



Govt. of Pakistan



National Accountability Bureau



PAKISTAN STEEL

Pakistan Steel Procurement Manual

Ministry of Industries and Production
The Procurement Manual has been compiled
by
Pakistan Steel Mills Corporation (Pvt) Limited
In collaboration
With
Transparency International Pakistan

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Transparency International Pakistan

Procurement Manual

Services, Works, Plant & Equipment
Information Systems
For the
Pakistan Steel Mills Corporation Limited

The Procurement Manual has been compiled by

Pakistan Steel Mills Corporation Limited

In collaboration with

Transparency international Pakistan

September, 2004



TRANSPARENCY INTERNATIONAL - PAKISTAN

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DRAFT

MEMORANDUM OF UNDERSTANDING

Considering that bribery is a widespread phenomenon which raises serious moral and political concerns, undermines good governance and economic development, and distorts national and international competitive conditions;

Considering that all companies and Major organizations within Pakistan share a responsibility to combat bribery in all its forms and manifestations;

Having regard to the present policies of the Pakistan Government on Combating Bribery through various measures taken by it including the National Accountability Bureau Ordinance 1999 which, *inter alia*, calls for effective measures to deter, prevent and combat bribery in all its manifestations in particular the prompt criminalization of such bribery in an effective and coordinated manner and in conformity with the agreed common elements set out in its articles and within the jurisdictional and other basic legal principles of the Anti Corruption Laws presently in force in Pakistan.

Welcoming the recent developments within Pakistan such as the Securities and Exchange Commission of Pakistan's Code of Corporate Governance and the Companies Ordinance of 1984, and the recently announced UN Convention against corruption,

Welcoming the efforts of Transparency International Pakistan and other like-minded companies, business organizations as well as other non-governmental organizations in combating corruption.

Recognizing the role of the Pakistan government and the recommendations of the National Anti Corruption Strategy approved by the Cabinet and signed by the President in 2002,

Recognizing that achieving progress in this field requires sustained efforts not only on a company level but on a National level in terms of implementation and monitoring of its reforms,

Have agreed to Support and implement to the best of our ability, both in letter and in spirit the recommendations of TI-Pakistan in affording Transparency within PSM.

Have agreed that the PSM shall take such measures as may be necessary to prevent that any person from our company intentionally offers, promises or gives any undue pecuniary or other advantage, whether directly or through intermediaries, to a public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.

Have agreed to take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorization of an act of bribery of a Public official shall be a criminal offence. Where a "public official" means any person holding a legislative, administrative or judicial office in Pakistan, whether appointed or elected; any person exercising a public function, including for a public agency or private enterprise; and any official or agent of a public / private organization;

Have agreed to take such measures as may be necessary, within the framework of existing laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery.

Have agreed that in case the PSM fails to carry out the above agreed-upon recommendations Transparency International Pakistan has the right to withdraw from this Memorandum of Understanding and declare the same through a public announcement. Such withdrawal shall be effective 30-days after the date of the receipt of a notification given by TI-Pakistan to the PSM to this effect.

Have agreed to this Memorandum of Understanding between Transparency International Pakistan (TI-Pakistan) and the Pakistan Steel Mills (PSM) – Karachi for the Implementation of the “Integrity Pact” and Transparency in its Procurement Systems.

Where the “Integrity Pact” is an Integral Part of the National Anti Corruption Strategy approved by the Cabinet on 20th September 2002 & 5th October 2002 and its Implementation mechanism approved by the President 24th October 2002.

The Integrity Pact is a tool developed by Transparency International, which ensures that all activities and decisions of public offices are transparent and that the projects/works are implemented, services are provided or taken, and goods/materials are supplied without giving taking or allowing for any kind of benefit, financial or otherwise. Justification of the decisions taken is provided without discrimination to all parties concerned or to any individual or institution/organization.

It is agreed that the Pakistan Steel Mills – Karachi along with TI-Pakistan will work jointly for the implementation of the appropriate SBD’s herein being the Pakistan Engineering Council’s Guidelines and Standard Bid Documents for Procurement of Engineering Services, Works and Plant and Equipment. The implementation of the PEC Procurement SBD’s are a recommendation of the NACS including those recommendations in the NACS involving Transparency in procurement. In case the PEC Guidelines and Standard Bid Documents do not respond to the requirements of the PSM, other SBD’s such as the World Bank guidelines and SBD’s will be used..

It is also agreed that the Pakistan Steel Mills – Karachi will establish accountability in all its dealings and will to all intents and purpose try to provide the necessary Checks and Balances in its effort towards an all encompassing Transparent Procurement System in its effort to reduce corruption in procurement. The process will comprise the formation of a Coordination Committee and other relevant committees to implement the Integrity Pact and transparency in Procurement.



The Coordinating Committee.

This basic committee to be set up by the Pakistan Steel Mills shall consist of three members comprising Officials of the Pakistan Steel Mills with responsibilities related to the Administrative (Legal Expert), Financial and Technical (Procurement & Contracts) Departments. and two Representative of TI-Pakistan. The General Manager (Development and contracts) shall act as its Chairman. The Coordinating Committee will:

1. Identify and list all issues of transparency and evaluation of tenders criteria in the procurement bidding documents, including the discretionary conditions presently existing in the contract documents and make the necessary changes where necessary..
2. Prepare ways and means to be included in the Contract Documents to eliminate/reduce delays to a bare minimum (Time base decisions with predictable milestones) and in approvals by providing mandatory time frames for submittals by consultants/contractors/suppliers and approvals by client/consultants.
3. Introduce approval systems to process and award contracts, as well as to complete the Projects at the most economical cost and within the scheduled time.
4. Incorporate the Directives of the NACS with regards to Procurement and Contracting.

Herein after it is agreed that;

- All important decisions be made public.
- The PSM will develop a comprehensive website for publication of all information especially with regards to tenders and procurement
- Information on all important activities including auditor's report should be made easily accessible to all.
- The Pakistan Steel Mills will periodically make public their sources of income and revenues.
- For this purpose, Transparency International Pakistan will provide the services of experts to the Pakistan Steel Mills – Karachi without any cost to the PSM
- The Pakistan Steel Mills has the responsibility to inform the local public and all interested individuals / institutions / organizations / Vendors and others about the activities carried out under this Agreement and to make public this agreement through a Press Conference organized by the Pakistan Steel Mills.
- In accordance with the proposed Pact, Transparency International Pakistan will provide experts' services for 3-months beginning from 10 June 2004, and may be renewed on mutual understanding.
- The PSM will continue the Integrity System even after the completion of this project and will provide information and details when Transparency International Pakistan requires such information for the purpose of implementation of this agreement. TI-Pakistan may continue the monitoring of the Integrity Pact and Transparency in Procurement, if found necessary for a further 9-months and shall be deemed to be accepted by the PSM in case TI-Pakistan requests for the same.
- That all information relevant to providing Transparency Procurement procedures shall be provided to the Coordination Committee by the Management of the PSM and all its related departments. It shall include documents which are in addition to those that are allowed under the Freedom of Information. Ordinance 2002.



- It is also agreed that the SAMPLE Integrity Pact attached along with will be implemented as part of all Contracts / Tenders to be implemented by the PSM with modifications by the coordination committee where and when necessary and preferably at the pre-qualification stage.

Lt. Gen. Abdul Qayyum H.I (M)
Chairman
Pakistan Steel Mills
Karachi.

Shaukat Omari,
Executive Director
Transparency International Pakistan
Karachi

Mr. Saleem Ahmed
General Manager - Finance
Pakistan Steel Mills
Karachi.

Syed Adil Gilani
Procurement Specialist
Transparency International Pakistan
Karachi

Witness

This dayat Karachi 2004

ACKNOWLEDGMENT

Transparency International Pakistan extends its deep appreciation for the support of **Lt. Gen. Abdul Qayyum H.I (M), Chairman Pakistan Steel Mills, Karachi** and acknowledges the participation and contribution of the Coordination Committee established by him in compiling this Procurement Manual

We would like to thank the following Senior Participants and members of the Coordination Committee for their support in this endeavors.

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| 1. | | | Pakistan Steel Mills |
| 2. | | | Pakistan Steel Mills |
| 3. | | | Pakistan Steel Mills |
| 4. | | | Pakistan Steel Mills |
| 5. | | | |
| 6. | Shaukat Omari | Executive Director | TI Pakistan |
| 7. | Saad Rasheed | Engineering Expert | TI Pakistan |
| 8. | Syed Adil Gilani | Procurement Specialist | TI Pakistan |

In order to allocate a dynamic nature to this procurement manual Transparency International Pakistan welcomes feedback from bidders and others stakeholders for improvement, both from their experiences and from the use of this Procurement Manual

Procurement Specialist
Transparency International Pakistan
65-C National Highway, Defense Housing Authority – Phase II, Karachi
Tele: (0092-21) 4552438 & 5803518, Fax: 4559152
E-mail: ti-pak@transparency.org.pk.
Website: www.transparency.org.pk

PREAMBLE

Government of Pakistan carried out a comprehensive study on the public procurement procedures in Pakistan and its causes and effects.

Government of Pakistan carried out a comprehensive study on the public procurement procedures in Pakistan and its causes and effects.

The pertinent extracts from the National Anti Corruption Report (the Complete NACS Report can be downloaded from www.nab.gov.pk) are quoted here.

Quote

“Procurement was of huge concern to stakeholders, who highlighted the following weaknesses as being particularly vital in allowing procurement to be the breeding ground for corruption.

*Pakistan has **no coherent single law setting standards** and no effective legal protection against collusion and corruption in the award of government contracts. Instead, there is an **accretion of complex laws, rules, regulations, codes and manuals** which create a web of lengthy and cumbersome practices and customs. (Unlike other developing countries, donors’ procurement rules do not prevail over local rules, although the Ministry of Finance has tried to enforce this.) The rules and regulations are manipulated to deter competition, thwart objectivity and transparency and give officials wide and unsupervised latitude in applying or ignoring the tangle of rules. The ground for corruption is laid at every stage of the procurement process, as seen in the box below.*

Manipulation of the procurement process

Overall: head of PSML certifies that procurement process is urgent, thereby avoiding requirement for competitive bidding; projects/contracts split to avoid competitive bidding requirements above a certain cost ceiling; officials take advantage of the year-end (May-June) period, when departments are trying to spend their budget allocations, to rush through procurements which then escape proper procedures and monitoring;

Technical feasibility: improper feasibility studies may be undertaken to overvalue projects, to the benefit of officials; studies may also be undertaken by consultants with links to contractors;

Tender documents: project specifications are prepared to favour particular contractors;

Registration/pre-qualification and Invitations for bids: process is kept bureaucratic (e.g. numerous unnecessary conditions to fulfill) and lengthy to deter competition; advertisements in low circulation publications; published tender notices are followed by a number of short addenda, which if missed by bidders in their tenders would lead to their disqualification; short notice for submission of bids whilst favoured bidder had prior notice and time to prepare; officials will create their own fictitious companies to bid and approve them through this stage of the process;

Preparation of bids: collusion between competitors will lead to inflated pricing; ‘pooling’, whereby one bidder “buys” his competitors’ bids, changing their values,

submitting the lowest bid far in excess of the market price; multiple bids by contractor operating under different names;

Bid evaluation: financial envelopes are often opened before technical; unrealistic and outdated Schedules of Rates are used to defeat good bids by "outsiders"; delays are created to generate kickbacks.

Negotiations: no rules exist for the negotiation period, but is often the period when collusion and coercion occur. Prices may be renegotiated and adjusted after contracts have been let.

