has been included in the RFP)

<b>Group of Activities (Phase):</b> _____					
Name <sup>2</sup>	Position <sup>3</sup>	Staff-month Rate <sup>4</sup>	Input <sup>5</sup> (Staff-months)	[Indicate Foreign Currency # 1] <sup>6</sup>	Pak Rupees
<b>Foreign Staff</b>					
		[Home]			
		[Field]			
<b>Local Staff</b>					
		[Home]			
		[Field]			
<b>Total Costs</b>					

- 1 Form FIN-4 shall be filled for each of the Forms FIN-3 provided.
- 2 Professional Staff should be indicated individually; Support Staff should be indicated per category (e.g.: draftsmen, clerical staff).
- 3 Positions of Professional Staff shall coincide with the ones indicated in Form TECH-5.
- 4 Indicate separately staff-month rate and currency for home and field work.
- 5 Indicate, separately for home and field work, the total expected input of staff for carrying out the group of activities or phase indicated in the Form.
- 6 Indicate between brackets the name of the foreign currency. For each staff indicate the remuneration in the column of the relevant currency, separately for home and field work. Remuneration = Staff-month Rate x Input.



## FORM FIN-5 BREAKDOWN OF REIMBURSABLE EXPENSES<sup>1</sup>

(This Form FIN-5 shall only be used when the Time-Based Form of Agreement has been included in the RFP)

<b>Group of Activities (Phase):</b> _____						
N°	Description <sup>2</sup>	Unit	Unit Cost <sup>3</sup>	Quantity	[Indicate Foreign Currency # I] <sup>4</sup>	Pak Rupees
	Per diem allowances	Day				
	International flights <sup>5</sup>	Trip				
	Miscellaneous travel expenses	Trip				
	Communication costs between [ <i>Insert place</i> ] and [ <i>Insert place</i> ]					
	Drafting, reproduction of reports					
	Equipment, instruments, materials, supplies, etc.					
	Shipment of personal effects	Trip				
	Use of computers, software					
	Laboratory tests.					
	Subagreements					
	Local transportation costs					
	Office rent, clerical assistance					
	Training of the Client's personnel <sup>6</sup>					
<b>Total Costs</b>						

1 Form FIN-5 should be filled for each of the Forms FIN-3 provided, if needed.

2 Delete items that are not applicable or add other items according to Paragraph Reference 3.6 of the Data Sheet.

3 Indicate unit cost and currency.

4 Indicate between brackets the name of the foreign currency. Indicate the cost of each reimbursable item in the column of the relevant currency. Cost = Unit Cost x Quantity.

5 Indicate route of each flight, and if the trip is one- or two-ways.

6 Only if the training is a major component of the assignment, defined as such in the TOR

## FORM FIN-5 BREAKDOWN OF REIMBURSABLE EXPENSES

(This Form FIN-5 shall only be used when the Lump-Sum Form of Agreement has been included in the RFP. Information to be provided in this Form shall only be used to establish payments to the Consultant for possible additional services requested by the Client)

N°	Description <sup>1</sup>	Unit	Unit Cost <sup>2</sup>
	Per diem allowances	Day	
	International flights <sup>3</sup>	Trip	
	Miscellaneous travel expenses	Trip	
	Communication costs between [ <i>Insert place</i> ] and [ <i>Insert place</i> ]		
	Drafting, reproduction of reports		
	Equipment, instruments, materials, supplies, etc.		
	Shipment of personal effects	Trip	
	Use of computers, software		
	Laboratory tests.		
	Subagreements		
	Local transportation costs		
	Office rent, clerical assistance		
	Training of the Client's personnel <sup>4</sup>		

- 1 Delete items that are not applicable or add other items according to Paragraph Reference 3.6 of the Data Sheet.
- 2 Indicate unit cost and currency.
- 3 Indicate route of each flight, and if the trip is one- or two-ways.
- 4 Only if the training is a major component of the assignment, defined as such in the TOR.

