Dated: 03-02-2021

Naya Pakistan Housing and Development Authority Procurement Regulations, 2020

S.R.O. 4(KE)/2021:

In exercise of the powers conferred under Section 58 read with Section 20(3) and Section 5(2)(q) of the Naya Pakistan Housing and Development Authority Act, 2020, the Naya Pakistan Housing and Development Authority is pleased to notify the following regulations:

1. Short title and commencement.- (1) These Regulations may be called the **Naya Pakistan Housing and Development Authority Procurement Regulations, 2020**.

(2) They shall come into force at once.

CHAPTER-I
GENERAL PROVISIONS

2. Definitions.- (1) In these Regulations:

(a) "**Act**" means Naya Pakistan Housing and Development Authority Act, 2020 (Act No. V of 2020);

(b) "**advertisement**" means an advertisement published by the Authority in the manner prescribed under Regulation 12;

(c) "**applicant**" means a person who seeks to be enlisted or to be prequalified or to be shortlisted in response to an advertisement;

(d) "**associate**" means any person with whom the consultant associates in order to provide any part of the services;

(e) "**Authority**" means the Authority as defined in Section 3(d) of the Act;

(f) "**bid**" means a tender or an offer, in response to an invitation by the Authority, by a person expressing its willingness to undertake a specified task at a price;

(g) "**biding document**" means a document or a set of documents prescribing the quantity, quality, characteristics, conditions and procedures of the transactions prior to the actual procurement and on the basis of which bidders prepare their bids;

(h) "**bid security**" means the bank guarantee or other form of security submitted by a bidder together with a bid to secure the obligations of the bidder participating in a bidding process;

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

(i) "**competitive bidding**" means a procedure leading to the award of a procurement contract whereby all invited persons may bid for the contract;

*Inserted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021

(j) "**competent authority**" means the Chairman of the Authority or any other officer of the Authority authorized to act as such pursuant to the Act;

(k) "**consultant**" means a person who is qualified by appropriate education and relevant experience for provision of consultancy services;

(l) "**consultancy services**" means services requiring adequate technical expertise and financial capability in undertaking specific assignment or project and may be of an intellectual nature and differ from the other types of services directly connected with the procurement of goods and works in which the physical component of the activity is the main function and often involves equipment intensive assignments and may include *inter alia*:

(i) Advisory and review services;

(ii) Pre-investment or feasibility studies;

(iii) Construction supervision;

(iv) Management and related services;

(v) Financial services;

(vi) Legal services;

(vii) Other technical services or special studies;

(viii) Design; and

(ix) Surveys and investigations;

(m) "**contractor**" means a person who undertakes to supply goods, services or works and includes a consultant;

*(n) "**corrupt and fraudulent practices**" in respect of procurement process, shall be either one or any combination of the practices including; -

(i) "coercive practices" which means any impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;

(ii) "collusive practices" which means any arrangement between two or more parties to the procurement process designed to stifle open competition for any wrongful gain, and to establish prices at artificial, non-competitive levels;

(iii) "corrupt practices" which means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain;

(iv) "fraudulent practices" which means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

**For clause (n) the following shall be substituted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*

(v) "obstructive practices" which means harming or threatening to harm, directly or indirectly, persons to influence their participation in a procurement process, or affect the execution of a contract;

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

*(o)(a) **"cross debarred"** means a bidder debarred by any procuring agency shall be considered as debarred by the Authority;

(p) "**emergency**" means natural calamity, disaster, accident, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment;

(q) "**evaluation committee**" means a committee constituted by the Authority to evaluate tender or proposal to ascertain whether the bid's proposal or tender correspond to the evaluation criteria formulated by the Authority;

(r) "**evaluation report**" means the report prepared after the evaluation of tenders, quotations, expression of interest, or proposal;

(s) "**framework procurement contract/agreement**" means a contractual arrangement which allows the Authority to procure goods, services or works that are needed continuously or repeatedly at agreed terms and conditions over an agreed period of time, through placement of a number of orders.

(i) "open framework agreement" means an agreement with specified terms and conditions without an agreed price

(ii) "closed framework agreement" means an agreement with specified terms and conditions with an agreed price.

(t) "**Federal Government**" means the Government of the Islamic Republic of Pakistan;

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

(u) "**Government**" means the Federal Government, a Provincial Government or a Local Government;

(v) "**large consultancy**" means a consultancy where the cost of consultancy exceeds **two million (2,000,000)** rupees for individual consultant and **five million (5,000,000)** rupees for consulting firms;

(w) **"most advantageous bid"** means:

**Inserted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*

***Inserted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*

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

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

(x) "**performance guarantee**" means the bank guarantee or other form of security submitted by the contractor to secure obligations under the contract in accordance with the requirements in the bidding document;

(y) "**person**" means a company, entity, firm, association of persons, body of individuals, or a sole proprietor;

(z) "**pre-qualification**" means a procedure for demonstrating qualification as a pre-condition for being invited to tender;

(aa) "**proposal**" means the technical proposal or the financial proposal submitted by a bidder;

(bb) "**procurement contract**" means the agreement entered into between the Authority and the successful bidder;

(cc) "**repeat orders**" means procurement of the same commodity from the same source;

(dd) "**Regulations**" mean the Naya Pakistan Housing and Development Authority Procurement Regulations, 2020;

(ee) "**responsive**" means qualified for consideration on the basis of declared evaluation criteria and specified in the bid document or in the request for proposal;

(ff) "**short consultancy**" means consultancy where the cost of consultancy does not exceed two million **(2,000,000)** rupees for individual consultant and five million **(5,000,000)** rupees for consulting firms and duration of the short consultancies shall not exceed **six (6)** months for an individual consultants and **one (1)** year for consulting firms;

(gg) "**supplier**" means a person who undertakes to supply goods, services or works;

(hh) "**urgency**" means a limited timeline for the accomplishment of procurement which cannot be met through open and limited bidding method; and

(ii) "**Unsolicited Proposal**" means any proposal containing a unique and innovative idea and approach which is not submitted in response to any procurement request, however is aligned with the mission and objectives of the Authority and is subject to competitive selection process by soliciting counter proposals challenging the initiator's proposal in all the technical and financial aspects.

(jj) "**value for money**" means the best returns for each rupee spent in terms of quality, timeliness, reliability, after sales service, up-grade ability, price, source, and the combination of whole-life cost and quality to meet the Authority's requirements.

(2) Any expression used but not defined in these Regulations shall have the same meaning as is assigned to it in the Act.

3. Scope and applicability. – Save as otherwise provided, these Regulations shall apply to all procurements made by the Authority.