*This manipulation of often quite acceptable rules only allows corruption because of the inherent **lack of transparency and public participation** in the procurement process. Without this, any set of procurement laws and rules can be manipulated for self-enrichment.*

The public are usually denied the opportunity to be informed of, monitor or participate in, aspects of the procurement or development affecting their community and country. There is no other mechanism by which the public may be satisfied about the integrity of the process.

*The blame does not lie entirely with the government side of course. There are builder's mafias, collusion between bidders and widespread **bribery by national companies**. However, in terms of grand corruption, **multinationals**, and therefore their **governments** must share the blame, as many tend to view corruption as a Pakistani trait, which they are content to accept, by the use of "agents."*

Unquote.

In order to address these serious drawbacks in the public procurement procedures, the National Anti-Corruption Strategy (NACS) was prepared by the Government of Pakistan in 2002 wherein the NACS has prescribed the use of the Pakistan Engineering Council Procurement Procedures and Standard Bidding Documents. At the same time it has also specified special modifications in these procedures.

Public Procurement Regulatory Authority formed under Presidential Ordinance the Public Procurement Regulatory Authority Ordinance, 2002. has prepared Public Procurement Rules 2004, and the Government of Pakistan, Finance Division. (Admn. And Coord. Wing) has issued Statutory Notification (S.R.O.), Notification on 8th June, 2004, S.R.O. 432 (I)/2004 which have become mandatory for all PSML in Pakistan.

While formulating the Procurement Manual, necessary guide lines have been picked up from Public Procurement Regulatory Ordinance-October 2002, PPRA Public Procurement Rules 2004, World Bank Procurement Procedures, National Accountability Bureau (NAB) ordinance and NAB anti-corruption strategy [reference available on www.nab.gov.pk]. Assistance of Transparency International has been solicited in formulation of this manual.

INTRODUCTION

The Government of Pakistan carried out a comprehensive study on the reasons for corruption in public procurement in Pakistan and made its recommendations in the National Anti Corruption Strategy (NACS) Report published in 2002. The NACS report describes various modes of corrupt practices prevailing in public procurement and their impact on the national economy.

In order to address these serious drawbacks in the public procurement procedures, the National Anti-Corruption Strategy (NACS) has prescribed the use of the World Bank / Pakistan Engineering Council Procurement Procedures and Standard Bidding Documents. At the same time it has also recommended specific improvements in these procedures to enable them to be transparent and discretion free. .

On 2004 **Pakistan Steel Mills** signed a Memorandum of Understanding with Transparency International Pakistan (TI-Pakistan) in which it was agreed that PSML along with TI-Pakistan will work jointly on the implementation of the recommendations of the National Anti corruption Strategy for providing Systemic improvements initially within the PSML for transparency in its procurement procedures. That PSML would include Transparency in all its dealings and incorporate the necessary Checks and Balances in PSML's effort to reduce corruption. It was also agreed that the "Integrity Pact" which is an Integral Part of the National Anti Corruption Strategy which was approved by the Cabinet on 20th September 2002 & 5th October 2002 with its Implementation mechanism approved by the President on 24th October 2002, would be a part of all Contract Awards by the PSML.

It is an established fact that the misuse of discretionary authority and discriminatory evaluation procedures can only be prevented by a transparent procurement process and with the participation of Civil Society.

PSML firmly believes that Transparency through internal and external scrutiny is an essential element of accountability and should be an inherent characteristic of all processes and procedures, plans, actions or decisions relating to Procurement.

The Manual has been compiled to achieve following aims

- All Procurements shall be allotted to the eligible firms, with the best quality of works/Plant & Equipment/services / Information Systems, but at the same time consideration must be given to obtain the lowest price for the stipulated/acceptable quality.**
- Timely and Transparent Contract Implementation is a key to the success of Procurement and will only be achieved by making available on PSML website all Tenders Notices, , Evaluation Reports, Award Decisions and Progress reports for general public information.**

This Procurement Manual has been prepared using all the PEC SBDs and the World Bank SBDs not available in PEC documents to establish Transparent Public

Procurement in the PSML, based on the principles laid down in the National Anti-Corruption Strategy (NACS) and PPRA Public Procurement Rules 2004.

PPRA Public Procurement Rules 2004 Methods of advertisement.- (1)

Procurements over forty thousand rupees and up to the limit of one million rupees shall be advertised on the Authority's website in the manner and format specified by regulation by the Authority from time to time. These procurement opportunities may also be advertised in print media, if deemed necessary by the PSML.

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

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

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

Response time.- (1) The PSML may decide the response time for receipt of bids or proposals (including proposals for pre-qualification) from the date of publication of an advertisement or notice, keeping in view the individual procurement's complexity, availability and urgency. However, under no circumstances the response time shall be less than fifteen working days for national competitive bidding and thirty working days for international competitive bidding from the date of publication of advertisement or notice. All advertisements or notices shall expressly mention the response time allowed for that particular procurement along with the information for collection of bid documents which shall be issued till a given date, allowing sufficient time to complete and submit the bid by the closing date:

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

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

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

Exceptions.- It shall be mandatory for PSML to advertise all procurement requirements exceeding forty thousand rupees. However under following circumstances deviation from the requirement is permissible with the prior approval of the Authority,-

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

(b) the proposed procurement advertisement or notice or publication of it, in any manner, relates to disclosure of information, which is proprietary in nature or falls within the definition of intellectual property which is available from a single source.

Cost of Tender Documents

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

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

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

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

Opening of bids.

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

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

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

Evaluation of bids.- (1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided for in clause (iv) of sub-rule (3) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.

Rejection of bids.

(1) The procuring agency may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring agency shall upon request

communicate to any supplier or contractor who submitted a bid or proposal, the grounds for its rejection of all bids or proposals, but is not required to justify those grounds.

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

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

Re-bidding.-

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

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

Record of procurement proceedings.-

(1) PSML shall maintain a record of their respective procurement proceedings along with all associated documentation for a minimum period of five years.

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

Public Access and Transparency.-

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

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

Limitation on negotiations.- Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder:

Provided that the extent of negotiation permissible shall be subject to the regulations issued by the PPRA.

Procedure of Routing the Tenders.

Prequalification(if being undertaken) and Tender Documents must be ready by the time the Budget approval is received.

- Notification for Prequalification(if being undertaken) 03Days
- Receipt of Prequalification documents from bidders (minimum) 15 Days
- Evaluation of Prequalification. 07 Days
- Invitation to Qualified Bidders. 01 Day
- Receipt of Tenders (minimum) 15 Days
- Opening & Evaluation of tenders (Technical & Financial) *15 Days
- Public Declaration of Evaluation Report 10 Days
- Evaluation Report
 - Finalization of ER 06 Days
 - Recommendation by the Project Award Committee. 02 Days
 - Approval for Award of Contract 02 Days
 - Signing of Agreement 15 Days

Note: * Evaluation period may be amended depending on the complicity of the Tender, but prior to issue of tenders.

Note: Following Procurement Committees will function.

- a). **Tender Opening Committee-DCE (Procurement), a representative of unit concerned, a representative of Accounts Section**
- b). **Evaluation and Award Committee-2 Nos. (Central Purchase Committee & Purchase Committee – 2, depending on value of Tender)**

These Committees shall comprise of General Manager, Chief Engineer, a representative of unit concerned, Technical representative, a representative of Procurement Deptt

The Committees shall be Assisted by two teams for Commercial Evaluation comprising of representative of Finance / account representatives of procurement Wing PSML H/Qs., and Consultant wherever applicable.

- c). **CE/GM (Procurement) Member/Secretary**

Minimum three members of the committee will be mandatory to complete the quorum.

b. Purchase Committee-2

1. President
2. (Finance) Member
3. (Procurement) Member
4. (Development) Member
5. Member
6. Member/Secretary

Consultants: In cases where PSML is procuring new technology or has shortage of in-house capacity, Consultants may be appointed, who will also be authorized to carry out the Evaluation of Bids and submit their report to PSML which shall be considered by the Evaluation Committee. In such cases the Evaluation Committee may not be assisted by Evaluation Teams.

Note: Publication of the Evaluation Report

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

PSML shall publish on its website the following information:

- (i) Name of all bidders who submitted a bid;
- (ii) Bid prices as read out at bid opening;
- (iii) Name and evaluated prices of all bids that had been evaluated;
- (iv) Name of bidders that were disqualified and the reasons for their disqualification; and
- (v) Name of the bidder recommended for award and reason for recommendation, price, duration and summary scope of the contract

Note: In order to expedite the evaluation process, the Bidders shall be asked to submit compliance report of all technical and contractual requirements. For this purpose a compliance chart shall be included in the Bid documents, which shall include columns for compliance, reference of page numbers of the supporting documents of bidder in the submitted bid.

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

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

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

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

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

The Bid Documents(TOR) shall also specify the mandatory Non Responsive Conditions for information of Bidders.

Major deviations to the commercial requirements and technical specifications are a basis for the rejection of bids. As a general rule, major deviations are those that, if accepted, would not fulfill the purposes for which the bid is requested, or would prevent a fair

comparison with bids that are properly compliant with the bidding documents. Examples of major deviations include:

- (i) Stipulating price adjustment when fixed price bids were called for
- (ii) Failing to respond to specifications by offering instead a different design or product that does not offer substantial equivalence in critical performance parameters or in other requirements
- (iii) Phasing of contract start-up, delivery, installation, or construction not conforming to required critical dates or progress markers
- (iv) Subcontracting in a substantially different amount or manner than that permitted
- (v) Refusing to bear important responsibilities and liabilities allocated in the bidding documents, such as performance guarantees and insurance coverage
- (vi) Taking exceptions to critical provisions such as applicable law, taxes and duties, and dispute resolution procedures
- (vii) Those deviations that are specified in the ITB as requiring rejection of the bid (such as, in the case of works, participating in the submission of another's bid other than as a subcontractor).

Note: The evaluation method for performance acceptability with regards to specifications (ii) above shall be included in the evaluation criteria in detail, and bidders shall be instructed to fill the required details of their submittals in this criteria to become responsive.

EXECUTIVE SUMMARY

Principles of Procurement.

PSML has five basic concerns that govern its procurement policies:

1. To ensure that the Products/goods, Services, Works, Plant & Equipment and Information Systems needed to carry out the projects are procured with due attention to economy;
2. To ensure that Projects are executed within shortest period of time;
3. To ensure that the funds are used to buy only those Products/goods, Services, Works, Plant & Equipment and Information Systems which are needed to carry out the project;
4. To give all qualified bidders an equal opportunity to compete for the contracts;
5. To ensure that the procurement process is transparent, fair and discretion free.

The Procurement Manual is based on the following principles;

- Economy;
- Efficiency;
- Fairness;
- Reliability;
- Transparency; and
- Accountability and Ethical Standards.

Statutory Requirements.

Various government departments are using more than 26 different procurement procedures, which had been a major cause to complaints and misuse of funds.

The Government of Pakistan to address this flaw in the procedures, carried out a comprehensive study in association with World Bank in 1994-2000, and decided to have a uniform Procurement Code in Pakistan. In May 2002, the Public Procurement Regulatory Authority (PPRA) was established through an Ordinance which has been entrusted the Task of preparing uniform procurement procedures for Pakistan.

In accordance with Pakistan Engineering Council Act 1976 the PEC Act 1976 promulgated on 14th January, 1976, SRO No 809 (1)86 dated 24 August 1986 and the PEC SRO 628 (I)/2003 issued by Ministry of Water & Power, Government of Pakistan vide Gazette Notification dated 21st June, 2003, Standard Bidding Documents of PEC are mandatory for all PSML. In accordance with S.R.O. 432(I)/2004.-issued by Ministry of Finance GoP on 9 June 2004, Public Procurement Rules, 2004 are applicable and supersedes all other procurement procedures.

