

GOVERNMENT



GAZETTE

North-West Frontier Province

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GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,
LAW DEPARTMENT.

NOTIFICATION

31st May, 2002.

No. LEGIS:1(13)/97/3800.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:-

**THE NORTH-WEST FRONTIER PROVINCE PROCUREMENT OF GOODS,
WORKS, SERVICES, AND CONSULTING SERVICES ORDINANCE, 2002.**

N.-W.F.P. ORDINANCE NO. XVIII OF 2002.

AN
ORDINANCE

*to regulate public procurement of goods, works, services,
consulting services and other matters connected therewith or incidental
thereto, to promote fair and open competition and to increase transparency;*

WHEREAS it is necessary to regulate public procurement of goods, works, services, consulting services and other matters connected therewith or incidental thereto, for the purposes hereinafter appearing;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended uptodate, and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the North-West Frontier Province Procurement of Goods, Works, Services and Consulting Services Ordinance, 2002.

(2) It extends to whole of the North-West Frontier Province.

(3) It shall come into force at once.

2. **Definitions.**— (1) In this Ordinance, unless there is anything repugnant in the subject or context,-

- (a) "bidding" means the formal procurement procedure under which sealed bids are invited, received, opened, examined and evaluated for the purpose of awarding a contract;
- (b) "bidding documents" means the standard bidding documents approved and notified by Government;
- (c) "Board" means the Provincial Consultant Selection Board and include Departmental Consultant Selection Committee with such functions and powers for hiring consulting services as prescribed;
- (d) "conformance" means financial proposal in conformity to technical proposal and pre-bid cost estimates;
- (e) "consulting services" means an independent expert advice of a quality equal to applicable professional standards;
- (f) "contract" means a contract as defined in the Contract Act, 1872;
- (g) "Fund" means-
- (a) Provincial Consolidated Fund;
- (b) foreign assistance;
- (c) all moneys standing in the Public Account; and
- (d) grants received from any of these sources;
- (h) "goods" means articles and objects of every kind and description including raw materials, products, equipment, spares and commodities in solid, liquid or gaseous form and electricity as well as incidental services such as installation, transport or vehicles, maintenance and similar obligations related to the supply of goods, if the value of these services does not exceed the value of the goods themselves;
- (i) "Government" means the Government of the North-West Frontier Province;

- (j) "misprocurement" means procurement in contravention of any provision of this Ordinance or any other law in respect of or relating to public procurement, including any rules, regulations, orders, or instructions made in this behalf and for the time being in force;
- (k) "prescribed" means prescribed by rules made under this Ordinance;
- (l) "procurement" means acquisition, temporary or permanent or on lease, of goods and services whether for a specific project or recurring need of Government or public sector enterprises or undertaking of works by contractual means, financed wholly or partly out of the Fund;
- (m) "Procuring Entity" means-
 - (a) a Department or any Office of Government; or
 - (b) any Board, Commission, Council, Local Governments or other bodies established by or under a provincial law; or
 - (c) a body which is owned or controlled by Government;
- (n) "services" means any scope of contract which does not constitute works, goods, or consulting services;
- (o) "substantially responsive" means the technical proposal submitted by the prospective bidders in conformity to statements of requirement as referred to in section 19 of this Ordinance;
- (p) "works" means any constructional work consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, such as site preparation, excavation, installation of equipment, electrical or mechanical works, and artistic decoration, and includes incidental work such as drilling, mapping, satellite photography, seismic investigations, etc. and similar activities, if the value of those work does not exceed that of the works themselves; and
- (q) "rules" means the rules make under this Ordinance.

(2) Words not specifically defined in this Ordinance and the rules shall have the meanings attributed to them as per relevant industry practice.

3. **Establishment of Board etc.**— (1) As soon as may be after the coming into force of this Ordinance, Government shall establish a Board, to be known as the Provincial Consultant Selection Board, which shall comprise of such members, and shall perform such functions and exercise such powers, as may be prescribed.

(2) After establishment of the Provincial Consultant Selection Board, each of the Procuring Entity shall establish a Departmental Consultant Selection Committee comprising of such members as may be determined by the Board.

4. **Responsibility of Procuring Entity.**— The Procuring Entity shall be responsible for carrying out procurement subject to the provisions of this Ordinance and the rules.

5. **Transparency, accountability and fairness.**— All procurement shall be conducted in a manner which promotes transparency, accountability and fairness.

6. **Competition.**— Except as otherwise provided for in this Ordinance and the rules, all procurements shall be conducted so as to maximize competition and to achieve value for money:

Provided that the exception shall be made only for acquisition of services for reasons to be recorded in writing by the Procuring Entity.

7. **Disclosure of information.**— A Procuring Entity shall not, except when required to do so by an order of a Court, disclose any information if the disclosure would amount to:

- (i) a breach of the law; or
- (ii) impede law enforcement; or
- (iii) prejudice legitimate commercial interests of the parties; or
- (iv) inhibit fair competition; or
- (v) in any way not be in the public interest.