4. Principles of procurements. – The Authority, while making any procurement, shall ensure that the procurement is made in a fair and transparent manner, the object of procurement brings value for money to the Authority and the procurement process is efficient and economical.

5. Treaty Obligations etc.-Whenever these Regulations are in conflict with an obligation or commitment of:

(a) the Federal Government arising out of an international treaty or an agreement with a State or States, or any international financial institution or donor institution;

(b) the Authority arising out of an agreement with any financial institution or donor institution;

the provisions of such treaty or agreement shall prevail to the extent of such conflict.

6. Language.–(1) Subject to sub-regulation (2), all communication and documentation relating to procurements of the Authority shall either be in Urdu or English or both.

(2) When any procurement is required to be made from any state outside Pakistan, the language of that state may also be used in addition to Urdu or English but the original documentation for purposes of record, even in that case, shall be in Urdu or English and the translation in such other language may be used for any other purpose.

(3) In case of conflict, the original documentation on record shall prevail.

7. Integrity pact. – Procurement exceeding the limit as may be determined by the Policy Board shall be subject to an integrity pact between the Authority and a contractor.

CHAPTER-II
PROCUREMENT PLANNING

8. Procurement planning.–The Authority shall, within two months from the commencement of a financial year, devise annual planning for all proposed procurements with the object of realistically determining the requirements of the Authority, within its available resources, delivery time or completion date and benefits that are likely to accrue to the Authority.

9. Limitation on splitting of procurement.–(1) Save as otherwise provided the Authority shall announce in an appropriate manner all proposed procurements for each financial year and shall proceed accordingly without any splitting or regrouping of the procurements so planned.

(2) The Authority shall advertise in advance annual requirements for procurement on its website.

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

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

(3) In case, the Authority is convinced that the use of or a reference to a brand name or a catalogue number is essential to complete, an otherwise incomplete specification, and no other sufficiently precise or understandable way of describing the characteristics of the goods, works or services to be procured is provided, the words "or equivalent" shall be used, after recording specific justifications in writing therein. The Authority shall be responsible to define the parameters of "equivalence" for all participants to procurement process, to ensure transparency;

(4) Solicitation documents or notices for disposal of assets by tender, and any additional information made available to a prospective participant, shall specify that the asset is to be sold on "as is where is" basis and shall disclaim liability after sale;

(5) Notwithstanding anything contained in sub-regulation (4), the Authority shall give a full and accurate description of an asset to be disposed;

11. Approval mechanism.–The Authority shall provide clear authorization and delegation of powers for different categories of procurement and shall initiate procurements after prior approval of the relevant competent authority specified by the Chairman through an order in writing.

CHAPTER-III
ADVERTISEMENT

12. Method of advertisement. – (1) Save as otherwise provided in these Regulations, the Authority shall advertise procurement of more than **five hundred thousand (500,000)** rupees and up to the limit of **ten million (10,000,000)** rupees on the website of the Authority but if deemed in public interest, the Authority may also advertise the procurement in at least one national daily newspaper.

(2) Subject to Regulations 13 and 16(5), any procurement exceeding **ten million (10,000,000)** rupees shall be advertised on the website of the Authority and in at least two national daily newspapers of wide circulation, one in English and one in Urdu.

(3) The Authority shall ensure that the information posted on the website is complete for 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.

**For regulation 10 the following shall be substituted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*

13. **Exceptions.**– The requirement of advertisement mentioned in Regulation 12, may be dispensed with after prior approval of the Policy Board in case the publication of advertisement or notice of the proposed procurement involves disclosure of information which is proprietary in nature or falls within the definition of intellectual property which is available from a single source.

14. **Response time.** – (1) The Authority may decide the response time for receipt of bids or proposals (including proposals for prequalification) from the date of publication of an advertisement or notice keeping in view the complexity of the procurement, availability and urgency but, in no circumstances, the response time shall be less than **fifteen (15)** days for national competitive bidding and **thirty (30)** days for international competitive bidding.

(2) All advertisements or notices shall expressly mention the response time allowed for the 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. Notwithstanding anything contained in these Regulations the requirement of response time shall not apply in case of an emergency procurement.

(3) The response time shall be calculated from the date of publication of the advertisement in a newspaper or on the website, whichever is later.

15. **Framework procurement contract. –** (1) The Authority may procure goods, services or works through framework procurement contract in order to ensure uniformity in the procurement.

(2) The Authority shall adopt any of the methods of procurement mentioned in these Regulations for purposes of entering into a framework procurement contract.

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

(4) Open and Closed Framework Agreements may be made with the selected suppliers and service providers. Maximum duration of Open Framework Agreements shall not be more than three years and the Closed Framework Agreements shall not exceed one year.

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

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

(2) The Authority shall determine the factor or percentage for price adjustment with approval of **Chairman of the Authority**.

CHAPTER-IV
PREQUALIFICATION, QUALIFICATION AND DISQUALIFICATION

17. **Prequalification.** – (1) Subject to sub-regulation (2), the Authority may, prior to floating the tenders or invitation to proposals or offers, engage in prequalification of bidders in case of services, civil works, turnkey projects and also in case of procurement of expensive and technically complex equipment to ensure that only technically and financially capable firms or persons having adequate managerial capacity are invited to submit bids.

(2) The Authority shall prequalify bidders under sub-regulation (1) in case of procurement of goods of **five hundred million (500,000,000)** rupees and above and large consultancy, except where the Authority, for reasons to be recorded in writing, dispenses with the requirement of prequalification of bidders.

(3) For purposes of the prequalification of bidders, the Authority shall take into consideration the following factors:

(a) Qualifications;

(b) Relevant experience and past performance;

(c) Capabilities with respect to personnel, equipment, and plant (as applicable);

(d) Financial position (where applicable);

(e) Appropriate managerial capability; and

(f) Any other factor that the Authority may deem relevant, not being inconsistent with these Regulations.

(4) The Authority shall ensure that the prequalification is based on the capacity of the interested parties to satisfactorily perform the services or works.

(5) In case of fast track projects where the time is of the essence, or where potential consultants are limited or the assignment is of a complex nature, the Authority may, after recording reasons and with the approval of the Policy Board, dispense the requirements under Regulation 12 while inviting a request for proposals.

(6) Notwithstanding anything contained in sub-regulation (1) and (2), the Authority may shortlist individual consultants, firms or companies having legal, financial and technical expertise without going through the process of prequalification prescribed in Regulation 18.