In October 2002, National Anticorruption Strategy Report was issued by the National Accountability Bureau which gave the recommendations for regulating the procedures on Contracting and Procurement.

The NACS 2002 has prescribed that for all Procurement in Pakistan, either the Pakistan Engineering Council (PEC) byelaws or the World Bank guidelines should be uniformly implemented until such time that the Public Procurement Regulatory Authority prepares its own laws and procedures.

On 9 June 2004, Public Procurement Rules, 2004 were issued under S.R.O. 432(I)/2004. The PSML Procurement Manual is compiled on the basis of PPRA Public Procurement Rules, 2004 and Pakistan Engineering Council SBDs, World Bank SBDs, NACS 2002, and complaint to Law of the Land..

Nevertheless, the PEC SBDs necessitate the incorporation of the PPRA Rules & NACS to be a truly transparent procurement document such as the inclusion of the Transparency International's "Integrity Pact", Selection of Consultants, formation of Evaluation Committees, declaration of the Evaluation Report prior to Award etc.

Transparency International Pakistan in association with the senior officers and procurement experts of PSML has prepared this Manual for Procurement. In addition the process for prequalification, evaluation and award decisions etc have also been described in this manual.

Applicability of Procurement Manual.

The Procedures given in the Procurement Manual will be applicable to all the Consultancy Contracts and the Tenders for award of Works, procurement of Plant & equipment, Information Systems, goods/products etc which are of more than Rupees One Million in value.

PSML will use the same procurement procedures for of Works, procurement of Plant & equipment, Information Systems, goods/products etc which are of less than Rupees One Million value, without publication of evaluation report, and Prequalification may be waived for enlisted contractors. _

Use of Procurement Manual

This Manual is intended to provide necessary clarifications and assistance in the procurement process in PSML with essential in-built Checks and Balances to ensure the desired transparency in all its procurement.

The Manual does not contain any new rules of procurement, but is compiled from existing World Bank / PEC procedures combined with the recommendations of the NACS 2002 policy and Public Procurement Rules, 2004 . However it explains in more detail how specific aspects of procurement should be handled consistent with the Guidelines. It is a source of "how-to" information about the tasks and elements that comprise the procurement process.

In Chapter I, the Procurement Manual describes the review of policy and institutional aspects of transparent public procurement that have a broad applicability and about which questions are most frequently asked. Subsequent chapters deal with specific procurement topics, taking them generally in the chronological order in which they occur, from the initial analysis of a procurement systems and capacity, through the procurement planning stages and into project implementation and contract administration.

The Four considerations that guide the rules for Procurement are:

- a) Ensuring economy and efficiency in project procurement.
- b) Giving eligible, responsive and technically qualified bidders a fair opportunity to compete on a level playing field,
- c) Encouraging the development of Domestic Producers, Constructors and Engineering Services Providers
- d) Providing for Transparency in the Procurement Process.

Chapter. 1

PUBLIC PROCUREMENT: WHY DOES IT MATTER.

Before describing various steps of procurement it is appropriate to establish at the outset as to why this topic is attention worthy. This inquiry can be fruitfully addressed by approaching it from three inter-linked though diverse perspectives:

- i) What constitutes proficient public procurement—what are its distinguishing characteristics?
- ii) Why is it so important?
- iii) Why should its achievement and maintenance be a priority concern for PSML and its staff?

What is Good Procurement? What Does It Look Like?

The principal hallmarks of proficient public procurement as mentioned previously are clarified below :

- Economy;
- Efficiency;
- Fairness;
- Reliability;
- Transparency; and
- Accountability and Ethical Standards.

Economy: Procurement is a purchasing activity whose purpose is to give the purchaser best value for money. For complex purchases, value may imply more than just price, for example, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.

Efficiency: The best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the purchasing entity and its procurement personnel.

Fairness: Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the purchaser's options and opportunities.

Transparency: Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but should be *seen* to be fair.

Accountability and Ethical Standards: Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified vendors. This directly and concretely benefits the purchasing entity and its constituents, responsive contractors and suppliers, and the donor agency providing the project finance.

Conversely, a procurement system that does not consider the above elements stimulates hesitation to compete, submission of inflated bids containing risk factor,, or submission of deflated bids followed by delayed or defective performance. Other direct results include collusion in bribery by frustrated or unscrupulous vendors and purchasing entities, bad value for those entities and their constituents, and betrayal and abuse of the public trust for personal gains.

Proficient public procurement is not difficult to describe in principle or to distinguish from its antithesis in practice, but it does require varied professional and technical know-how to establish, and a discipline and determination to successfully administer.

Why Is Proficient Public Procurement So Important?

Public procurement is the process by which PSML buy the inputs for vital public-sector investments. Those investments, both in physical infrastructure and in strengthened institutional and human capacities, lay foundations for national development. In procurement terms, those inputs are generally grouped into four categories:

- Services - expert advice and training, conventionally labeled Consulting Services.
- Civil works - for example, buildings, and other construction/renovation works etc.
- Plant & Equipment - typically equipment, materiel and supplies.
- Information Systems.

The quality, timeliness, Transparency, local appropriateness and affordability of those procured inputs can largely determine whether the public investments will succeed or fail. Thus the beneficial impact and contribution of the input, particularly in the case of technical assistance services, can exceed their direct costs, by several orders of magnitude. Yet procurement costs can be substantial, consuming scarce resources of tightly constrained budgets. Often the required funding is limited. Moreover, the process also consumes scarce skilled public-sector human resources. It takes time, not merely for procurement planning and contracting but also for contract supervision and execution. And much of this process is highly visible, as well as controversial, exposing ministers and civil servants to scrutiny and second-guessing for procurement choices they made, deferred or discarded.

There are four basic concerns that Govern Procurement Policies:

- To ensure that the Plant & Equipment and services needed to carry out the project are procured with due attention to economy and efficiency;
- To ensure that the funds are used to buy only those Plant & Equipment and services needed to carry out the project;
- To give all qualified bidders an equal opportunity to compete for the contracts;
- To ensure that the procurement process is transparent.

The procurement policies and procedures through this manual have been designed to promote fairness and equal treatment.

Chapter. 2

Tendering Process

Flow Chart showing Prequalification, Bidding and Indicative Time

Organize Project Management / Implementation Teams

- Designate staff and facilities and decision to appoint consultants.
Establish Independent Evaluation Committees and Project Award Committees.

Prepare Prequalification Documents (In case the Pre-qualification is being undertaken)

- Review procurement strategy and confirm packaging
- Establish explicit, transparent and fair criteria for the evaluation of firm's applications
- Confirm adequacy of draft technical specifications
- Prepare the Instructions to Applicants including the procedural and substantive qualifications aspects

1-3 weeks

Revise and Clear Prequalification Document (if necessary)

- Revise documents
- Obtain Approval

1 week

Obtain Approval

1 - week

Advertise Prequalification Documents

1- 4 weeks

Prepare Applications (Suppliers)

- Organize joint-venture partners, if any
- Identify project- teams and resources
- Compile supporting materials
- Complete application

Manage Application Process

- distribute documents to purchasers
- Organize Evaluation Teams
- Organize and hold clarification meetings and site visits if appropriate

Draft Bidding Documents

Technical specifications

- schedule of requirements
- special conditions of contract & sample forms
- instructions to bidders and bid data sheet, including supplier qualifications and bid evaluation method
- invitation to bid & procurement notice
- assemble documents & obtain agency approval

(2-8 Weeks)

Obtain Approval of Bid Documents

(1 week)

Evaluate and Select Pre-qualified Firms

- Confidentially evaluate applicants in terms of their: experience and financial and technical resources
- Select qualified applicants
- Prepare full prequalification report and submit to approving Authority

1- 2 weeks

Obtain approval

1 week

Distribute List of Pre-qualified Firms to All Applicants

Issue Bidding Documents

- Distribute invitation to bid

4 - 8weeks

Opening of Bids

- Open Bids in presence of Bidders.
- Announce the Bidders name, Bid Security, Bid Price, and any discount bidders have offered.
- Get the signatures of all Bidders and Bid Opening Committee Members.
- After Bidders leaves the meeting, Bid Committee members shall sign all the Bids, including the prices, rates offers, and initial all pages, and initial all the corrections made by the bidders in the Bid Documents.

Evaluate and Select Lowest Responsive Evaluated Bid

****15 Days***

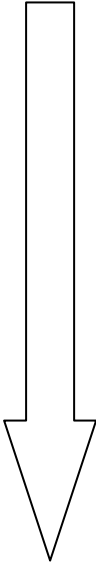
Note: * Evaluation period may be amended depending on the complicity of the Tender, but prior

Evaluation Report Declaration on PSML Website for inviting Objections

10 Days

Re Examine Evaluation Report and Objections. Revise and Finalize Evaluation Report and Submit the Recommendation to Award the Bid to the Lowest Responsive Bidder to Authority for Approval, and Award the Bid to the Lowest Responsive Bidder

16 Days



Chapter. 3

Procurement of Services.

A) PREQUALIFICATION

Pre-qualification of Consultants is an important step in the selection process to ensure high quality proposals for a meaningful proposal evaluation in shorter time for grading of firms for ultimate selection of suitable consultants. It may be remembered that registration of firms in PEC in general terms is not a substitute for Prequalification before inclusion in the shortlist. The qualifications and experience of the qualifying consultant should be such as to reflect its previous association with such project(s) and capability to handle the project with dexterity.

Unlike in procurement of goods and works in which all interested qualified bidders are publicly invited to present their bids, the process of consultant selection is based on obtaining a limited number of proposals from a shortlist prepared by the PSML. Because it is too time consuming to invite and evaluate proposals from all consultants who want to compete. Selection is based on limited competition among qualified firms who have the required experience and are capable of delivering the required services and desired level of quality.

From the consultants' point of view, the use of a shortlist reduces the number of proposals to be prepared, raises proposal quality, and increases the chances of the consultant winning the competition. For the PSML, it is an effective way of attracting the best candidates for the assignment.

PSML procedures for hiring consultants provide that, first, consultant opportunities are advertised. Then, on the basis of those consultants who submitted expressions of interest in response to the advertisement the PSML prepares a shortlist of consultants who will be invited to present their proposals.

B) STANDARD GUIDELINES FOR EVALUATION.

I) Use Standard Guidelines for Pre-Qualification of Consultants (First Edition) May 2002, issued by the Pakistan Engineering Council Islamabad, attached as **Annexure I**.

II) Amendments to be made in this PEC document incorporating NACS 2002 policy.

III) Integrity Pact.

High value and high profile procurements in particular, above Rupees Five Million for procurement of services, are to be based on Integrity Pacts. A Standard Integrity Pact is attached.

IV) Associations between Consultants

Consultants may associate with each other. Such an association may be for the long term (independent of any particular assignment) or for a specific assignment. The "association" may take the form of a joint venture or of a sub-

consultancy. In case if the an association is in the form of a joint venture, the association should appoint one of the firms to represent the association. All members of the joint venture shall sign the contract and shall be jointly and severally liable for the entire assignment. Any association in the form of joint venture or sub-consultancy among short-listed firms shall be permissible only with the approval of PSML.

V) Fraud and Corruption

Following clause should be included in the prequalification documents.

It is the PSML policy to require its staff and the consultants to observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, PSML:

(a) Defines, for the purposes of this provision, the terms set forth below:

(i) “Corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of a public official in the selection process or in contract execution; and

(ii) “Fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;

(iii) “Collusive practices” means a scheme or arrangement between two or more consultants with or without the knowledge of PSML, designed to establish prices at artificial, noncompetitive levels and to deprive PSML of the benefits of free and open competition;

(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 contract.