## Appendix

### Financial Negotiations - Breakdown of Remuneration Rates

(Not to be used when cost is a factor in the evaluation of Proposals)

#### 1. Review of Remuneration Rates

1.1 The remuneration rates for staff are made up of salary, social costs, overheads, fee that is profit, and any premium or allowance paid for assignments away from headquarters. To assist the firm in preparing financial negotiations, a Sample Form giving a breakdown of rates is attached (no financial information should be included in the Technical Proposal). Agreed breakdown sheets shall form part of the negotiated agreement.

1.2 The Client is charged with the custody of government funds and is expected to exercise prudence in the expenditure of these funds. The Client is, therefore, concerned with the reasonableness of the firm's Financial Proposal, and, during negotiations, it expects to be able to review audited financial statements backing up the firm's remuneration rates, certified by an independent auditor. The firm shall be prepared to disclose such audited financial statements for the last three years, to substantiate its rates, and accept that its proposed rates and other financial matters are subject to scrutiny. Rate details are discussed below.

(i) Salary

This is the gross regular cash salary paid to the individual in the firm's home office. It shall not contain any premium for work away from headquarters or bonus (except where these are included by law or government regulations).

(ii) Bonus

Bonuses are normally paid out of profits. Because the Client does not wish to make double payments for the same item, staff bonuses shall not normally be included in the rates. Where the Consultant's accounting system is such that the percentages of social costs and overheads are based on total revenue, including bonuses, those percentages shall be adjusted downward accordingly. Any discussions on bonuses shall be supported by audited documentation, which shall be treated as confidential.

(iii) Social Costs

Social costs are the costs to the firm of staff's non-monetary benefits. These items include, *inter alia*, social security including pension, medical and life insurance costs, and the cost of a staff member being sick or on vacation. In this regard, the cost of leave for public holidays is not an acceptable social cost nor is the cost of leave taken during an assignment if no additional staff replacement has been provided. Additional leave taken at the end of an assignment in accordance with the firm's leave policy is acceptable as a social cost.

(iv) Cost of Leave

The principles of calculating the cost of total days leave per annum as a percentage of basic salary shall normally be as follows:

$$\text{Leave cost as percentage of salary}^1 = \frac{\text{total days leave} \times 100}{[365 - w - ph - v - s]}$$

It is important to note that leave can be considered a social cost only if the Client is not charged for the leave taken.

- (v) **Overheads**  
Overhead expenses are the firm's business costs that are not directly related to the execution of the assignment and shall not be reimbursed as separate items under the agreement. Typical items are home office costs (partner's time, non-billable time, time of senior staff monitoring the project, rent, support staff, research, staff training, marketing, etc.), the cost of staff not currently employed on revenue-earning projects, taxes on business activities and business promotion costs. During negotiations, audited financial statements, certified as correct by an independent auditor and supporting the last three years' overheads, shall be available for discussion, together with detailed lists of items making up the overheads and the percentage by which each relates to basic salary. The Client does not accept an add-on margin for social charges, overhead expenses, etc., for staff who are not permanent employees of the firm. In such case, the firm shall be entitled only to administrative costs and fee on the monthly payments charged for subcontracted staff.
- (vi) **Fee or Profit**  
The fee or profit shall be based on the sum of the salary, social costs, and overhead. If any bonuses paid on a regular basis are listed, a corresponding reduction in the profit element shall be expected. Fee or profit shall not be allowed on travel or other reimbursable expenses, unless in the latter case an unusually large amount of procurement of equipment is required. The firm shall note that payments shall be made against an agreed estimated payment schedule as described in the draft form of the agreement.
- (vii) **Away from Headquarters Allowance or Premium**  
Some Consultants pay allowances to staff working away from headquarters. Such allowances are calculated as a percentage of salary and shall not draw overheads or profit. Sometimes, by law, such allowances may draw social costs. In this case, the amount of this social cost shall still be shown under social costs, with the net allowance shown separately. For concerned staff, this allowance, where paid, shall cover home education, etc.; these and similar items shall not be considered as reimbursable costs.
- (viii) **Subsistence Allowances**  
Subsistence allowances are not included in the rates, but are paid separately and in pakistani currency. No additional subsistence is payable for dependents—the subsistence rate shall be the same for married and single team members.