(7) The Authority may, at the time of prequalification process consider any of the individual consultants, firms or companies shortlisted under sub-regulation (6), after conducting the due evaluation process (technical or financial), in cases where:

(a) The Authority lacks the capacity to undertake the prequalification process; or

(b) Sufficient time to undertake the process of prequalification is not available; and

(c) Expertise of the individual consultant, firms or companies shortlisted under sub-regulation (6) are in line with the requirements of the Authority.

(8) The Authority shall:

(a) Before shortlisting process, in consultation with the Policy Board, determine the parameters and selection criteria for shortlisting of individual consultants, firms or companies to be considered as consultant;

(b) Shortlist all such individual consultants, firms or companies only for one financial year strictly in accordance with the procedure provided under these Regulations;

(c) Shortlist at least three individual consultants, firms or companies for each area of expertise; and)

(d) Upload the list of such shortlisted individual consultants, firms or companies on its website.

(9) The Authority, if it intends to use the facility of shortlisted individual consultants, firms or companies, while taking up the process of procurement, shall invite technical or financial bids from all such shortlisted individual consultants, firms or companies as per requirement of the Authority.

18. Prequalification process.– (1) The Authority while engaging in prequalification shall announce, in the prequalification documents, all information required for prequalification including instructions for preparation and submission of the prequalification documents, evaluation criteria, list of documentary evidence required by contractors to demonstrate their respective qualifications and any other information that the Authority deems necessary for prequalification.

(2) The Authority shall provide a set of prequalification documents to any contractor or supplier, on request and subject to payment of such price as the Authority may determine to defray the cost on account of printing and provision of the document.

(3) The Authority shall promptly inform the contractor or supplier who has applied for the prequalification whether or not he has been prequalified and shall, on request from the applicant who had applied for prequalification, provide a list of contractors who have been prequalified.

(4) On a request, the Authority shall communicate to the contractor who has not been prequalified the reasons for not prequalifying the contractor.

(5) Only the prequalified contractors shall be entitled to participate in the subsequent procurement proceedings if such prequalification process has been carried out.

19. Qualification.– The Authority, at any stage of the procurement proceedings, having credible reasons for, or prima facie evidence of, any defect in the capacity or otherwise of a contractor or supplier, whether or not prequalified, may require the contractor or supplier to provide such further information concerning the professional, technical, financial, legal or managerial competence as the Authority may decide.

20. Disqualification. – The Authority shall disqualify a contractor, after providing an opportunity of hearing, if it has reasonable basis to believe that he has provided false, fabricated or materially incorrect information.

21. Declaration of ineligibility.– (1) Subject to Regulation 22, the Authority may, after providing an opportunity of hearing, declare, through a notification, an applicant for prequalification as ineligible for participating in any public procurement process for such period as it may determine on account of his engaging, directly or through an agent, in corrupt and fraudulent practice.

(2) A copy of the notification shall be provided to the affected person.

22. Blacklisting.– (1) The Authority may, for a specified period, debar a bidder or contractor from participating in any procurement process of the Authority, if the bidder or contractor has:

(a) Acted in a manner detrimental to the public interest or good practices;

(b) Consistently failed to perform his obligation under the contract;

(c) Not performed the contract up to the mark; or

(d) Indulged in any corrupt and fraudulent practice.

(2) If the Authority debars a bidder or contractor under sub-regulation (1), the Authority:

(a) Shall publish the decision on its website; and

(b) May request any Government to debar the bidder or contractor from procurement for all public procuring agencies.

(3) The Chairman may debar a bidder or contractor of the Authority from participating in any public procurement process of the Authority for such period as the Chairman may determine.

(4) Any person aggrieved by a declaration made under Regulation 21 or a decision under sub-regulation (1) of this Regulation may, within **thirty (30)** days from the date of the publication of the information on the website of the Authority, file a representation before the Chairman and the Chairman may pass such order on the representation as it may deem fit.

(5) Any person aggrieved by an order under sub-regulation (3) or (4) may, within **thirty (30)** days of the order, file a representation before the Policy Board and the Policy Board may pass such order on the representation as he may deem appropriate.

(6) The mechanism or process for barring a bidder or contractor from participating in procurement process of the Authority and a representation under this Regulation is specified in the Schedule appended to these Regulations;

CHAPTER-V
METHODS OF PROCUREMENT

23. Principal method of procurement.– Save as otherwise provided hereinafter, the Authority shall use open competitive bidding or publication of request for tender as the principal method of procurement for the procurement of goods, services and works.

24. Open competitive bidding.– Subject to Regulations 25 to 40, the Authority shall engage in open competitive bidding if the cost of procurement is more than **five hundred thousand (500,000)** rupees.

25. Submission of bids. – (1) A bidder shall submit a bid in a sealed package or packages in such manner that the contents of the bid are fully enclosed and cannot be known until duly opened.

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

26. Bidding documents. – (1) The Authority shall formulate precise and unambiguous bidding documents that shall be made available to the bidders immediately after the publication of the invitation to bid.

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

(a) Invitation to bid;

(b) Instructions to bidders;

(c) Form of bid;

(d) Form of contract;

(e) General or special conditions of contract;

(f) Specifications and drawings or performance criteria (where applicable);

(g) List of goods or bill of quantities (where applicable);

(h) Delivery time or completion schedule;

(i) Qualification criteria (where applicable);

(j) Bid evaluation criteria;

(k) Format of all securities required (where applicable);

(l) Details of standards (if any) that are to be used in assessing the quality of goods, works or services specified; and

(m) Any other detail not inconsistent with these Regulations that the Authority may deem necessary.

(3) Any information that becomes necessary for bidding or for bid evaluation, after the invitation to bid or issue of the bidding documents to the prospective bidders, shall be provided in a timely manner and on equal opportunity basis.

(4) Where any change becomes essential in the procurement process, such change shall be made in a manner similar to that of the original advertisement.

(5) The Authority shall prescribe its own standard bidding documents or adopt such documents prescribed by other relevant public bodies with such modifications as the Authority may consider appropriate.

(6) The Authority shall, on payment of such fee as the Authority may determine keeping in view the cost of printing and provision of the documents, provide a set of bidding documents to the prospective bidders.

27. Reservations and preference. – (1) The Authority shall allow all prospective bidders to participate in procuring procedure without regard to nationality except in cases in which the Authority decides to limit such participation to national bidders only or prohibit participation of bidders of some nationalities in accordance with the policy of the Federal Government.