(b) 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 contract in question;

(c) will sanction a consultant, including declaring the consultant ineligible, either indefinitely or for a stated period of time, to be awarded a PSML contract if it at any time determines that the consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices.

vi) Allocation of Sub Criteria.

Sub-criteria and their weighting determine the outcome of the evaluation, they should be chosen considering the aspects that are critical to the success of the assignment. Evaluation criteria and sub-criteria, associated points, and the rating

system form an arithmetic model to assess the technical merit of the proposals. The more reliable the model, the more accurate the evaluation and the greater the possibility that PSML will select the proposal of the consultants who are best suited for the assignment. All sub-criteria points shall be included in the prequalification documents for information of the applicants.

vii) Fair Competition.

Sub Clause 6.3 of the PEC Standard Guideline restricting the number of qualified firms, is deleted, to enable all qualified firms to have fair opportunity to participate in the competition.

This has therefore to be ensured that the Prequalification should not be used to limit competition to a predetermined number of potential bidders. All applicants who have the qualifications to perform the proposed contract should be pre-qualified and bidding documents made available to all those who stands pre-qualified. No upper limit therefore should be imposed on the number of pre-qualified potential bidders.

viii) Evaluation

The Evaluation Committee shall evaluate the proposals in accordance with PEC Standard Guidelines for Pre-Qualification of Consultants.

ix) Invitation of Proposals.

Proposals for Procurement of Services on the standard format shall then be invited.

C) PROPOSAL FOR CONSULTING SERVICES.

Copy of the PEC Standard Guidelines for Evaluation of Proposals for Procurement of Engineering Services issued on May, 2002 by Pakistan Engineering Council Islamabad is attached as **Annexure IV**.

The Use of the Standard Guidelines For Evaluation of Proposals for Procurement of Engineering Services issued on May, 2002 by Pakistan Engineering Council Islamabad along with the with modifications is prescribed by the Public Procurement Rules, 2004. All consultancy contracts except single source selection of engineering experts, should be processed on the two envelope system, evaluated on the basis of technical competence with minimum passing marks of 75% .

i) Procedures of open competitive bidding.

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

Single Stage – Two Envelope Procedure.-

- (i) The bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;

- (ii) the envelopes shall be marked as ‘FINANCIAL PROPOSAL’ and ‘TECHNICAL PROPOSAL’ in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked ‘TECHNICAL PROPOSAL’ shall be opened;
- (iv) the envelope marked as ‘FINANCIAL PROPOSAL’ shall be retained in the custody of the PSML without being opened;
- (v) the PSML shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which do not conform to the specified requirements;
- (vi) during the technical evaluation no amendments in the technical proposal shall be permitted;
- (vii) the financial proposals of bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;
- (viii) after the evaluation and approval of the technical proposal the PSML, shall at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and
- (ix) the bid found to be the lowest evaluated bid shall be accepted.

ii) Single Source Selection of consultants- NACS

Under Single Source Selection PSML will ask a specific consultant to prepare technical and financial proposals, which are then negotiated. Since there is no competition, this method is acceptable only in exceptional cases in case of an emergency or repeat order. This is because;

- The assignment represents a natural or direct continuation of a previous one awarded competitively, and the performance of the incumbent consultant has been satisfactory; or
- A quick selection of the consultant is essential, for instance, in emergency operations such as natural disasters and financial crisis; or
- The contract is very small in value; or

If continuity of downstream work by retaining an incumbent consultant for a downstream assignment is essential to the project and is in the interest of PSML, the RFP for the original assignment should indicate this likelihood. Satisfactory performance in the first assignment has to be a precondition for continuation. In these cases, PSML should balance the importance of continuing with the same technical approach, the experience acquired, and the continued professional liability of the incumbent against the benefits of renewed competition such as fresh technical approaches and competitive remuneration rates.

If the RFP for the original assignment has indicated the likelihood of continuity of downstream work by retaining an incumbent consultant for a downstream assignment, and once valid causes have occurred under the four situations described above, PSML may agree to an SSS on a continuation basis. PSML then should ask the consultant to prepare technical and financial proposals on the basis of the TOR prepared by PSML, or by an independent adviser with no relation to the incumbent. This is the basis for negotiating a continuation contract.

The Amendments to be made in this PEC Standard Guidelines for Evaluation of Proposals for Procurement of Engineering Services issued on May, 2002 for incorporating the Public Procurement Rule 2004 and NACS 2002 as described in the prequalification chapter above, which are:

- i) The Integrity Pact.**
- ii) Associations between Consultants.**
- iii) Fraud and Corruption**
- iii) The Evaluation of proposals by the Evaluation Committee**

At the time of opening of the Tenders, all members of Evaluation Committee shall sign each and every page of the Proposal, quoted costs, cuttings and overwriting at the time of opening of Technical and Financial proposals as the case may be.

Standard Evaluation based on the RFP and PEC Evaluation Form be carried out by the Evaluation Committee. PEC Standard Guidelines for evaluation of proposals for procurement of Engineering Services is attached as Annexure II. The method of selection as prescribed by NACS and Public Procurement Rules 2004 is **Two Envelope Procedure as described above.**

The Evaluation Committee shall evaluate the proposals in accordance with Standard Guidelines for Evaluation of Proposals for Procurement of Engineering Services along with the amendments prescribed in this chapter.

iv) Establishment of Sub Criteria for Evaluation.

Sub-criteria and their weighting determine the outcome of the evaluation, they should be chosen considering the aspects that are critical to the success of the assignment. Evaluation criteria and sub-criteria, associated points, and the rating system form an arithmetic model to assess the technical merit of the proposals. The more reliable the model, the more accurate the evaluation and the greater the possibility that PSML will select the proposal of the consultants who are best suited for the assignment.

All adopted sub-criteria should be specified in the RFP. The points allocated to each of the sub-criteria under “qualifications and competence of key staff” must be indicated in the RFP. It is also recommended to disclose in the RFP the points allocated to the sub-criteria of “adequacy of the proposed methodology and work plan” and “suitability of the transfer of knowledge program”, since it increases the transparency of the evaluation. The weight of each sub-criterion will vary according to its relative importance to the specific assignment. To avoid over detailed lists of sub-criteria, it is recommended that no fewer than three points be allocated to each sub-criterion. Allocation of fewer than three points would imply that the sub-criterion is of only minor importance to the overall evaluation.

v) Evaluation of Personnel.

There is an ambiguity in allotting scores for personnel in the PEC Bidding Documents. LOI Section 3.iv on status of personnel says that “ The majority of the key professional staff proposed shall be permanent employees of the firm or have an extended and stable working relation with it unless otherwise indicated in the Data Sheet.”

Delete following clause.

Section 5.6.7 of the Standard Guidelines for Evaluation of Proposals for Procurement of Engineering Services “ It is accordingly desirable that no undue importance and weight age may be assigned to this element except that the consultants may be required to provide a certificate that the services of the nominated experts will be available up to the end of the validity period of the consultants proposal”.

vi) Financial Evaluation.

a) The financial proposals of firms lower than 75% shall be returned unopened, the remaining financial proposals should be publicly opened by inviting all the remaining bidders.

b) On the date and time set for opening the financial proposals, the appointed PSML official delivers them to the Evaluation Committee. The opening is public. The Evaluation Committee verifies that the financial proposals have remained sealed and then opens them.

The Evaluation Committee should first review the financial proposals for arithmetical errors and consistency between the financial and technical proposals (for example, omissions of items included in the technical proposals). Arithmetical errors should be corrected, omitted items evaluated, and the corresponding adjustments made to the offered prices to obtain the final evaluated prices. For example, if a technical proposal indicates the presence of the team leader at the assignment site for 12 months and the financial proposal indicates only 8 months, and should be calculated by adding the corresponding amount of staff remuneration to the proposed amount.

The Financial proposals shall be evaluated by the Evaluation Committee, and Evaluation Report prepared.

viii) Finalization and Public Declaration of Evaluation Report.

The Evaluation Report shall be published on PSML website for a minimum period of 10 days for inviting objections.

vii) Publication of the Evaluation Report, Review, approval and Award of Contract.

PSML shall publish in its website the following information: (i) name of all bidders who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of all bids that had been evaluated; (iv) name of bidders that were disqualified and the reasons for their disqualification; and (v) name of the bidder recommended for award and reason for recommendation, price, duration and summary scope of the contract.

After 10days, all objections shall be examined by the evaluation committee, and evaluation report to be finalized in 6 days, signed by all committee members. The ER shall then be approved by the Project Award Committee in 2 days, President - PSML in 2 Days and letter of Award issued in 2 days and Contract Agreement Signed in 15 days.

ix) Negotiation of Contract.

The lowest evaluated bidder will be invited to negotiate a contract with PSML.

Note A copy of the Executed Contract of over Rupees Fifty Million shall be forwarded to the National Accountability Bureau for information.

x) Standard Contract Documents

The RFP shall also include one of the following three appropriate form of Standard Contract Documents issued by PEC,

1. Small Projects
2. Large Time based Projects
3. Large Lump Sum Projects

These Standard Contract Documents are attached as **Annexure II IV, and V.**

xi) Amendments in the Standard Contract Documents

Following amendments are to be made in the Contract documents.

Clause 3.8 , “The Client and Consultant shall not use these documents for the purpose unrelated to this contract without the prior written approval of the other party” is to be substituted with following;

“Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client.”

xii) Project Director

According to the NACS Tenures are to be fixed for the Project Directors. In case of short duration projects of up to three years, posting for the entire project period should be made. For projects of longer duration, there must be a criteria giving employment for a minimum period of three years.

xiv) Time Frame.

This process shall be completed within the time prescribed below;

- Prequalification (if undertaken) and notification in the press. 03 Days.
- Receipt of Prequalification from bidders 25 Days
- Evaluation of Prequalification. 07 Days
- Invitation to Bidders. 01 Day
- Receipt of Tenders (minimum) 21 Days
- Opening & Evaluation of tenders *15 Days
- Public Declaration of Evaluation Report 10 Days
- Evaluation Report
 - Finalization of ER 06 Days
 - Approval of ER by Project Award Committee. 02 Days

- Approval of Award of Contract
by President PSML. 02 Days
- Issue of Letter of Award 02 Days
- Signing of Agreement 07-15 Day

Note: * Evaluation period may be amended depending on the complicity of the Tender, but prior to issue of tenders.

Chapter 4

Procurement of Works, Plant & Equipment and Information Systems

According to PEC Engineering Works Bye-Laws notified under S.R.O. 568 (I)/87 dated 8th July 1987, Statutory Tendering process recommendations are;

Selection and Tendering process-

(1) All construction and management and supervision of operations of engineering work shall be entrusted only to the constructors or operators, as the case may be, licensed as such by the Council.

(2) A foreign constructor or foreign operator wishing to perform any construction or operation of engineering works in Pakistan shall obtain an appropriate license from the Council before initiating any activity which is a subject of these Bye-laws. The foreign constructor or foreign operator may be granted license only for specific projects which need expertise and specialized technology of construction or operation not available with a Pakistani constructor or Pakistani operator. Any such foreign constructor or foreign operator shall enter into a joint venture agreement with the Pakistani constructor or Pakistani operator in which share of foreign constructor or foreign operator shall be limited to the expertise and technology not available with the Pakistani constructor or Pakistani operator. The establishment of a joint venture shall be subject to the condition that share of the Pakistani constructor or Pakistani operator shall not be less than thirty percent.