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<sup>1</sup> Where *w* = weekends, *ph* = public holidays, *v* = vacation, and *s* = sick leave.

## **2. Reimbursable expenses**

- 2.1 The financial negotiations shall further focus on such items as out-of-pocket expenses and other reimbursable expenses. These costs may include, but are not restricted to, cost of surveys, equipment, office rent, supplies, international and local travel, computer rental, mobilization and demobilization, insurance, and printing. These costs may be either unit rates or reimbursable on the presentation of invoices, in foreign or local currency.

## **3. Government of Punjab Guarantee**

- 3.1 Payments to the firm, including payment of any advance based on cash flow projections, shall be made according to an agreed estimated schedule ensuring the firm regular payments in local and foreign currency, as long as the services proceed as planned.

## Sample Form

Consulting Firm:  
Assignment:

Date:

### Consultant's Representations Regarding Costs and Charges

We hereby confirm that:

- (a) the basic salaries indicated in the attached table are taken from the firm's payroll records and reflect the current salaries of the staff members listed which have not been raised other than within the normal annual salary increase policy as applied to all the firm's staff;
- (b) attached are true copies of the latest salary slips of the staff members listed;
- (c) the away from headquarters allowances indicated below are those that the Consultants have agreed to pay for this assignment to the staff members listed;
- (d) the factors listed in the attached table for social charges and overhead are based on the firm's average cost experiences for the latest three years as represented by the firm's financial statements; and
- (e) said factors for overhead and social charges do not include any bonuses or other means of profit-sharing.

\_\_\_\_\_  
*[Name of Consulting Firm]*

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### Consultant's Representations Regarding Costs and Charges

(Expressed in *[insert name of currency]*)

Personnel		1	2	3	4	5	6	7	8
Name	Position	Basic Salary per Working Month/Day/Year	Social Charges <sup>1</sup>	Overhead <sup>1</sup>	Subtotal	Fee <sup>2</sup>	Away from Headquarters Allowance	Proposed Fixed Rate per Working Month/Day/Hour	Proposed Fixed Rate per Working Month/Day/Hour <sup>1</sup>
Home Office									
Field									

1. Expressed as percentage of 1
2. Expressed as percentage of 4



Revision 1.05.7

This Handbook is accompanied by the  
'Consultant Selection Guidelines 2006'.

Both documents can be found online at  
**<http://www.pndpunjab.gov.pk>**

Your feedback on this Handbook is valued.  
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# Strategy for Procurement Reform in Punjab Government

12<sup>th</sup> April 2006

Project Management Unit,  
Planning & Development Department,  
Government of the Punjab

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# STRATEGY FOR PROCUREMENT REFORM IN PUNJAB GOVERNMENT

## 1 EXECUTIVE SUMMARY

Punjab will spend Rs. 51 billion on public sector development out of a total outlay of Rs. 252 billion in 2005-06. Procurement is fundamental to the way a large portion of this money is spent; and the performance of the public procurement system determines how effective the goods, works and services acquired with it are in meeting the government's obligations to its citizens. As the single largest buyer in the local market, the policies and practices followed by the government directly influence the performance, competitiveness and growth of local businesses. Increases in efficiency stemming from procurement reforms introduced in developing economies with similar characteristics as Punjab have achieved savings of 20%<sup>1</sup>. This makes the potential prize of similar procurement reforms in Punjab to be as high as yearly savings of Rs. 10 billion.

The Government of Punjab recognizes the challenges it faces in managing procurement through its existing framework and practices. Procurement in the current system is governed by rules, regulations and practices that vary across departments. Purchase processes are focused on the procurement transactions without looking at their outcome. Transactions are often subject to delays arising for multiplicity of approvals, inexperience of purchasers in the preparation of required documents, and absence of competent suppliers. There is no mechanism for collecting or consolidating purchase data to support informed decision making. Government is unable to leverage its position as the largest buyer to get better value for its spending. On the contrary, the difficulty of working with the government is demonstrated in the form of higher prices (risk premium) that it pays for goods and services in comparison to the private sector.