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

***28 Bid security.** – The Authority may require the bidders to furnish a fixed amount of bid security not exceeding five percent of the estimated value of procurement determined by the Authority;
Provided that in case where the Authority does not require the bid security, the bidder shall submit bid securing declaration on the format prescribed by the Authority in Standard Procurement Documents;

Explanation. *– In this Regulation, the words 'estimated price' mean the price of procurement estimated by the Authority before initiation of the process of procurement.*

29. Bid validity. – (1) The Authority, keeping in view the nature of the procurement, shall subject the bid to a bid validity period. s

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

(3) Subject to sub-regulation (5), the Authority shall ordinarily be under an obligation to process and evaluate the bids within the stipulated bid validity period but, under exceptional circumstances and for reasons to be recorded in writing, if an extension is considered necessary, all the bidders shall be requested to extend their respective bid validity period but such extension shall not be for more than the original period of bid validity. Provided that such request to extend bids may only be made during the currency of the original bid.

(4) A bidder who:

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

(b) Agrees to the Authority's request for extension of bid validity period shall not be permitted to change the substance of the bid; and

(c) Does not agree to an extension of the bid validity period shall be allowed to withdraw the bid without forfeiture of the bid bond or security.

(5) The Authority may extend bid validity period for reasons to be recorded in writing.

30. Extension of time for submission of bids. – If the Authority considers that it is necessary in public interest to extend the last date for the submission of the bids, it may, after recording reasons, do so in the manner similar to the original advertisement.

CHAPTER-VI
OPENING, EVALUATION AND REJECTION OF BIDS

31. Opening of bids. – (1) The date for opening of bids and the last date for the submission of bids shall be the same; and, bids shall be opened at the time specified in the bidding documents which shall not be less than **thirty (30)** minutes after the closing time for the submission of the bids.

**For regulation 28 the following shall be substituted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*

(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 and the Authority shall read aloud the unit price as well as the bid amount and shall record the minutes of the bid opening.

(3) All bidders in attendance at the time of opening of the bids shall sign an attendance sheet.

(4) The bids submitted after the closing time prescribed shall be rejected and returned without being opened.

32. Evaluation criteria. – (1) The Authority shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated and such evaluation criteria shall form an integral part of the bidding documents.

(2) Failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement.

(3) In simple or standard procurement process like open competitive bidding or procurement through direct request for tender, the Authority may use the amount of the bid price as the sole evaluation criteria for the bids.

33. 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 document.

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

(3) A bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issue of notice for invitation of bids.

34. Clarification of bids. – (1) No bidder shall be allowed to alter or modify his bid after the closing time for the submission of the bids.
(2) The Authority may, if necessary after the opening of the bids, seek and accept such clarifications of the bid as do not change the substance of the bid.

(3) Any request for clarification in the bid, made by the Authority and its response, shall invariably be in writing.

35. Discriminatory and difficult conditions.– Save as otherwise provided, the Authority shall not introduce any condition, which discriminates between bidders or which is difficult to meet.

Explanation. *- In ascertaining the discriminatory or difficult nature of any condition, reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.*

36. Rejection of bids. – (1) The Authority may reject all bids or proposals at any time prior to the acceptance of a bid or proposal.

(2) The Authority shall upon request communicate to any bidder, the grounds for its rejection of all bids or proposals, but shall not be required to justify those grounds.

(3) The Authority shall incur no liability, solely by virtue of its invoking sub-regulation (1) towards the bidders.

(4) The bidders shall be promptly informed about the rejection of the bids, if any.

(5) The Authority may, for reasons to be recorded in writing, restart the bidding process from any prior stage if it is possible without violating any principle of procurement contained in Regulation 4 and shall immediately communicate the decision to the bidders.

37. Re-bidding.– If the Authority rejects all the bids under Regulation 36, it may proceed with the process of fresh bidding but before doing that it shall assess the reasons for rejection and may, if necessary, revise specifications, evaluation criteria or any other condition for bidders.

38. One person one bid. - (1) In any procurement, one person may submit one bid and if one person submits more than one bids, the Authority shall reject all such bids.

(2) If a consortium of persons has submitted a bid in any procurement, it shall be construed that each member of the consortium submitted the bid.

***39. Announcement of evaluation reports.**– Based on the procedure adopted for the respective procurement, the Authority shall announce the result of bid evaluation, in the form of final evaluation report giving justification for acceptance or rejection of bids at least fifteen days prior to the award of procurement contract: Provided that in case where technical proposal is to be evaluated separately, prior to opening of financial proposal, the technical evaluation report shall be announced before opening of the financial proposal;

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

40. Procedures for selection of contractors. – (1) Save as otherwise provided in these Regulations, single stage one envelope bidding procedure shall ordinarily be the main open competitive bidding procedure used for the procurement of works and standard goods.

(2) Other appropriate procedures for selection of contractors other than consultants may be adopted in the following circumstances:

(a) Single stage two envelopes bidding procedure shall be used for procurement of such goods where the bids are to be evaluated on technical and financial grounds and the procedure for single stage two envelopes shall be:

(i) The bid shall be a single package consisting of two separate envelopes, containing separately the financial and the technical proposals;

(ii) The envelopes shall be marked as “Financial Proposal” and “Technical Proposal”;

**For regulation 39 the following shall be substituted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*

(iii) In the first instance, the "Technical Proposal" shall be opened and the envelope marked as "Financial Proposal" shall be retained unopened in the custody of the Authority;

(iv) The Authority shall evaluate the technical proposal in the manner prescribed in advance, without reference to the price and shall reject any proposal which does not conform to the specified requirements;

(v) During the technical evaluation no amendments in the technical proposal shall be permitted;

(vi) After the evaluation and approval of the technical proposals, the Authority shall open the financial proposals of the technically accepted bids, publicly at a time, date and venue announced and communicated to the bidders in advance, within the bid validity period;

(vii) The financial proposal of the bids found technically non-responsive shall be retained unopened and shall be returned on the expiry of the grievance period or the decision of the complaint, if any, filed by the non-responsive bidder, whichever is later:

Provided that the Authority may return the sealed financial proposal earlier if the disqualified or non-responsive bidder, contractor or consultant submits an affidavit, through an authorized representative, to the effect that he is satisfied with the proceedings of the Authority; and

(viii) The most advantageous bidder shall be awarded the contract;

(b) Two stage bidding procedure may be adopted in large and complex contracts where technically unequal proposals are likely to be encountered or where the Authority is aware of its options in the market but, for a given set of performance requirements, there are two or more equally acceptable technical solutions available to the Authority and the bidding procedure shall be:

First stage

(i) In the first instance, the bidders shall submit, according to the required specifications, a technical proposal without quoting price;

(ii) The technical proposal shall be evaluated in accordance with the specified evaluation criteria and may be discussed with the bidders regarding any deficiencies and unsatisfactory technical features;