(3) The client or employer shall adopt an equitable method of selection of a constructor or operator for a particular project and will ensure that the following basic requirements are met namely:-

(a) An engineering work falling under a certain category must be entrusted only to those constructors or operators who are licensed by the Council in accordance with these byelaws, either in the same category or in a higher category.

(b) A uniform system of credit points for the purpose of evaluation of the applicant's capabilities in the respect of vital elements of applicant's organization and capacity to perform shall be established before tenders or proposals are called from prospective bidders. The various vital elements to be covered are:

(i) Net worth of the applicant as on the date of application.

(ii) current ability to obtain finances and bonds (i.e. total ability less existing commitments).

(iii) current availability of applicant's construction equipment of tools required for the project (total equipment and tools owned as well as equipment irrevocably committed to be leased to the

applicant on demand less current commitment and the period of their commitment).

(iv) Professional experience of construction or operation of the type of proposed project, including professional personnel of required experience in full time employment of the applicant less the personnel commitment on projects in hand.

(v) Previous performances of the applicant on other projects and similar projects,

(vi) Current license issued by the Council; and

(vii) Any other relevant factors.

(c) A provision is made in the proposed contract with the constructor or operator for the settlement of any differences by arbitration under the Arbitration Act 1940, before recourse to any other legal action.

(d) Selection is done through open and fair competition and no preference is given to any contractor or operator for reason of his being in the public or private sector.

S.R.O. 628 (I)/2003 21 June 2003-In the aforesaid Bye-laws, in bye-law 7, after clause (4), the following new clause shall be added, namely:-

“(5) For award and execution of an engineering work the relevant standard from of bidding or tender document prepared by the Pakistan Engineering Council shall be adopted.”

A) PREQUALIFICATION.

A Prequalification is aimed at ensuring that only contractors and suppliers who have the required experience, technical and financial resources bid for a contract. Prequalification screens potential bidders and is designed to provide the following benefits:

- Unqualified bidders save the cost of bid preparation which results in lower overhead costs to them and, therefore presumably lower bid prices in the long run, to the benefit of the PSML
- Leading contractors and suppliers, particularly the reputable ones, are more likely to bid knowing that competition is confined to only those qualified. This is also to the benefit of the PSML
- The scale of interest by potential bidders can be measured, affording the opportunity to revise bidding conditions as necessary to develop adequate competition.
- The evaluation of bids only from the qualified bidders may result in time and cost savings to PSML, as well as a reduction (or elimination) of the threat of pressure being applied by marginally or unqualified bidders for their low prices to be considered.

- An early indication of PSML procurement capability is provided, allowing necessary improvements to be made at the initial stages of procurement.
- The creation of appropriate joint ventures is encouraged.

This has to be ensured that the Prequalification should not be used to limit competition to a predetermined number of potential bidders. All applicants who have the qualifications to perform the proposed contract should be pre-qualified and bidding documents made available to all those who pre-qualified. No upper limit should be imposed on the number of pre-qualified potential bidders, but, if the pre-qualified applicants are too few to ensure competition, a reassessment of the situation can be carried out. This includes:

- further advertising for prequalification submission;
- extension of the deadline for applications;
- review of the proposed contract conditions to reduce contractors' risks; and
- improvement of advance mobilization payments. PSML may also review prequalification requirements but should not lower them merely to increase competition. Setting of standards/requirements at different well defined levels may be justified when a contract is divided into several smaller, less complex contracts, and bidding is on a slice or package basis.

After prequalification, pre-qualified bidders are invited to submit bids which are eventually evaluated. PSML is required to award the contract to the bidder offering the lowest evaluated responsive bid. PSML should ask bidders to confirm and update essential prequalification information at the time of bid submission. The lowest apparent evaluated responsive bidder may be denied the contract if evaluation of the updated information indicates that the bidder, no longer possesses the necessary capabilities. This could occur because of changed financial situation, loss of equipment or key personnel, or lack of capacity because of new contract commitments on the bidder's part.

Prequalification documents should enlarge on the information provided in the notification advertisement and contain a description of:

- the proposed procurement;
- the estimated value of the contract and major quantities of work;
- location of the work;
- procurement scheduling of goods or works to be procured;
- abbreviated specifications and conditions of contract;
- main quantities to be procured;
- delivery or implementation schedules;
- requirements for bid and performance securities;
- prequalification evaluation criteria and sub criteria,
- how the project is to be financed;
- payment terms;
- price adjustment provisions;
- the language and governing law of the contract;
- other information in sufficient detail to enable bidders, suppliers or contractors to assess their interest and respond appropriately; and
- The name and address of PSML and of its officials in charge of the procurement with a statement of their roles.

- Registration with Pakistan Engineering Council and the Current license issued by the Council;
- Consent to sign “ Integrity Pact” and
- Any other relevant factors..

The criteria should also be objective; ambiguous requirements such as “general reputation”, or “co-cooperativeness” or irrelevant ones should not be used. Likewise the criteria should not be unfairly discriminatory.

For purposes of evaluating the applicants, the prequalification documents should include a questionnaire, requiring applicants to respond to direct questions as well as to complete a series of forms. The information solicited and the number of forms to be filled should be the minimum essential required to make an objective decision as to the bidder’s capabilities. PSML should avoid requesting excessive form-filling, testimonials, affidavits from bidder’s former or current PSML notarized documents and any other non-essential documents and information which will deter some of the qualified firms from applying. Properly designed and completed, questionnaire should provide the PSML with a good framework for evaluation, while encouraging applicants to provide full pertinent details on their capabilities.

Prequalification Documents

Prequalification documents should specify the submissions required, such as completed questionnaire forms and supporting documents and their number and the deadline for their submission. **They should also contain a clear statement on the criteria and sub criteria for evaluation of prequalification applications** . The anticipated period for evaluation after receipt of prequalification applications, usually 2 to 3 weeks and the method of notification to all applicants of the results should be indicated in the documents and displayed on website. PSML should not consider prequalification applications received after the time stipulated.

B) STANDARD GUIDELINES FOR EVALUATION.

PSML will use the following Guidelines and Standard Bidding Documents for its procurement in Works, Plant & Equipment and Information Systems.

- I) Standard Guidelines for Pre-qualification of Constructors issued by Pakistan Engineering Council Islamabad, in May 2002, with amendments prescribed by NACS 2002
- II) Copy of the PEC Standard Guidelines for Pre-Qualification of Constructors is attached as **Annexure VI**.
- III) Amendments to be made in these PEC documents incorporating Public Procurement Rules, 2004 & NACS 2002 policy.
- IV) Integrity Pact.- Same as prescribed in Consultants procedures.

Allocation of Sub Criteria.

Sub-criteria and their weighting determine the outcome of the evaluation, they should be chosen considering the aspects that are critical to the success of the assignment. Evaluation criteria and sub-criteria, associated points, and the rating system form an arithmetic model to assess the technical merit of the proposals.

The more reliable the model, the more accurate the evaluation and the greater the possibility that the PSML will select the Contractors who are best suited for the assignment.

In the PEC Standard Guidelines for Pre-Qualification of Constructors, clause 3.2.5 shall be examined in the following manner;

Financial Position - General Information

- i) The purpose of assessing the financial soundness of the Applicants is to reassure the Employer that the individual Applicant's financial standing in its whole does not have structural weaknesses that may result in the Applicant's financial inability to perform, and to give an indication of the scope and value of the work the Applicant would be able to undertake. To place a detailed analysis in context, it is necessary to look at trends in key figures over a number of years and to make comparisons of the firm's annual activities to the same firm's results from previous years.
- ii) Because of differing international accounting practices and tax laws, published information on the financial position of companies and financial ratios derived there from do not provide a uniform and satisfactory basis to compare the financial standing of an Applicant with other Applicants for prequalification purposes. Nevertheless, audited financial statements or balance sheets should be sought as a general guide to the financial situation of the Applicant. Firms owned by individuals and partnerships may not be required to maintain audited accounts by the laws of their countries of origin. In such cases, balance sheets should be certified by a registered accountant and supported by tax returns.
- iii) In any case, PSML should require applicants to provide the following background information to support the presentation in the Information Forms:
 - Audited or certified financial statements for the last five years or for the period stated in the prequalification notice, supported respectively by audit statements or tax returns; and
 - Names and addresses of the Applicant's banker(s), as well as the names and addresses of clients or organizations familiar with its financial standing.

Development of Indicators and Ratios

The financial information provided by an Applicant should be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the Applicant should be given on this basis. To assist in this review, the indicators used most frequently are **working capital** and **net worth**. The following table summarizes the financial information of an example firm as would be reported by an Applicant in the Form A 10, as well as an evaluation by the Employer of the Applicant's **working capital** and **net worth**.

The example for financial capability to be provided under Form A-10 is given below for information.

EXAMPLE

Financial Information(Rs. million equivalent)

	Actual: previous five years					Projected: next two years		
	5	4	3	2	1	0	1	2
1. Total assets	185	190	200	230	250		255	253
2. Current assets	120	130	145	140	150		160	162
3. Total liabilities	90	105	100	110	115		120	126
4. Current liabilities	70	65	70	75	78		90	95
5. Profits before taxes	14	13	13	14	18		21	21
6. Profits after taxes	10	9	9	10	13		15	15

Overview Analysis

7. Net worth (1) - (3)	95	85	100	120	135		13.5	127
8. Current ratio (2)/(4)	1.7	2.0	2.1	1.9	1.9		1.8	1.7
9. Return on equity %		13.7	15.3	14.0	15.0		15.5	15.5
(5)/(7 of prior year)								

Working capital is the difference between current assets and current liabilities, and measures the firm's ability to generate cash in the short term. Current assets are cash and other assets suitable for conversion into cash within one year. Current liabilities are monetary obligations that must be paid out within the current year. To help in the interpretation of the adequacy of **working capital**, the **current ratio**, which compares the current assets with the current liabilities, is more helpful than a figure for working capital. In the example, the current ratio of the firm varies from 1.7 to 2.1 over the previous five years and the projected ratios for the next two years are also within this range. This indicates that the firm has had a consistent record of its working capital with at least Rs. 1.7 in current assets to back each rupee of its current liabilities. Construction firms normally have small inventories and accounts receivable are easy to collect; they can therefore operate safely with a low current ratio. The example firm appears healthy from its **working capital** point of view.

Net worth or **net equity** is the difference between total assets and total liabilities. The **net worth** measures a firm's ability to produce profits over the long run as well as its ability to sustain losses. Although the yearly figures for the **net worth** indicate the growth of the firm, the **return on equity** gives a better indication of the efficiency with which equity is employed within the firm. This is obtained by dividing the annual profit before taxes by the net worth of the previous year and expressed as a percentage. In the example, for every rupee of equity, the firm made 13.7 to 15.3 paise during the five-year period. The example firm shows a rather consistent net worth record.

Example : Estimating minimum “Cash-flow” Requirement

Consider a Rs. 100 million Contract of Road Work with a Two year completion period.

Estimated Cost:	Rs. 48 m
Duration:	2 years
Average monthly “cash flow” amount:	Rs. 48 m ÷ 24 = <u>Rs. 2.0m</u>
Elapsed period (sample)	
(a) Interim construction period	1 month
(b) Engineer issues payment certificate	5 days
(c) Employer pays invoice	45 days
(d) Contingency period	<u>1 month</u>
Total	4 months

“Cash flow” requirement for four months: = 4 × Rs. 2.0m = Rs. 8.0m

Contract Evaluation

- (a) The average annual amount of the Applicant’s past turnover on general construction stated by the Applicants in should be equal to or greater than that stated in Prequalification documents. If there has been a downward trend in turnover in more recent years over the specified period, a clarification should be sought by the evaluator with a view to a possible weighting of the more recent years in determining the annual average (see example below).