The primary goal of carrying out a review and reform of the existing procurement system is with a vision for creating a system that will yield improved efficiency and transparency along with substantial direct and indirect economic gains. Benefits are not just limited to savings but also to improvement in the way services are delivered to citizens. An effective system will translate in the delivery of more books, medicines, water purification plants or kilometers of road within the same budget in a shorter period of time with better quality. A transparent, modern procurement system will not only create economic opportunities for local suppliers helping to create healthy competition for goods and services acquired by the government but also encourage foreign direct investment which is a one of the key goals in Punjab's economic strategy.

Procurement reform needs to be considered in the broader context of public sector fund management from the identification of goods, services and capital assets to procure or dispose to the provision of finances to carry out the transaction. It is important to recognize the enormity of change associated in any major reform effort. Success depends on creating and sustaining support by top decision makers. This support can be sustained in the long term if there is effective monitoring of outcomes that can demonstrate the beneficial impact of the reform efforts.

Lessons from similar reform efforts in other countries show the importance of getting active involvement of all stakeholders including politicians, civil service, private sector and civil society organizations. The government needs to commit itself to putting in place a new procurement framework within two years. To get the process rolling, the following steps will be taken in the first four months:

1. A suitably empowered Central body created to develop and guide the implementation and operation of a new procurement framework which should include rules, regulations, procedures and standard bidding documents (draft for central body in 4 months)
2. Stakeholders identified and brought into a formal consultative process to ensure a strong buy-in from civil service, private sector and civil society organizations (hold workshop for stakeholder identification; finalize composition of stakeholder body: 2 months)
3. A procurement monitoring system developed and deployed to collect, analyze and disseminate procurement related data within government and to the public which will include web based procurement notices, and notices of award of all Government of Punjab contracts (design, develop and implement web-based application in 4 months)

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<sup>1</sup> Organization for Economic Cooperation and Development – *Good Practices on Strengthening Procurement Capacities in Developing Countries*, 2005

4. A complaints handling mechanism that independently provides speedy resolution to aggrieved bidders (agree on initial framework in 4 months)
5. A training and capacity building program prepared for individuals involved in procurement that follows international best practices through collaboration with leading international procurement institutions (identify programs and partner institutions for capacity development; agree framework and structure for training courses: 4 months)
6. An international conference on procurement reforms and capacity building held to exchange strategies and lessons learned from international successes (within 3 months)
7. Benchmarks created and a baseline study on the current status of procurement completed so as to establish key performance indicators to track progress in procurement reform (carry out initial study and consolidate recommendations from conference in 4 months)

## **2 CHALLENGES**

The challenges that lie ahead in the establishment of a new procurement regime are particularly complex because of the number of stakeholders involved in government procurement. International studies show that public procurement systems can involve up to 16 different stakeholders<sup>1</sup>, in varying degree of influence and importance. As a whole, procurement is more of a culture than a practice for these stakeholders, one that has rigid rules, traditions and perceptions, is deep-rooted and is averse to change. Four key areas that require attention are: framework, capacity, value, and transparency and integrity.

### **2.1 FRAMEWORK**

The public sector, in its current capacity, is severely limited in its ability to absorb modern procurement reforms. Institutional Framework refers to many different components of governance, such as, laws, institutions, human resources, management and administration. Some of the major capacity challenges that have to be considered in reform can be broadly defined in two areas: regulatory and institutional.

#### **2.1.1 Regulatory**

Public procurement in Punjab is dictated by a wide variety of laws, rules, regulations, codes and manuals. Over time, departments have introduced variations to procedures based on individual perceptions of public interest. Lack of access to standard bidding documents and the absence of uniform guidelines have led to inconsistent procurement practices across the government. Punjab lacks a unified regulatory framework approved by the legislature that deals with all kinds of government contracts, defines standard methods for dealing with core issues such as poor quality, delays, claims, dispute resolution and blacklisting of firms, and offers effective legal protection against collusion and corruption in the award of contracts.