(iii) After such discussions, all the bidders shall be permitted to revise their respective technical proposals to meet the requirements of the Authority;

(iv) The Authority may revise or modify any aspect of the technical requirements or evaluation criteria, or it may add new requirements or criteria not inconsistent with these Regulations but any revisions or modifications shall be communicated to all the bidders at the time of invitation to submit final bids, and sufficient time shall be allowed to the bidders to prepare their revised bids but such time shall not be less than

fifteen (15) days in the case of national competitive bidding and **thirty (30)** days in case of international competitive bidding;

(v) The bidders unwilling to conform their respective bids to the Authority's technical requirements may withdraw from the bidding without forfeiture of their bid security;

Second stage

(i) The bidders, whose technical proposals or bids have not been rejected and who are willing to conform their bids to the revised technical requirements of the Authority, may submit a revised technical proposal along with the financial proposal;

(ii) The fresh and revised technical proposals and the financial proposals shall be opened at a time, date and venue announced and communicated to the bidders in advance but in setting the date for the submission of the revised technical proposals and financial proposals, the Authority shall allow sufficient time to the bidders to incorporate the agreed changes in the technical proposal and prepare their financial proposals accordingly; and

(iii) The revised technical proposal and the financial proposal shall be evaluated in the manner prescribed above and the bid found to be the most advantageous shall be accepted;

(c) Two stage two envelope bidding method shall be used for procurement where alternative technical proposals are possible, such as certain types of machinery or equipment or manufacturing plant and the procedure shall be:

First stage

(i) The bid shall comprise a single package comprising two separate envelopes containing the financial proposal and the technical proposal;

(ii) The envelopes shall be marked as "Financial Proposal" and "Technical Proposal";

(iii) In the first instance, the envelope marked "Technical Proposal" shall be opened and the envelope marked as "Financial Proposal" shall be retained unopened in the custody of the Authority;

(iv) The technical proposals shall be discussed with the bidders with reference to the Authority's technical requirements;

(v) Those bidders willing to meet the requirements of the Authority shall be allowed to revise their technical proposals following these discussions; and

(vi) Bidders not willing to conform to the technical proposal as per revised requirements of the Authority shall be allowed to withdraw their respective bids without forfeiture of their bid security;

Second stage

(i) After agreement between the Authority and the bidders on the technical requirements, bidders who are willing to conform to the revised technical specifications and whose bids have not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the technical requirement;

(ii) The revised technical proposal along with the original financial proposal and supplementary financial proposal shall be opened at a date, time and venue announced in advance by the Authority:

Provided that in setting the date for the submission of the revised technical proposals and supplementary price proposals a Authority shall allow sufficient time to the bidders to incorporate the agreed changes in the technical proposal and to prepare the required supplementary financial proposal; and

(iii) The Authority shall evaluate the whole proposal in accordance with the evaluation criteria and the most advantageous bid shall be accepted.

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

(a) advertise the proposal for open competition without disclosing the name of the initiator of unsolicited proposal;

(b) conduct prequalification process;

(c) exempt the initiator of the unsolicited proposal from the prequalification; and

(d) award five percent additional weightage to the project proponent in the combined evaluation of his proposal.

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

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

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

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

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

42. Exception: Notwithstanding anything contained in these Regulations, the Policy Board on the recommendations of the Authority, may by notification direct that the procurements mentioned in the notification may be made in the manner provided under Regulation 49 and in that case the expression ‘consultant’ or ‘consultants’ in that Regulation shall be deemed as ‘contractor’ or ‘contractors’ and the said Regulation shall be construed accordingly.

CHAPTER-VII
PROCUREMENT OF CONSULTANCY SERVICES

43. Rights and obligations.– The rights and obligations of the Authority and the consultant shall be governed by of the provisions of the relevant procurement contract.

44. Selection of consultants.– Depending upon the selection method, the Authority shall include, among others, the following steps in the process of selection of a consultant:

(a) Preparation and approval of the terms of reference of the assignment;

(b) Preparation of the cost estimate or budget of the assignment;

(c) Public advertisement of invitation of consultants’ expressions of interest and their short-listing;

(d) Preparation and issuance of the request for proposal to the shortlisted consultants;

(e) Preparation and submission of proposals by the consultants;

(f) Evaluation of technical proposals; and

(g) Opening and evaluation of financial proposals.

45. Methods for selection of consultants.- (1) The Authority may utilize one of the methods mentioned in succeeding sub-regulations for selection of a consultant.

(2) **Least Cost Selection:** This is the preferred method for selecting consultants for assignments of standard or routine nature such as audit, simple engineering design or supervision of noncomplex works, where well-established practices and standards exist.

(3) **Quality and Cost Based Selection**: This method may be used where:

(a) Quality is the prime consideration while cost is a secondary consideration;

(b) Terms of reference are well defined;

(c) The financial proposals of only those technically responsive bidders who obtained minimum **sixty five percent (65%)** marks shall be opened;

(d) A combined evaluation of the technical and financial proposals is carried out by weighting and adding the quality and the cost scores;

(e) The weight for quality is normally of **eighty percent (80%)** with **twenty percent (20%)** given to cost and more than **twenty percent (20%)** weight to the cost of the services is justified only in relatively routine and straightforward assignments (such as design of simple structures), whereas in no cases it should exceed **thirty percent (30%)** and the consultant obtaining the highest combined score is invited for negotiations.

(4) **Quality Based Selection**: This system may be used for highly specialized, innovative and complex assignments, where quality is the predominant factor.

(5) Subject to sub-regulation (6), the Authority may, in a complex project, engage, through direct contracting, an organization owned or controlled by a Government with the prior approval of the Policy Board.

(6) In case of engagement of an organization under sub-regulation (5), the Authority shall:

(a) Record reasons in writing for direct contracting and shall issue a certificate of reasonability of the negotiated price of consultancy based on the principles of procurement contained in Regulation 4; and

(b) Obtain approval of the Policy Board to the extent of declaring the project as complex project.

(7) The Authority may, after recording reasons in writing, use any method for selection of consultant other than least cost selection.

46. Selection process of individual consultant.- The following shall be the selection process of individual consultant in a short consultancy:

(a) Individual consultant may not be required to submit proposals and shall be selected based on the qualifications and experience for the assignment;

(b) Individual consultant shall be selected by comparing the qualifications and experience of at least three consultants among those who have expressed interest in the assignment or have been approached directly by the Authority;

(c) Individual consultant considered for the comparison of qualifications and experience shall meet the minimum relevant qualifications, and the one selected to be employed by the Authority shall be the best qualified (in the Authority's opinion) and shall be fully capable of carrying out the assignment;

(d) Individual consultant may be selected on a single-source basis (with due justification) in exceptional cases such as an emergency situation resulting from a natural disaster or where the individual is the only available consultant qualified for the assignment;

(e) For key assignments, interviews may be set up, if required.