Example:

Year	Turnover	Rs. equivalent in M
1. 1998 (to end June)	(completed in different currencies)	20
2. 1999	“	40
3. 2000	“	80
4. 2001	“	120
5. 2002	“	100
Totals: 4.5 years		R. 360 m
Average T/O p.a.: 360÷4.5 =		<u>Rs. 80m p.a.</u>
Minimum Average Requirement stated in PQ Doc:		<u>Rs. 60m p.a.</u>

Note: Although appearing to pass the qualifying criterion, the Applicant has only averaged Rs.56 m/per annum. (140÷2.5) in the last two and one-half years, with decreasing turnover. In such cases, the Employer should make a thorough investigation of the financial soundness of the Applicant and, failing a satisfactory resolution, the Applicant could be disqualified.

- (b) The particular experience on similar contracts, and minimum key production rates as stated in PQ Doc., should be compared with information provided by applicant. The contribution of named specialist subcontractors may be a factor in satisfying these criteria.

- (c) The minimum required cash flow amount stated in PQ Doc. should be adequately supported by the Applicant's statements .. If the Applicant is a JV, the available contribution of each partner may be aggregated.
- (d) The sources of financing for "Works in Progress" should be satisfactory.

vi) The Analysis of Litigation History

1 The execution of any construction contract will normally result in the payment by the Employer of a number of reasonable claims from the Contractor, e.g., for defaults of the Engineer/Project Manager, delays, unforeseeable ground and climatic conditions, etc. However, some Contractors have an established business practice of bidding low to obtain award of contract; and then flooding the Employer with excessive or frivolous claims to increase their income. Employers should be on guard against any Contractor who habitually resorts to excessive claims, arbitration, and litigation in the execution of contracts.

2 Applicants with a consistent and significant history of excessive contract arbitrations and litigation resulting in awards or decisions against them should not be qualified to bid. So that the litigation history may be evaluated, Applicants should be required to list all contracts over a stated period of time (normally five years) that resulted in litigation or arbitration proceedings, with an indication of the matters and amounts in dispute, the parties involved, and the resolution of the dispute.

3 The criterion for rejection should be that of numerous arbitral awards or court decisions **against** the Applicant in relation to awards **for** the Applicant, taking the number and amount of contracts executed. As an indicative example, the occurrence of one or two adverse cases over five years for a Contractor handling, on average, ten construction jobs simultaneously, should not be a cause for rejection. If dispute resolution is found relatively frequently in the business of the Applicant, it may indicate an attitude of the management of the firm that could be dangerous for the Employer if the Applicant were awarded the contract, and further investigation with previous Employers may be warranted.

Evaluation

The Evaluation Committee shall evaluate the proposals in accordance with PEC Evaluation Form is attached as **Annexure VII**. Approval of Project Award Committee shall then be obtained. This activity shall be completed in Seven days.

Invitation of Tenders.

Tenders shall then be invited from the Pre-qualified Contractors.

C) INVITATION OF TENDERS.

- I) Standard Form of Bidding Documents issued by Pakistan Engineering Council in August 2002, with amendments prescribed by NACS 2002 & Public Procurement Rules, 2004.
1. Standard Guidelines for Evaluation of Bids for Procurement of Works. **Annexure VII**
 2. Standard forms of Biding Documents (Civil Works) **Annexure VII**
 - Part I. General Conditions of Contracts.
 - Part II Condition of Particular Applications.
 - FIDIC conditions for works of civil engineering constructions
 3. Standard forms of tender documents for procurement of works (Electrical and Mechanical)- **Annexure IX**
 4. Escalation and Construction Contracts.- **Annexure X**
 5. Standard Bidding Documents Supply and Installation of Information Systems (Single-Stage Bidding)- **Annexure XI**
 6. Standard Bidding Documents Supply and Installation of Information Systems (Two-Stage Bidding)- **Annexure XII**
 5. Standard Bidding Documents – Procurement of Plant & Equipment.(Goods)- **Annexure XIII**
- II) Amendments to be made in these PEC documents incorporating NACS 2002 & Public Procurement Rules, 2004 as given below.
1. **Integrity Pact.**
Same IP to be included as prescribed in Consultants procedures.
 2. **Allocation of Sub Criteria and Financial Evaluation.**
Sub-criteria and their weighting determine the outcome of the evaluation, they should be chosen considering the aspects that are critical to the success of the assignment. Evaluation criteria and sub-criteria, associated points, and the rating system form an arithmetic model to assess the technical merit of the proposals.

The more reliable the model, the more accurate the evaluation and the greater the possibility that PSML will select the proposal of the consultants who are best suited for the assignment.

III) **Check for balanced bid prices, to evaluate determination of enhancement of performance security.**

Bill of Quantity (BOQ) Format requires change, to include breakdown against each BOQ item cost of material, equipment, labour & overhead costs.

IV) Amendments in the Tender Documents for Civil Works.

- a) In Standard Form of Bidding Documents Civil Works also the Arithmetic Check and Correction of error should be included at the preliminary checking stage.
- b) The IT.26 and IT. 27 Examination of Tenders and Determination of Responsiveness may therefore be substituted with IT 24.1 a & b, 24.2 and 24.3 of the Tender Documents for Electrical and Mechanical Works.
- c) The IT.18 Format and Signing of Tender. Wording of 18.6 is substituted with new wording. 18.6.

“The tender shall contain no alterations, omissions or additions, except to comply with instructions issued by the Employer, or as are necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the tender”.

“The Correction shall be made by striking a line over the wrong amount, and writing the correct amount separately. The use of White Fluid for correction of error is not allowed. The Correction shall be made by striking a line over the wrong amount, and writing the correct amount separately”

V) Amendments in the Tender Documents for Electrical and Mechanical Works.

The PEC Standard Form of Tender Documents for Procurement of Works (Electrical & Mechanical) includes following clause.26.2 Evaluation and Comparison of Tenders

VI) Commercial Evaluation

It will be examined in detail whether the tenders comply with the commercial/contractual conditions of the Tender Documents. It is expected that no major deviation/stipulation shall be taken by the bidders.

However there is no information on the procedure of commercial evaluation. The procedure for commercial evaluation has to be defined in the Tender Documents for transparent evaluation. For this purpose following Clause is to be included in the Tender Documents for Electrical & Mechanical Works. This clause has been borrowed from the “Standard Bidding Documents for the Supply and Installation of Plant and Equipment” prepared by the World Bank, issued in November 1997, Revised January 1999 and March 2002.

- | | | |
|---------------------------------|------|--|
| 25 Commercial Evaluation | 25.1 | The comparison shall be of the EXW price of plant and equipment offered from within the Employer’s country, such price to include all costs as well as duties and taxes paid or payable on components and raw material incorporated or to be incorporated in the plant and equipment, with the price of the CIF-named port of destination (or CIP border point or CIP-named place of destination) offered from outside the Employer’s country, plus the cost of local transportation, all installation and other services required under the contract. The Employer’s comparison will also include the costs resulting from application of the evaluation procedures described in ITB Sub-Clause 25.3. |
|---------------------------------|------|--|

25.2 The Employer's evaluation of a bid will take into account, in addition to the bid prices indicated in Price Schedule Nos. 1 through 5, the following costs and factors that will be added to each Bidder's bid price in the evaluation using pricing information available to the Employer, in the manner and to the extent indicated in ITB Sub-Clause 25.3 and in the Technical Specifications:

- (a) the cost of all quantifiable deviations and omissions from the contractual and commercial conditions and the Technical Specifications as identified in Attachment 6 to the bid, and other deviations and omissions not so identified
- (b) compliance with the time schedule called for in the corresponding Appendix to the Form of Contract Agreement and evidenced as needed in a milestone schedule provided in the bid
- (c) the projected operating and maintenance costs during the life of the facilities
- (d) the functional guarantees of the facilities offered
- (e) the extra cost of work, services, facilities, etc., required to be provided by the Employer or third parties.

The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the contract, shall not be taken into account in bid evaluation.

25.3 Pursuant to ITB Sub-Clause 25.2, the following evaluation methods will be followed:

(a) ***Contractual and commercial deviations***

The evaluation shall be based on the evaluated cost of fulfilling the contract in compliance with all commercial, contractual and technical obligations under this bidding document. In arriving at the evaluated cost, the price for withdrawal of deviations shown in Attachment 6 of the bid will be used, if necessary. If such a price is not given, the Employer will make its own assessment of the cost of such a deviation for the purpose of ensuring fair comparison of bids.

(b) ***Time schedule (program of performance)***

The plant and equipment covered by this bidding are required to be shipped and installed, and the facilities shall have the pre-commissioning completed within the period named in the Bid Data Sheet after the effective date specified in the Form of Contract Agreement. **Bidders are required to base their prices on the time schedule given in the corresponding Appendix to the Form of Contract Agreement (Time Schedule) or, where no time schedule is given, on the completion date(s) given in the Bid Data Sheet.** No credit will be given for earlier completion. Where an Alternative Time Schedule is accepted, pursuant to ITB Sub-Clause 9.3 (g) (i), and where the completion date offered is within the limits specified in the Bid Data Sheet, bids offering a completion date beyond the minimum designated period shall be adjusted in the evaluation by adding a factor specified in the Bid Data Sheet to the bid price. Bids offering a completion date beyond the maximum designated period shall be rejected.

(c) ***Operating and maintenance costs***

- (i) Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle cost of the

facilities, these costs will be evaluated according to the principles given in the Bid Data Sheet, including the cost of spare parts for the initial period of operation stated in the Bid Data Sheet and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other employers similarly placed. Such costs shall be added to the bid price for evaluation.

- (ii) The price of recommended spare parts quoted in Price Schedule No. 6 shall not be considered for evaluation.

(d) ***Functional Guarantees of the facilities***

- (i) Bidders shall state the functional guarantees (e.g., performance, efficiency, consumption) of the proposed facilities in response to the Technical Specifications. Plant and equipment offered shall have a minimum (or a maximum, as the case may be) level of functional guarantees specified in the Technical Specifications to be considered responsive. Bids offering plant and equipment with functional guarantees less (or more) than the minimum (or maximum) specified shall be rejected.

- (ii) For the purposes of evaluation, the adjustment specified in the Bid Data Sheet will be added to the bid price for each drop (or excess) in the responsive functional guarantees offered by the Bidder, below (or above) either a norm of one hundred (100) or the value committed in the responsive bid with the most performing functional guarantees, as specified in the Bid Data Sheet.

(e) ***Work, services, facilities, etc., to be provided by the Employer***

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding documents, the Employer shall assess the costs of such additional work, services and/or facilities during the duration of the contract. Such costs shall be added to the bid price for evaluation.

(f) ***Specific additional criteria***

The relevant evaluation method, if any, shall be detailed in the Bid Data Sheet and/or in the Technical Specifications.

- 25.4 Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

vii) Evaluation Form.

PEC Standard Form of Evaluation report is to be used, with amendments prescribed by NACS 2002 & Public Procurement Rules, 2004. Copy of the PEC Standard Form of Evaluation report is attached as **Annexure X**.

vii) Declaration of Evaluation Report for Transparency of decision.

Evaluation reports should be made public, e.g. by placing on website or locally by the clients 10 days prior to finalization of Evaluation Report to invite any objections from any sector for the purpose of making any re-evaluation, if needed.

Note: Publication of the Evaluation Report

PSML shall publish in its website the following information: (i) name of all bidders who submitted a bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of all bids that had been evaluated; (iv) name of bidders that were disqualified and the reasons for their disqualification; and (v) name of the bidder recommended for award and reason for recommendation, price, duration and summary scope of the contract.

viii) Finalization of Evaluation Report.