The lack of a formal mechanism for the fair and speedy resolution of disputes is excessively detrimental to successful public procurement. Standard practice delegates this duty to the superior of the deciding official within the bureaucratic hierarchy. Appeals can be filed repeatedly, allowing bidders several opportunities to get a decision in their favor. Due to the discretionary power accorded to each official, bidders have an incentive to seek out means to influence their decisions. As a side-effect, this mechanism promotes personal relations between officials and bidders, opening public procurement to potential bias and favoritism. In cases where a bidder's objection pertains to law, the case can be taken to court, but this generally results in several years of litigation before a decision is reached.

#### **2.1.2 Institutional**

Public procurement is subject to several layers of scrutiny, evaluation, review and approval to check corruption and malpractice. Each procurement activity necessitates the involvement of several departments, each of which has its own procedures and priorities. Shortage of capacity in the key departments that are required to process government-wide procurement has resulted in a passive system that requires manual intervention by procuring departments to move their cases forward. The procurement process is further affected by over reliance on unstructured decision-making, which introduces an aspect of unpredictability, both in time and outcome.

### **2.2 CAPACITY AND TRAINING**

Procurement in the government is treated as a clerical administrative exercise and relies on the use of civil servants to carry out procurement functions. Responsibility is assigned on the basis of rank, and not

experience, knowledge or training, putting officers at a serious disadvantage when undertaking technical activities such as preparation of bid documents and RFPs, bid and proposal evaluation, and contract award. As part of the civil setup, such officials are regularly transferred, preventing the development of expertise and continuity required for efficient performance. Absence of adequate professional capacity poses constraints on procurement performance and the ability of the system to absorb new methods to bring about greater efficiency. There are no public or private institutions in the country that currently provide procurement related training.

## **2.3 VALUE**

Public sector procurement practices focus on processes and transactions instead of outcomes. In the absence of performance feedback the current system is unable to assess and promote quality, cost efficiency or timeliness in procurements.

### **2.3.1 Quality**

The general experience of public sector procurement has been that the quality of goods, services and capital works procured is consistently below average. This is despite the fact that the public exchequer pays a premium price for commodities. Low quality is a direct outcome of system emphasis on cost instead of value, lack of adequate protection from supplier exploitation, inability to learn from past mistakes, and the failure to nurture quality in the supplier market.

Some identified public practices that result in low quality procurement are: a) pre-registration that in consequence promotes collusion and restricts competition, b) audit procedures that only allow lowest-cost purchases which causes the procurement officials to take decisions only to avoid audit objections, c) procurement officials' inability to understand the nature of the item being procured or the market that they are approaching, and, d) poor specification requirements that make high-quality commodities compete against low-quality ones on a similar scale.

### **2.3.2 Time & Cost**

Delays are a pervasive problem in public sector procurement, especially during bid evaluation and selection. Due to inflation, these delays incur monetary costs on the government in two forms: a) bidders factor in expected cost escalation in bids, making the government pay a premium; and, b) work on procurement-dependent projects halts, yet recurrent expenses continue to be billed.

A number of unhealthy practices arise from constant delays: bidders jockey for positions, political pressures develop, and each stage of review becomes vulnerable to corruption and influence. At times, when the cumulative delay exceeds a given amount of time, the bid is invalidated and has to be re-tendered. This is a practice that discourages competitive bidders.

## **2.4 TRANSPARENCY & INTEGRITY**

Procurement procedures have over time evolved into protectionist practices that limit, or completely block access to information on procurement-related activity. Often, the inhibition to share data across departmental boundaries allows the supplier to take advantage and sell the same commodities to different departments at varying prices. Departments do not have information on the performance of various contractors across projects.