47. Expression of interest.- (1) A request for expression of interest shall be advertised in accordance with the provisions of Regulation 12 and Regulation 13.

(2) The expression of interest shall contain the following information:

(a) The name and address of Authority;

(b) An appropriate description of the assignment providing scope of the intellectual and professional services required;

(c) Closing date and place of the submission of the expression of interest;

(d) Criteria for short listing or prequalification where required; and

(e) Any other information that the Authority may deem appropriate to disseminate at this stage.

48. Request for proposals.– (1) A Authority shall use a request for proposal for seeking proposals from the shortlisted or pre-qualified consultants which shall include the following:

(a) **Letter of Invitation**: the letter of invitation shall mention the name and address of the Authority and its intention to enter into a procurement contract for provision of consulting services and contain names of all the short listed firms;

(b) **Instruction to Consultants**: the instructions to consultants shall contain all necessary information that may help them prepare responsive proposals;

(c) **Terms of Reference**: the terms of reference shall unambiguously define the objectives, goals and scope of the assignment, core team of required experts, expected deliverables with timelines and list of services necessary to carry out the assignment;

(d) **Evaluation Criteria**: except as otherwise provided, the evaluation of proposals shall be carried out giving due consideration to quality and cost;

(e) **Type of Procurement Contract**: The Authority, depending on the circumstances, may use one of the following types of procurement contracts:

(i) Lump sum procurement contract shall be used mainly for assignments in which the content, duration of the services and the required output are unambiguously defined;

(ii) Time based contract shall be used when it is difficult to define the scope and the length of services;

(iii) Hourly or daily rates shall be used for small projects, especially when the assignment is for less than a month; and

(iv) Any other, based on combination of the above and including out of pocket expenses, where required;

(f) **Special Provisions**. The Authority may specify any other requirement related to the assignment or procurement contract, where required.

(2) The Authority shall invite the prospective consultants to submit their technical and financial proposals in separately sealed envelopes and the Authority shall give deadline for submission of proposals but the consultants shall be given adequate time to prepare their proposals which shall not be less than **two (2)** weeks.

49. Evaluation of quality of consulting services.– Evaluation criteria for technical evaluation of consultants shall include the following:

(a) **Experience**: The consultants specialized skills, work on similar assignments and access to particular technologies related to the assignment;

(b) **Financial Capability**: Financial capability of the consultant may be evaluated with a view to ensuring that the consultant can complete the assigned task in a timely manner;

(c) **Approach and Methodology**: The methodology proposed by the consultants shall be evaluated for its innovativeness and soundness;

(d) **Quality Management**: The availability of a well-established quality management system may be taken into account for large and complex assignments; and

(e) **Staff Proposed**: Qualification and experience of the proposed staff of the consultant in the relevant field.

50. Engagement of consultant on single source basis. - (1) Notwithstanding anything to the contrary contained within the Regulations, the Authority may determine that it is necessary to engage a consultant on single source basis under following circumstances:

(a) If a particular transaction, scheme or project is deemed critical in the context of the purposes of the Act; or

(b) The credentials of a consultant for a particular transaction, scheme or project are deemed beneficial having competitive edge in terms of economy and efficiency.

(2) The Authority may keeping in view the aforementioned considerations seek necessary exemption for direct contracting or single source selection of a particular consultant with sound justification form the Policy Board and the Policy Board may grant such exemption, on case to case basis.

51. Association of consultants.– (1) An association of consultants may take either the form of a joint venture or a subcontract and such association may participate in procurement process with the permission of the Authority.

(2) Under a joint venture, all members, if awarded the procurement contract, shall individually sign and be jointly and severally liable for the entire assignment and such an association may be known as a consortium, association or joint venture.

52. Intellectual property rights.– (1) All documents, reports, designs, research work and all deliverables prepared by the consultant shall become and remain the property of the Authority.

(2) Any restrictions on the future use of these documents and software by the consultant shall be specified in the conditions of the contract.

53. Negotiations.– (1) Notwithstanding the provisions under Regulation 59 (*Limitation on negotiations*), the Authority may negotiate with the most advantageous bidder for consultancy regarding methodology, work plan, staffing, contract price, payment terms and special conditions of the contract.

(2) In case of failure of negotiations, the Authority may invite the next the most advantageous bidder.

(3) A committee of the Authority shall negotiate with the consultant and negotiation by a single person on behalf of the Authority shall not be allowed.

54. Professional liability of consultant.– (1) The consultant selected and awarded a procurement contract shall be liable for consequence of errors or omissions on the part of the consultant.

(2) The extent of liability of the consultant shall form part of the contract and such liability shall not be less than remunerations nor shall it be more than twice the remunerations.

(3) The Authority may demand insurance on part of the consultant to cover the liability of the consultant and necessary costs shall be borne by the consultant.

(4) The consultant shall be held liable for all losses or damages suffered by the Authority on account of any misconduct by the consultant in performing the consulting services.

CHAPTER-VIII
ACCEPTANCE OF BIDS AND AWARD OF PROCUREMENT CONTRACTS

55. Acceptance of bids.– Subject to these Regulations, the bidder with the most advantageous bid shall be awarded the procurement contract within the original or extended bid validity period.

56. Bid discount.- The Authority may seek unconditional discount by incorporating the same in the bid solicitation documents. The bidder may offer unconditional discount, in percentage of their quoted price or bids, before opening of the financial proposal. The discounted bid price shall be considered as original bid for evaluation being an integral part of the bid. No offer of discount shall be considered after the process of opening of bidders' financial proposals has commenced on the appointed day.

57. Single complying proposal.- Subject to Regulation 35, if one complying bid is received, the Authority may award the procurement contract to the bidder.

58. Performance guarantee.– Where needed and clearly expressed in the bidding documents, the Authority shall require the successful bidder to furnish a performance guarantee which shall not exceed **ten percent (10%)** of the contract amount.

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

60. Confidentiality.– The Authority shall keep all information regarding the bid evaluation confidential until the time of the announcement of the evaluation report.