After 10 days, all objections shall be examined by the Evaluation Committee, and evaluation report to be finalized in 6 days, signed by all ER Committee Members. The ER shall then be approved by the Project Award Committee in 2 days, competent authority in 2 Days and letter of Award issued in 2 days and Contract Agreement Signed in 28 days.

x) Award of Contract.

The negotiations for award of Contract shall be held with the responsive evaluated lowest bidder, and the contract awarded to the at the quoted cost. This process shall be completed within the prescribed time frame quoted below

• Receipt of Tenders (minimum)	15 Days
• Opening & Evaluation of tenders (Technical & financial) by ER Committee	*15 Days
• Public Declaration of Evaluation Report	10 Days
• Evaluation Report	
- Finalization of ER	06 Days
- Approval of ER by Project Award Committee.	02 Days
- Approval of Award of Contract by PSML.	02 Days
- Issue of Letter of Award	02 Days
- Signing of Agreement	28 Days

Total 37 Days

Note: * Evaluation period may be amended depending on the complicity of the Tender, but prior to issue of tenders.

xi) Copy of Contract for National Accountability Bureau.

A copy of the Executed Contract of over Rupees Fifty Million shall be forwarded to National Accountability Bureau for information.

xii) Standard Contract Documents

The Tender Documents shall also include one of the following two appropriate form of Standard Contract Documents issued by PEC,

1. Standard Form of Bidding Documents (Civil Works) **Annexure VIII**
2. Standard Form of Tender Documents (electrical & mechanical) **Annexure IX**

D) ALTERNATIVE METHODS OF PROCUREMENT

PSML may utilize the following alternative methods of procurement for Plant & Equipment, Services, Information Systems and Works:-

- i) **Petty Purchases.** Where the object of the procurement is below the financial limit of Rs.10,000. Such procurement shall be exempt from the requirements for bidding or quotations for prices.

Provided that the PSML shall ensure that procurement of petty purchases is in conformity with the principles of procurement described below.

When engaging in procurement, PSML shall ensure that all procurement is conducted in a fair and transparent manner. The aim shall be to obtain the best value for money. The procurement process shall be both efficient and economical. It shall seek to improve governance, management, transparency and accountability.

- ii) **Request for Quotations (RFQ).** A PSML shall engage in this method of procuring only if the following conditions exist:-

- a) The cost of object of procurement is below the prescribed limit of Rs.100,000.
- b) The object of the procurement has standard specifications.
- c) Minimum of three quotations have been obtained.
- d) The object of the procurement is purchased from the supplier offering the lowest price.

Provided that PSML are convinced of the inadequacy of the financial limit prescribed for RFQ in undertaking their respective operations may approach the Authority for enhancement of the same with full and proper justifications.

- iii) **Direct Contracting.** PSML shall only engage in Direct Contracting if the following conditions exist:-

- a) The procurement concerns the acquisition of spare parts or supplementary services from original manufacturer or supplier.
- b) Provided that the same are not available from alternative sources.
- c) Only one manufacturer or supplier exists for the required procurement.
- d) Provided that the procurement agencies shall prescribe appropriate and may authorize procurement of proprietary object after due diligence,
- e) Where a change of supplier would oblige the PSML to acquire material having different technical specifications and/or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance. Provided that the contract or contracts do not exceed 3 years in duration.

iv) Repeat orders

PSML may place a repeat order at the same lowest price on the same bidder qualified/declared successful in the last tender for a particular commodity/service for a quantity not exceeding 15% of the original procurement.

v) Negotiated Tendering.

PSML may engage in negotiated tendering with one or more suppliers/contractors with or without prior publication of a procurement notification. This procedure shall only be used:

- a) when the suppliers involved are manufactured purely for the purpose of appointing a specific piece of research of an experiment, a study or a particular development.
- b) When for technical or artistic reasons, or for reasons connected with protection of exclusive rights or intellectual property, the supplies may be manufactured or delivered only by a particular supplier.
- c) When for reasons of extreme urgency brought about by events unforeseeable by the PSML, the time limits laid down for open and limited bidding procedures cannot be met. The circumstances invoked to justify extreme urgency must not be attributable to the PSML.
- d) Provided that any PSML desirous of using negotiated tendering as a method of procurement shall record its reasons and justifications in writing for resorting to negotiated tendering and shall place the same on record.



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SAMPLE

PREQUALIFICATION EVALUATION CRITERIA OF CONTRACTORS.

In the Invitation for Pre-qualification, minimum requirements have to be specified. For guidance, the following may be considered; however it may be necessary for PSML to prepare its own criteria / sub-criteria depending upon the nature, size and requirements of specific projects.

Use of Prequalification

Prequalification is aimed at ensuring that only contractors and suppliers who have the required experience, technical and financial resources bid for a contract. The Prequalification process screens potential bidders and is designed to provide the following benefits:

- Unqualified bidders save the cost of bid preparation which results in lower overhead costs to them and, therefore presumably lower bid prices.
- At times the lowest submitted bid may be non responsive, i.e. it fails to satisfy the requirements of the project specification or TOR, this puts the PSML in an embarrassing situations. This must be avoided at all costs..
- It eliminates firms with insufficient experience as the technical abilities of firms is checked at this stage.
- Leading contractors and suppliers, particularly the international bidders, are more likely to bid knowing that competition will be confined to only those qualified and responsive to the requirements of the project TOR and specifications. This benefits the PSML in terms of only qualified bidders responding.
- The scale of interest by potential bidders can be measured, affording the opportunity to revise bidding conditions as necessary to develop adequate competition.
- The evaluation of only bids from qualified bidders may result in time and cost savings as well as a reduction (or elimination) of the threat of pressure being applied by marginally or unqualified bidders for their low prices to be considered.

Where government agencies come in as bidders, prequalification may be used to determine that they are not only capable of supplying the items to be procured, but also that they are commercially-oriented and do not enjoy direct or hidden subsidies from the government. This ensures that a fair competitive bidding situation exists and thus, eligible private sector domestic and foreign suppliers and contractors, safely participate in the bidding process.

Prequalification should not be used to limit competition to a predetermined number of potential bidders. All applicants who have the qualifications to perform the proposed contract should be prequalified and bidding documents made available to all those who

stand pre-qualified No upper limit should be imposed on the number of prequalified potential bidders.

Evaluation Criteria

The Evaluation Criteria given along with is a sample based on the World Bank and Pakistan Engineering Council guidelines, and is based on the factors given in sub-paragraphs of Instructions to Applicants and shall result in fail/pass basis. The 'pass' Applicants should be allowed to participate in the Tender.

Pre-qualification will be based on the Applicant's general and particular experience, personnel and equipment capabilities, and financial position, as demonstrated by the Applicant's responses in the forms attached to the prequalification request form. Sub-contractor's experience and resources shall not be taken into account in determining the Applicant's compliance with the qualifying criteria. However, Joint Venture experience & resources shall be considered. Consortium or Association of firms will be considered for similar treatment as in the case of Joint Venture.

Maximum Marks 100 and minimum passing marks are 75, and 15 marks in each category.

a) Experience

25 Marks

The Applicant shall meet the following minimum criteria:- (*Indicate amount here*)

a) Average annual turnover which is also termed as Income from contracting, Revenue or Sales and is defined as billing for works in progress and completed over the last five years of Rs. _____ million or equivalent.

b) Successful experience as prime contractor in the execution of at least one to three projects of a nature and complexity comparable to the proposed contract(s) within the last five years. This experience should include _____

_____ [*Indicate annual rate for key construction activities in the proposed contract or works. The annual rate should equal about 80 percent of expected peak rate of construction of the key activity in the contract or works.*]

b) Personnel Capabilities

25 Marks

Requirement of Employer/User will be varied from Project to Project. The Applicant must have in his employment suitably qualified personnel to fill the following key management and specialist positions. The Applicant will supply information on a prime and an alternate candidate for each position (both should meet the specified experience requirements):

However following factors should be given due consideration by the user of this document.

i) For Key Positions e.g. Project Manager, Contract Manager, Project Director etc.

- The experience of the personnel on similar projects of 2 or more shall be 10 years or more.
- Specialized experience if required shall be specified.

- M.S./B.S. Engineering or equivalent qualification approved by PEC as an academic qualification shall be essential for execution/supervision of Engineering Works/Projects.

ii) For other Engineering Positions

- B.S. Engineering or equivalent approved by PEC as an academic qualification shall be essential for Engineering Works/Projects.
- Experience on similar projects from 3 to 5 years in accordance with the project requirements.

iii) For other Positions

- The Employer/PSML should assess and specify the experience/qualification requirements for other positions.

c) Equipment Capabilities

25 Marks

(a) The Applicant should own, or have assured access to (through rented, lease, purchase agreement or other means), the following key items of equipment (limited to only major items of equipment) in full working order, and must demonstrate that, based on known commitments, these will be available for deployment on the proposed contract or works. The Applicant may also list alternative equipment which he would propose for the contract together with an explanation of the alternate proposal.

Sr.No.	Equipment Type & Characteristics	Minimum Number required
1.		
2.		
3.		

- 1.
- 2.
- 3.

d) Financial Position

25 Marks

The Applicant should demonstrate that he has access to, or has available liquid assets, un-encumbered real assets, lines of credit and other financial means sufficient to meet the construction cash flow for the execution of works. Applicant's commitments for other ongoing contracts shall also be considered. *[The duration for the ongoing contracts are calculated by allowing the time of construction from beginning of month invoiced plus the time needed for the Engineer to certify the pay estimate plus the time needed by the Employer to pay the certified amount]*

Conflict of Interest

The Applicant (including all members of a JV) must not be associated, nor have been associated in the past, with the consultant or any other entity that has prepared the design, specifications, and other prequalification and bidding documents for the project, or was proposed as Engineer for the contract, over the last five years. Any such association may result in disqualification of the Applicant.

EVALUATION SUB-CRITERIA FOR CONTRACTORS.

[For guidance, the following sub-criteria is considered; however PSML may fix its own criteria depending upon nature, size and requirements of the specific projects.]

Max 100 Marks

1. Experience

25 Marks

Experience of Firm	10 Years	5 Marks
*Average annual turn over in last five years Rs 60 million. Carried out Projects of value more than Rs 40 Million in last 5 years		5 marks
Each subsequent Project 1 Marks,	3 Projects Max	10 Marks 5 Marks

2. Personnel Capabilities

25 Marks

For Key Position

Project Manager:

15 Marks

B.E. (preferred discipline) 20 Years Experience	5 marks
M.S.. Engineering	2 Marks
Employed in Firm for 5 year or more	2 Marks
3 Project of similar nature	3 Marks
Each additional project of similar nature will score 1 marks(max 3)	3 Marks

Construction / Installation Engineer:

5 Marks

B.E. (preferred discipline) 15 Years Experience	2 marks
Employed in Firm for 5 year or more	1 Marks
3 Project of similar nature	2 Marks

For other Engineering Positions min. experience 10-years

- | | |
|---|----------------|
| 1. (Engineer Specify Discipline). | 3 Marks |
| 2. (Engineering Diploma specify discipline) | 2 Marks |

3. Equipment Capability – (owned by firm)

25 Marks

(PSML to Specify Equipment requirements)

i) Equipment	10 Marks
ii) Equipment	5 Marks
iii) Equipment	4 Marks
iv). Equipment	2 Marks
v). Equipment	4 Marks

**Note the above marks given to each piece of equipment to be
Based on the importance of the equipment for the project**

4. Financial

25 Marks

Working Capital with firm	Rs (8.0) Million	15 marks
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For Additional Rs 10 Million,5 Marks Max 10 Marks
 ***(Working Capital: Total assets, including bank overdraft limits- Present Value of Contract in Hand)

Financial Capabilities

Example : Estimating minimum “Cash-flow” Requirement

[ESTIMATED COST OF Project to be filled by PSML Sample is based on Rupees 96Million.]