Lack of transparency in procurement has led to the creation of a closed circle of vendors who get government business due to preferential access to information, thus undermining the open tender system. Tenders are either not advertised widely enough or when they are advertised insufficient time is given to bidders to respond. New businesses wanting to access the public sector find it excessively difficult to enter the system, either due to exclusion or due to the high competitive costs imposed because of unfair sharing of information.

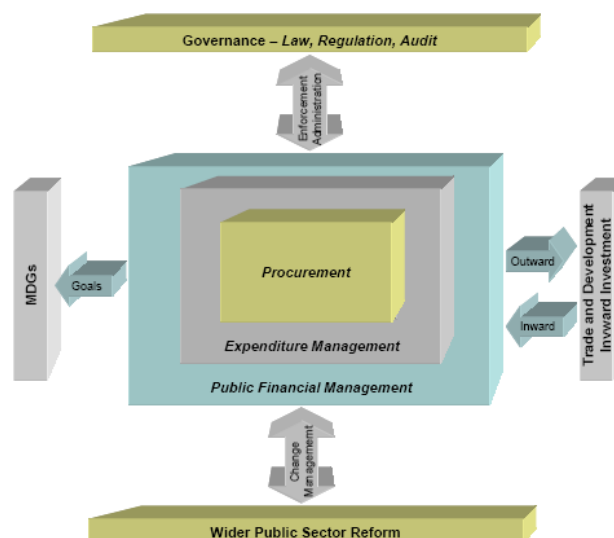
The absence of public data on governmental procurement activity has provided a cover to corrupt practices. Existing tendering and selection procedures are manipulated to award contracts to favorites, and regulatory mechanisms such as contract execution inspections are regularly influenced. Corruption is prevalent on both sides of business: on the supply side, bidders lean more heavily on bribes to win bids instead of honest competition, and on the demand side, such practices have become deeply entrenched in the institutional setup.

### 3 REFORM

Procurement is a complex and dynamic system. Sustainable reform in procurement requires change to be incorporated in a non-linear manner that is not limited to simply developing skills and processes. Three critical areas that need to be addressed are: a) mainstreaming to gain support for reforms; b) capacity development to tackle identified weaknesses; and, c) monitoring and evaluation to measure the value of the reforms.

#### 3.1 MAINSTREAMING

Sustainable improvement in procurement outcomes require not just political support to introduce reforms and see them through, but also stakeholder support to accept and implement the resulting changes. Even with the best of intentions on the part of reform-oriented governments, effective reforms have often fallen short of expected outcomes due to weak institutional support. Mainstreaming is required to gather critical stakeholder buy-in and accentuate the importance of procurement in the broader context of public financial management and delivery of government services.



##### 3.1.1 Steering Body

Successful reform will require a clearly designated central body to engage key stakeholders and create broad support for the reform. The central body will be responsible for steering the reform in consultation with the stakeholders and for developing a communication strategy that attracts greater attention to procurement issues and the need for reform. This body will take care of high-level coordination, knowledge management, and planning and monitoring of reform targets.

##### 3.1.2 Change Management

Overcoming the resistance to change is a major challenge in any reform effort. According to a formula published by Beckhard and Harris in 1987<sup>2</sup>, the only way to overcome the natural resistance to change is to make sure that a) everyone fully understands that the present situation is not satisfactory, b) there is a realistic positive vision of what the system can and should look like in the future, and, c) the change process used to roll out the reform includes some achievable early wins. Keeping these goals in mind, the government will need to design a change management plan that will ensure broad support for the reform.

#### 3.2 CAPACITY DEVELOPMENT

Developing capacity is essential for all functions of the government, but this should not simply be limited to improvement of individual skills. Professionally trained individual procurement staff cannot function in full capacity when the institutions, organizations, attitudes and incentives that govern, control and influence their functioning are unreceptive. Deep-seated capacity building requires the strengthening of the full range of institutions and organizations that play a role in the procurement process, including the private sector business community.