61. Alternative methods of procurements.– (1) The Authority may utilize the following alternative methods of procurement of goods, services and works:

(a) **Petty Purchases**: The Authority may provide for petty purchases where the object of the procurement is below the financial limit of **five hundred thousand (500,000)** rupees and such procurement shall be exempted from the requirements of bidding or quotation of prices; The Authority shall, however, ensure that procurement of petty purchases is in conformity with the principles of procurement as laid out in Regulation 4;

(b) **Petty Purchases through Quotation**: The Authority may provide for petty purchases through at least three quotations where the cost of the procurement is more than **five hundred thousand (500,000)** rupees but less than **one million (1,000,000)** rupees and such procurement shall be exempted from the requirements of bidding procedures; The Authority shall, however, ensure that such procurement is in conformity with the principles of procurement as laid out in Regulation 4;

(c) **Direct Contracting**: The Authority shall only engage in direct contracting if any of the following conditions exist:

(i) The procurement concerns the acquisition of spare parts or supplementary services from original manufacturer or supplier when the same are not available from alternative sources;

(ii) Only one manufacturer or supplier exists for the required procurement but in such a case, the Authority shall obtain the approval in writing from the Policy Board; and

(iii) Where a change of supplier may result in acquisition of material having different technical specifications or characteristics that may cause incompatibility or disproportionate technical difficulties in operation and maintenance; and the contract does not exceed **three (3)** years in duration;

(iv) Repeat orders not exceeding **fifteen percent (15%)** of the original procurement;

(v) In case of an emergency but the Authority shall obtain approval in writing from the Policy Board in such a case;

(vi) When the price of goods, services or works is fixed by a Government or any other authority, agency or body under the law; and

(vii) For purchase of motor vehicle from local original manufacturers or their authorized agents at manufacturer's price.

(d) **Negotiated Tendering**: The Authority may engage in negotiated tendering with one or more contractors with or without prior publication of a procurement notification but this procedure shall only be used when:

(i) The supplies involved are manufactured purely for the purpose of supporting a specific piece of research or an experiment, a study or a particular development;

(ii) For technical or artistic reasons, or for reasons connected with protection of exclusive rights or intellectual property, the supplies may be manufactured or delivered only by a particular supplier;

(iii) For reasons of extreme urgency brought about by events unforeseeable by the Authority, the time limits laid down for open and limited bidding methods cannot be met, however, the circumstances invoked to justify extreme urgency must not be attributable to the Authority; and

(iv) The Policy Board, for reason to be recorded in writing, approves any specific procurement to be made on urgent basis and shall fix the time for such urgency.

***(e)** **Force Account:** The Authority, may use force account if the value of procurement does not exceed two hundred million Pakistani Rupees, subject to the following conditions, namely;

(i) the required works are small, scattered or remotely located for which qualified construction firms are unlikely to bid at reasonable prices;

(ii) work is required to be carried out without disrupting ongoing operations;

(iii) urgent repairs, rehabilitation and remodeling works of national heritage requiring prompt attention to prevent further damages;

(iv) where unavoidable risk is better borne by the state owned entity than that of contractor;

(v) there are extreme urgencies which require prompt attention, or

(vi) the project is of sensitive nature and its information cannot be shared with private sector: Provided that state owned entity engaged for the procurement shall accomplish the task exclusively through its own resources without involving private sector as a partner or in the form of a joint venture or as a sub-contractor: Provided further that, where there are more than one eligible state owned entities having such resources to perform that particular assignment, limited competition shall be held amongst them through soliciting the proposals following any mode of enquiry providing reasonable response time without requirement of publication of open advertisement";

****(f)** **Direct Contracting with State Owned Entities:** The Authority, may engage in direct contracting with state owned entities such as professional, autonomous or semi-autonomous organizations or bodies of the Federal or Provincial Governments for the procurement of such works and services, including consultancy services, which are time sensitive and in the public interest, subject to the following conditions, namely: -

(i) the organization or the body to be engaged in direct contracting shall be eligible to perform the works or render the services;

(ii) the organization or the body shall accomplish the work or the services including consultancy services, exclusively through its own resources without involving private sector as a partner or in the form of a joint venture or as a sub-contractor;

** Inserted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*
***Inserted vide S.R.O. No. 88(KE)/2021 dated 9th September, 2021*

(iii) in case there are more than one organizations or bodies eligible to perform the works or render the services, the Authority shall hold competition amongst them through limited tendering (notifications) without any advertisements, however, giving reasonable time for submission of their applications or proposals;

(iv) the Authority, shall devise a mechanism for determining price reasonability to ensure that the prices offered by the state owned entities are reasonable for award of the contract;

62. Exemption.– (1) The Authority may directly procure goods from a public sector manufacturing unit on fixed price or negotiated price where value of procurement does not exceed **one million (1,000,000)** rupees.

(2) Where value of goods exceeds **one million (1,000,000)** rupees or in a competitive bidding, the public sector manufacturing unit participating in the bid may, within **three (3)** working days of opening of the bids, match the lowest evaluated bid. Where more than one public sector manufacturing unit matches the lowest price the Authority shall have the discretion to select one in line with the principles of procurement contained in Regulation 4.

(3) In this Regulation, public sector manufacturing unit means a manufacturing unit owned or controlled by a Government or by an organization which is owned or controlled by any Government. In this Regulation, "owned or controlled" means directly or indirectly holding not less than **fifty (50)** percent of the voting securities or voting power of the manufacturing unit or otherwise having the power to appoint, elect or nominate the majority of the directors and/or management of the manufacturing unit.

63. On account payments.– The Authority shall make prompt payments to the contractor against the invoice or running bill on satisfactory performance within the time given in the relevant procurement contract which shall not exceed **thirty (30)** days from the submission of the invoice or running bill.

64. Commencement of procurement contract.– (1) A procurement contract shall come into force:

(a) Where no formal signing of a procurement contract is required, from the date the notice of the acceptance of the bid or purchase order has been given to the bidder whose bid has been accepted and such notice of acceptance or purchase order shall be issued within a reasonable time; or

(b) Where the Authority requires signing of a written procurement contract, from the date on which the signatures of both the Authority and the successful bidder are affixed to the written procurement contract and such affixing of signatures shall take place within a reasonable time; and

(c) Where the coming into force of a procurement contract is contingent upon fulfillment of a certain condition or conditions, the contract shall take effect from the date whereon such fulfillment takes place.

65. Closing of contract.– (1) Except for defect liability by the contractor, as specified in the relevant procurement contract, performance of the procurement contract shall be deemed close on the issue of overall delivery certificate or taking over certificate which shall be issued within **thirty (30)** days of final taking over of goods or receiving the deliverables or completion of works enabling the contractor to submit final bill.

(2) In case of defect liability, defect liability certificate shall be issued within **thirty (30)** days of the expiry of the said period enabling the contractor to submit the final bill, except for unsettled claims, which shall be settled through resolution of dispute mechanism provided in the relevant procurement contract.