Explanatory Notes.

Development of Indicators and Ratios

4.1 The financial information provided by an Applicant should be reviewed in its entirety to allow a truly informed judgment, and the pass–fail decision on the financial position of the Applicant should be given on this basis. To assist in this review, the indicators used most frequently are **working capital** and **net worth**. The following table summarizes the financial information of an example firm as would be reported by an Applicant in the Form A 10, as well as an evaluation by the Employer of the Applicant’s **working capital** and **net worth**.

The example for financial capability to be provided under Form A-10 is given below for information.

EXAMPLE

Financial Information (Rs. million equivalent)

	Actual: previous five years					Projected: next two years		
	5	4	3	2	1	0	1	2
1. Total assets	185	190	200	230	250		255	253
2. Current assets	120	130	145	140	150		160	162
3. Total liabilities	90	105	100	110	115		120	126
4. Current liabilities	70	65	70	75	78		90	95
5. Profits before taxes	14	13	13	14	18		21	21
6. Profits after taxes	10	9	9	10	13		15	15

Overview Analysis

7. Net worth (1) - (3)	95	85	100	120	135		13.5	127
8. Current ratio (2)/(4)	1.7	2.0	2.1	1.9	1.9		1.8	1.7
9. Return on equity % (5)/(7 of prior year)		13.7	15.3	14.0	15.0		15.5	15.5

Working capital is the difference between current assets and current liabilities, and measures the firm’s ability to generate cash in the short term. Current assets are cash and other assets suitable for conversion into cash within one year. Current liabilities are monetary obligations that must be paid out within the current year. To help in the interpretation of the adequacy of **working capital**, the **current ratio**, which compares the current assets with the current liabilities, is more helpful than a figure for working capital. In the example, the current ratio of the firm varies from 1.7 to 2.1 over the previous five years and the projected ratios for the next two years are also within this range. This indicates that the firm has had a consistent record of its working capital with at least Rs. 1.7 in current assets to back each rupee of its current liabilities. Construction firms normally have small inventories and accounts receivable are easy to collect;

they can therefore operate safely with a low current ratio. The example firm appears healthy from its **working capital** point of view.

Net worth or **net equity** is the difference between total assets and total liabilities. The **net worth** measures a firm's ability to produce profits over the long run as well as its ability to sustain losses. Although the yearly figures for the **net worth** indicate the growth of the firm, the **return on equity** gives a better indication of the efficiency with which equity is employed within the firm. This is obtained by dividing the annual profit before taxes by the net worth of the previous year and expressed as a percentage. In the example, for every rupee of equity, the firm made 13.7 to 15.3 paisa during the five-year period. The example firm shows a rather consistent net worth record.

Example: Estimating minimum “Cash-flow” Requirement

Consider a Rs. 100 million Contract of Road Work with 2 year completion period.

Estimated Cost:	Rs. 48 m
Duration:	2 years
Average monthly “cash flow” amount:	Rs. 48 m ÷ 24 = <u>Rs. 2.0m</u>
Elapsed period (sample)	
(a) interim construction period	1 month
(b) Engineer issues payment certificate	5 days
(c) Employer pays invoice	45 days
(d) contingency period	<u>1 month</u>
Total	4 months

“Cash flow” requirement for four months: = 4 × Rs. 2.0m = Rs. 8.0m
Firm shall have working capital to provide this cash flow..

Contract Evaluation

- (b) The average annual amount of the Applicant’s past turnover on general construction stated by the Applicants in should be equal to or greater than that stated in Prequalification documents. If there has been a downward trend in turnover in more recent years over the specified period, a clarification should be sought by the evaluator with a view to a possible weighting of the more recent years in determining the annual average (see example below).

Example:

Year	Turnover	Rs. equivalent in M
1. 1998 (to end June)	(completed in different currencies)	20
2. 1999	“	40
3. 2000	“	80
4. 2001	“	120
5. 2002	“	100
Totals: 4.5 years		R. 360 m
Average T/O p.a.: 360÷4.5 =		<u>Rs. 80m p.a.</u>
Minimum Average Requirement stated in PQ Doc:		<u>Rs. 60m p.a.</u>

***Note:** Although appearing to pass the qualifying criterion, the Applicant has only averaged Rs.56 m/p.a. (140÷2.5) in the last two and one-half years, with decreasing turnover. In such cases, the Employer should make a thorough investigation of the financial soundness of the Applicant and, failing a satisfactory resolution, the Applicant could be disqualified.

- (b) The particular experience on similar contracts, and minimum key production rates as stated in PQ Doc., should be compared with information provided by applicant. The contribution of named specialist subcontractors may be a factor in satisfying these criteria.
- (c) **The minimum required cash flow amount stated in PQ Doc. should be adequately supported by the Applicant's statements .. If the Applicant is a JV, the available contribution of each partner may be aggregated.
- (d) The sources of financing for "Works in Progress" should be satisfactory.



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Sample Evaluation Format for Contractors / Suppliers.

After the public opening of bids, information relating to the examination, clarifications, and evaluation of bids shall not be disclosed to bidders or other persons not officially concerned with this process until the Evaluation Report is completed and then it shall be displayed on PSML website for inviting objections for ten days. On 11, 12 and 13th days the objections shall be reviewed by the ER Committee and the Evaluation Report finalized.

The evaluation committee should work in a secure office where all bidding documents can be kept. There may be a considerable advantage if the members who participated in the preparation of the bidding documents are included in the bid evaluation committee. This is recommended in order to prevent the un-realistic time gap between submission of Bids and the completion of the Evaluation process because such gaps may create opportunities for disclosure of contents of Bids/informations.

The evaluation process should begin immediately after bid opening. The purpose of preliminary examination is to identify and reject bids that are incomplete, invalid, or substantially non-responsive to the bidding documents and therefore are not to be considered further..

Evaluation of Bids.

Step 1. Carry out Arithmetic check.

Arithmetical errors shall be rectified. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected.

“The tender shall contain no alterations, omissions or additions, except to comply with instructions issued by the Employer, or as are necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the tender”.

“The Correction shall be made by striking a line over the wrong amount, and writing the correct amount separately. The use of White Fluid for correction of error is not allowed.

Non compliance of the correction of arithmetic error as described shall be cause of rejection of bid at this preliminary stage.

Step 2. Post Qualification. Evaluate the Qualification of the Bidder i.e., - Review of updated information on the sub-elements for prequalification to establish continued status as at the time of pre-qualification, or - Assessment of qualification of the Bidder from data provided for post-qualification.

Only post qualified bids shall be further evaluated for responsiveness and detailed evaluation.

Step 3. Check for Substantial Responsiveness of Bid. : Unless the bidding documents have specifically allowed, bids not offering all of the required items should ordinarily be considered non-responsive. However, under works/other contracts, missing prices for occasional work items are considered to be included in prices for closely related items elsewhere; if such provision exists in the preamble of Bill of Quantity. If any erasures, interlineation, additions, or other changes have been made, these should be initialed by the bidder. Exception from bid conditions are acceptable if they are corrective, editorial, explanatory; otherwise, they should be treated as deviations and should be analyzed as per evaluation criteria.. Missing pages in the original copy of the bid which affect the ranking of the Bidders may be a cause for rejection of the bid.

Major (Material) deviations

Major deviations to the commercial requirements and technical specifications are a basis for the rejection of bids. As a general rule, major deviations are those, that if accepted, would not fulfill the purposes for which the bid is requested, or would prevent a fair comparison or affect the ranking of the bids that are compliant with the bidding documents.

A bid is not to be considered in the light of the above if;

- (i) It is submitted by a Bidder who has participated in more than one Bid.
- (ii) It is received after the time and date fixed for its receipt.
- (iii) It is submitted through fax, telex, telegram or e-mail.
- (iv) It is unsigned.
- (v) It is not accompanied with Bid Security.
- (vi) Bid Security value/validity is less than specified.
- (vii) It is submitted for incomplete Scope of Work.
- (viii) It indicates a completion date later than specified.
- (xi) It indicates that material to be supplied does not meet the specifications requirements. (This item will be examined at the stage of Technical Evaluation).
- (x) It indicates that prices quoted are not firm during currency of the contract except those prices where escalation/adjustments are permitted in the Conditions of Contracts (This item will be examined at the stage of Financial Evaluation).
- (xi) It indicates that Bid Prices do not include the amount of taxes & duties.
- (xii) If Bidder refuses to accept the arithmetic corrections.
- (xiii) It is materially and substantially different from the Conditions/Specifications of Bidding Documents. (This item will be examined at the stage of Technical Evaluation).
- (xiv) It provides Sub-contracting, contrary to conditions specified in the Bidding Documents.
- (xv) It fails to comply with Milestones/critical dates specified in Bidding Documents.
- (xvi) The bidder is not valid license holder of the PEC.
- (xv) It does not comply with the performance requirements of supplies specified in the Bid documents. (This item will be examined at the stage of Technical Evaluation).
- (xvi) Subcontracting contrary to the Conditions of Contract specified in Bidding Documents.

- (xvii) Refusing to bear important responsibilities and liabilities allocated in the Bidding Documents, such as performance guarantees and insurance coverage.
- (xviii) Taking exception to critical provisions such as applicable law, taxes and duties and dispute resolution procedures.
- (xix) Those deviations that are specified in the ITB requiring rejection of the bid (such as, in the case of Works/Plant & equipment supplies/Information System participating in the submission of other bids other than as a subcontractor).

Minor Deviations

Bids that offer deviations acceptable to the PSML and which can be assigned a monetary value defined in the bidding documents, may be considered substantially responsive at least as to the issue of fairness. This value would however be added as an adjustment for evaluation purposes only during the detailed evaluation process

Step 4. Technical Evaluation shall be carried out on the basis of pre determined Criteria given in the Bid Documents. Sample Technical Evaluation Requirements and Weightage to be assigned for telecommunication items is attached, which is to be made according to the product requirement.

Note: In Information System Procurement **Technical : Financial** scoring ratio varies from 80:20 for complicated software only to 20:80 for simple software and supply of hardware also. Each project has to be assigned the ratio according to PSML requirement.

Step 5. The Financial Evaluation as prescribed in the PEC Standard Guidelines for Evaluation of Bids for Procurement of Works/ Equipment of only the Responsive Bids shall be carried out after the responsiveness evaluation is completed.

Integrity Pact

DECLARATION OF FEES, COMMISSIONS AND BROKERAGE ETC. PAYABLE BY THE SUPPLIERS/CONTRACTORS OF GOODS, SERVICES & WORKS

_____ [the Seller/Supplier/Contractor] hereby declares its intention not to obtain or induce the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan or any administrative subdivision or agency thereof or any other entity owned or controlled by it (GoP) through any corrupt business practice.

Without limiting the generality of the foregoing, [the Seller/Supplier/Contractor] represents and warrants that it has fully declared the brokerage, commission, fees etc. paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or including the procurement of a contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP, except that which has been expressly declared pursuant hereto.

[The Seller/Supplier/Contractor] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with GoP and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[The Seller/Supplier/Contractor] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty. It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to GoP under any law, contract or other instrument, be voidable at the option of GoP.

Notwithstanding any rights and remedies exercised by GoP in this regard, [the Seller/Supplier/Contractor] agrees to indemnify GoP for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [the Seller/Supplier/Contractor] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit in whatsoever form from GoP.