##### 3.2.1 Structural Framework

###### 3.2.1.1 Regulatory Body

Procurement functions operationally lie within the domain of individual departments. Within this distributed architecture, there is a need for a dedicated body that can act in the capacity of formulating common rules, regulations, guidelines and standards. Such a body will study existing procurement rules, laws, policies and practices and integrate them into a clear provincial purchasing policy that can

<sup>2</sup> Beckhard, R and Harris, R - *Organizational Transitions: Managing Complex Change*, 1987

be used as a basis for an eventual procurement law. The regulatory body will also be responsible for developing easy-to-understand guides for stakeholders and making them widely available.

A central body on public procurement is normally found to be organised, to a greater or lesser extent, around the following objectives/activities:

- (i) Legislation and Policy Function: to be responsible for drafting amendments to the public procurement law (PPL), the preparation of implementation guidelines and instructions, standard tender forms and contract documents to be used by all contracting entities. It would also develop, prepare and propose improvements in procurement procedures & routines and policy for independent third party procurement audits;
- (ii) Advisory Function: to provide advice on the application of the PPL and other related matters to the contracting entities in response to requests for clarification and guidance;
- (iii) Monitoring Function: to collect data on public procurement from contracting entities subject to the PPL and other sources with the purpose to serve the government and the parliament with reports and information on the status of public procurement in the province;
- (iv) Procurement Information Function: to manage the procurement bulletin for the publication of tender and award notices as well as the publication of a newsletter;
- (v) Capacity Building Function: to be responsible for initiating training programmes in the short and long term perspective and other capacity building measures such as the introduction of a system for procurement officer accreditation;
- (vi) Development Function: to take initiatives for the improvement of the public procurement system in areas such as central coordinated purchasing, framework agreements, procurement of concessions, procurement related databases, a central website and in the development of electronic procurement.

#### 3.2.1.2 Standards

Procurement documents have to address the requirements established by rules and practices. However, documents for similar purposes tend to vary across department in the absence of established standards. Propagation of documents across departments is based on individual interaction without the necessary version control to reflect required changes and amendments in the originals.

#### 3.2.1.3 Holistic Approach

Existing procurement practices deal with basic procurements like materials and supplies to support the operational side of governance. Procurement of capital assets through projects, engagement of consulting services and complex acquisitions are handled through processes that are unable to address the needs of these procurements. A new framework needs to be developed that is holistic in nature and is capable of dealing with all types of government contracts including emergency procurements.

##### i. Goods & Services

The acquisition of goods and services includes purchasing, leasing and licensing, standing offer or similar arrangements by which terms and conditions of purchase are determined. Acquisition of services can include management of information technology projects, printing services and the performance of professional or trade operations of any kind. The development of a suitable mechanism for service acquisition is essential in giving the government the ability to outsource its non-core activities especially in the social sectors.

##### ii. Capital Projects

A major part of public procurement is of a capital nature (building, roads, canals, etc). These procurements are essentially carried out through development projects. Within the project, the procurement of materials is governed through departmental rules and regulations. There are, however, no standards for managing the effective execution of projects by using the materials, services and consulting resources available to the project teams. As a result of this, public development projects are frequently challenged in terms of time, scope and cost targets. Given the significance and contribution of capital projects and their share in the overall procurement budget it is important to upgrade existing standards, rules and guidelines to ensure their effective and timely execution. Revision of existing systems on the basis of modern Project Management<sup>3</sup> and

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<sup>3</sup> Project Management Institute PMBOK 3<sup>rd</sup> Ed

procurement practices can make the process more effective in delivering capital projects on time and budget.

### iii. Consultant Selection Process

Existing process for selection of consultants typically takes 6 months or more for medium sized jobs and much longer for larger jobs. Departments tend to use the services of NESPAK (a semi-government entity) through single sourcing to save on the time it takes in following a competitive process. Given the impact of consultants input on the outcome of projects it is essential to define a faster process without compromising on quality and transparency. The selection process should also help the government in enhancing the capacity of the consulting market by creating opportunities for new firms and individuals and by limiting anti-competitive practices like enlistment and single sourcing.