66. Assignment.- The Authority may assign whole or part of procurement process to another authority set up and acting under the control of a Government with the consent of such other authority.

CHAPTER-IX
MAINTENANCE OF RECORD AND FREEDOM OF INFORMATION

67. Record of procurement.– (1) The Authority shall maintain a record of a procurement along with all associated documents for a minimum period of **five (5)** years.

68. Public access and transparency.– (1) As soon as a contract has been awarded, the Authority shall make all documents related to the evaluation of the bid and award of contract public.

(2) Where the disclosure of any information related to the award of a contract is of proprietary nature or where the Authority is convinced that such disclosure shall be against the public interest, it may withhold only such information from public disclosure subject to the prior approval of the Policy Board.

CHAPTER-X
REDRESSAL OF GRIEVANCES AND SETTLEMENT OF DISPUTES

69. Grievance Committee for Procurement Process.– (1) The Authority 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 Authority after the submission of his bid may lodge a written complaint concerning his grievances not later than **ten (10)** days after the announcement of the bid evaluation report.

(3) The committee shall investigate and decide upon the complaint within **fifteen (15)** days of the receipt of the complaint.

(4) Any bidder feeling aggrieved of the decision of the Grievance Committee under Regulation 66 (3) may prefer an appeal to the Appellate Committee. The Appellate Committee shall comprise odd number of members of the Policy Board to be nominated by the Chairman. The Appellate Committee shall grant an opportunity of hearing to the concerned parties and decide the matter within **fifteen (15)** days of receipt of the appeal.

(5) Mere fact of lodging of a complaint before the Grievance Committee or an appeal before the Appellate Committee shall not warrant suspension of the procurement process but the Grievance Committee or the Appellate Committee, as the case may be, may consider suspension of the procurement process in appropriate cases.

70. Dispute resolution.– (1) In case of any dispute between Authority and a contractor/consultant in relation to or arising out of the procurement contract, the parties shall resolve the dispute in the following manner:-

(a) The parties shall first deliberate to achieve a consensus; and

(b) If no amicable settlement of the dispute has been reached, the parties shall resolve the dispute by arbitration in the city of Islamabad or any other place, agreed to by the parties, in Pakistan in accordance with the arbitration clause contained in the procurement contract and the arbitral award may be enforced in any court of competent jurisdiction.

(2) The disputes shall be decided in accordance with the laws of Pakistan and pursuant to the Arbitration Act, 1940 *(X of 1940)*, or any amending/repealing law thereof or under any other law as may be specified in the procurement contract.

71. Mis-procurement.– Any violation of these Regulations shall be treated as mis-procurement.

CHAPTER-XI
MISCELLANEOUS

72. Procurement of Land.- The Authority may from time to time recommend to the Federal Government procurement of immovable property through private agreement in accordance with Section 16 of the Act. For the said purpose the Authority shall obtain or require latest land valuation through at least **two (2)** reputable land valuers on the panel of Pakistan Bankers Association/State Bank of Pakistan.

73. e-Public Procurement. - The Authority may carry out its procurement process by using information and communication technologies or digital or electronic means.

SCHEDULE
{Refer Regulation 22(6)}

BLACKLISTING MECHANISM OR PROCESS

1. The Authority shall constitute a committee comprising of odd number of persons, with proper powers and authorizations, for the purposes of Regulation 22(6) (“**Blacklisting Committee**”). The Blacklisting Committee may, through any duly empowered member, on information received from any resource, issue show cause notice to a bidder or contractor.

2. The show cause notice shall contain:

(a) Precise allegation(s), against the bidder or contractor;

(b) The maximum period for which the Blacklisting Committee proposes to debar the bidder or contractor from participating in any public procurement of the Authority; and

(c) The statement, if needed, about the intention of the Blacklisting Committee to recommend to the Authority to request any Government for debarring the bidder or contractor from participating in public procurements of all public procuring agencies.

3. The Blacklisting Committee shall give minimum of **seven (7)** days to the bidder or contractor for submission of written reply of the show cause notice.

4. In case, the bidder or contractor fails to submit written reply within the requisite time, the Blacklisting Committee may issue notice for personal hearing to the bidder or contractor/ authorize representative of the bidder or contractor and the Blacklisting Committee shall decide the matter on the basis of available record and personal hearing, if availed.

5. In case the bidder or contractor submits written reply of the show cause notice, the Blacklisting Committee may decide to close the matter if satisfied or direct issuance of a notice to the bidder or contractor for personal hearing.

6. The Blacklisting Committee shall give minimum of **seven (7)** days to the bidder or contractor for appearance before the Blacklisting Committee, or any one or more of its duly empowered members, for personal hearing.

7. The Blacklisting Committee shall decide the matter on the basis of the available record and personal hearing of the bidder or contractor, if availed.

8. The Blacklisting Committee shall decide the matter within **fifteen (15)** days from the date of personal hearing unless the personal hearing is adjourned to a next date and in such an eventuality, the period of personal hearing shall be reckoned from the last date of personal hearing (whether availed or not).

9. The Blacklisting Committee shall communicate to the bidder or contractor the order of debarring the bidder or contractor from participating in any public procurement with a statement that the bidder or contractor may, within **thirty (30)** days, prefer a representation against the order before the Chairman of the Authority.

10. The Authority shall, as soon as possible upload an order passed in accordance with Regulation 22(6) on its website.

11. If the Blacklisting Committee wants any Government to debar the bidder or contractor from participating in any public procurement of all procuring agencies, it shall specify reasons for

such action and make such recommendation to the Authority. The Authority may in its discretion make such request to any Government for undertaking such action.

12. In case of request of the Blacklisting Committee under paragraph 11 or representation of any aggrieved person under Regulation 22, the Chairman shall issue a notice for personal hearing to the parties and call for record of proceedings of blacklisting. The parties may file written statements and documents in support of their contentions.

13. In every order of blacklisting under Regulation 22, the Chairman or the Blacklisting Committee shall record reasons of blacklisting and also reasons for short, long or medium period of blacklisting.

14. The Authority shall upload all the decisions under Regulation 22, available with it, on its website. But the name of a bidder or contractor shall immediately be removed from the list of blacklisted persons on expiry of period of blacklisting or order of the competent authority to that effect, whichever is earlier.

15. An effort shall be made for electronic communication of all the notices and other documents pursuant to this mechanism or process.

[No. F.1(8)/2020/Mgmt/NAPHDA].

HAFIZ SHAHZAD MASOOD,
DED HR