### **3.2.2 Institutional Empowerment**

Procurement decisions are subjects to multiple levels of checks depending on the value and nature of the transaction. The multiplicity of checks in a few key departments creates bottlenecks which lead to frequent delays without necessarily improving the outcome of the transactions. Multiple decision making levels also lead to distributed responsibility which impedes the ability of the government to enforce performance accountability. This distributed responsibility model is a system response to existing accountability practices. For empowerment to be effective the system should reduce the number of approvals and include well defined rules, policies, and practices that support effective decision making.

### **3.2.3 Professional Development**

Procurement is a specialized profession which includes technical activities such as the preparation of bid documents and RFPs, bid and proposal evaluation and contract awards. These tasks can only be performed efficiently if procurement officials have the requisite training and expertise. Without such training, officials often do not understand the rationale behind procurement rules, and miss the objective by treating them clerically.

Use of procurement specialists in the public sector will be driven by increasing demand for better value in public procurement. There are various models available for bringing professional competence to procurement including the creation of special cells, training of existing departmental staff and the creation of specialist commodity teams.

Basic procurement training needs to be complemented with in-house specialists, market knowledge and experience in order to achieve true value for money. In developed countries, both the Corporate and Public sector use procurement specialist firms to handle non-standard complex purchases. The use of procurement agents can be explored to reduce the cycle time of large/complex procurement that would in the current practices be passed through multiple approval authorities because of limited ability to reach a decision on basis of past experience or domain knowledge.

### **3.2.4 Strategic Partnerships**

Modern procurement practices emphasize the role of planning to enable the client and key suppliers to establish long-term strategic relationships that can benefit both parties. Sharing procurement needs with suppliers over a medium to long term timeframe helps them gear up their capacity to meet the needs of the clients. As the largest purchaser in the local market, government needs to look into adopting procurement plans for goods & services that it regularly procures. This planning will help to prevent quality and cost issues associated with unbalanced supply and demand.

## **3.3 MONITORING & EVALUATION**

Support for any reform requires stakeholders to be aware of its achievements. Monitoring and evaluation forms a key part of the reform process because it helps to highlight the achievements to create a positive feedback for mainstreaming.

### **3.3.1 Benchmarking**

Existing international best practices should be studied to setup benchmarks to guide the reform efforts. This is essential in ensuring that the scope is driven by the desirability of change to achieve significant returns, instead of purely by the acceptability of change itself.

### **3.3.2 Baseline Study**

Objectives of reform agenda need to be clearly defined in terms of measurable outcomes. This will require an information system to capture and analyze data before the start of the reform to create an understanding of current purchase patterns and to establish a baseline that will be used to regularly measure and rate achievement against benchmarks.

### **3.3.3 Access to Information**

Procurement plans require data on the commodities consumed by the government and the net expenditure on them. Since government procurement is decentralized, such information can only be obtained by collecting and sharing data from across departments. The consolidation of government-wide procurement data will provide policy makers with an overall picture of government procurement; what is being bought, in what volume, for what purpose and by whom. This data will help develop strategies that allow procurement to be used a socioeconomic tool, and leverage the government's position as a bulk buyer.

The transfer of data between departments, its consolidation and its dissemination (including to the public) will require a mechanism that should include a data path plan, exchange system, and audit procedure. Such a mechanism should be developed after careful review of the data components, their use and their contribution to the system, in order to identify what information to share and with whom.

## **3.4 TECHNOLOGY**

Governments in developed countries are turning to modern technology to bring in transparency and efficiency in public procurement. e-Procurement portals have been implemented which allow easy dissemination of standard documents, tracking of bids, access to supplier history and information, centralized advertisement and online bidding of tenders. Such technology is being used to offer easy access to businesses wanting to trade with the government, thus promoting a free and fair procurement environment. At the backend, service-access improvements need to be complimented with workflow automation to remove process delays and speed up procurement. This is achieved by:-

- cutting down dead time caused by movement of paper files;
- providing online tools to analyze bids; and
- automating mechanical tasks such as bid comparison etc.