8. **Confidentiality.**— A Procuring Entity shall not disclose any information relating to the examination and evaluation of bids, inclusive of pre-qualification submissions and actual content of tenders, proposals or quotations other than in the summary form setting out the evaluation and comparison of tenders, proposals or quotations received until the successful bidder is notified of the award.

9. **Economy and efficiency.**— All procurements shall be conducted in a manner, which promotes economy, quality, and efficiency.

10. **Ethics.**— All procurements shall be carried out in accordance with such codes of ethics as may be specified from time to time by Government.

11. **International obligations.**— Notwithstanding anything contained in this Ordinance, international obligations of Government arising out of bilateral or multilateral agreements including treaties, financing agreements, or agreements by Government shall continue to remain and be valid, binding and operative.

12. **Preference and reservation.**— (1) Where an agreement referred to in section 11 contains provisions favorable to national providers, the Procuring Entity shall ensure that the applicable preference is clearly stated in the bidding documents.

(2) A Procuring Entity shall permit prospective bidders to participate in procuring proceedings without regard to nationality, except in cases in which the Procuring Entity decides to limit such participation to national providers or participation of any nationality is forbidden by general instructions or otherwise.

(3) A Procuring Entity that limits participation on the basis of nationality shall include in the record of the procurement proceedings a statement of grounds and circumstances relied upon, except in those cases where participation of any nationality is otherwise prohibited.

13. **Public accessibility.**— Copies of this Ordinance, rules or regulations, guidelines, forms, bidding documents and/or decisions of Government or Procuring Entity relating to procurement shall be made available to the public by the Government at a fee to be prescribed.

14. **Publication of opportunities/information.**— (1) Government shall organize and maintain a system for the publication of or posting on approved web site, data on public procurement opportunities, awards and any other information of public interest as may be determined.

15. **Records.**— (1) The Procuring Entity shall:

- (i) maintain detailed records of all their proceedings in the manner prescribed;
- (ii) preserve, maintain and safeguard all relevant documents issued and received as shall be set out in the rules;

(2) The records of the procurement process of the Procuring Entity shall be open to inspection for internal and external audit during working hours in such manner as may be prescribed.

16. **Communication.**— (1) All communication between a Procuring Entity, bidder or provider shall be in writing and communication in any other form shall be referred to and confirmed in writing.

(2) Forms of communication shall be specified in solicitation documents.

17. **Procurement planning.**— A Procuring Entity shall plan its procurement in a rational manner with due consideration to economy, efficiency and timeliness of the procurement.

18. **Initiation of procurement requirements.**— (1) All procurement requirements must be documented and approved by the Procuring Entity prior to commencement of any procurement proceedings.

(2) In certain circumstances, as prescribed by rules, a Procuring Entity may, in the interest of accelerating project implementation, proceed with the initial steps of procurement, except award of contract, even when the availability of funding, in the full amount over the required period, remains to be confirmed/ approved by the competent authority.

19. **Statements of requirement.**— (1) All solicitation documents shall include a clear, unambiguous statement of requirements, giving a correct and complete description of the object of the procurement for the purpose of creating fair and open competition as may be prescribed.

(2) The statement of requirements shall be in the form of a technical specifications, terms of reference, scope of works, briefs or its equivalent as appropriate.

(3) Procuring Entities shall solicit bids based on performance or functional specifications and not on restrictive or proprietary specifications of a specific brand.

20. **Best practices and industry standards.**— Procuring Entities shall at all times use industry standards defined and codified by internationally recognized trade associations and professional bodies in the appropriate fields in international bidding where available and local bidding where laid down.

21. **Solicitation documents.**— (1) A Procuring Entity shall use the approved standard documents provided by Government as models for drafting all solicitation documents. Solicitation documents shall be drafted for each individual procurement requirement.

(2) All solicitation documents shall detail the terms and conditions, which shall apply to any resulting contact.

(3) All solicitation documents shall contain General Conditions of Contract, or a statement of the General Conditions that shall apply.

(4) The General Conditions of Contract shall not be modified except through Special Conditions inserted into the solicitation document or contract.

(5) A Procuring Entity shall obtain the consent of Government to place contracts against General Conditions of Contract other than those contained in the standard solicitation documents provided by Government furnishing detail justification and reasons thereof.

(6) Solicitation documents shall be made available to the bidders from the date of their issuance to the closing date on submission of required fee by the prospective bidder whether in person or, if so requested, through mail.

(7) General Conditions of Contract and Statement of General Conditions shall be prescribed.

22. **Selection of bidders.**— All methods for the selection of bidders to be invited to bid shall allow for fair and equitable selection and ensure the maximum competition.

23. **Bidding period.**— The bidding period shall be reasonable to allow bidders to prepare and submit their bids and shall not be reduced with the aim of limiting competition, except where the procurement is made on emergent basis.

24. **Clarification of solicitation documents.**— (1) At any time prior to the deadline for submission of bids, the Procuring Entity may, on its own initiative or in response to a request for clarification by a bidder, modify the solicitation documents by issuing an addendum or corrigendum.

(2) If the Procuring Entity considers it necessary, it may extend the closing date, after recording reasons in writing, to enable bidders to take the addendum or corrigendum, as the case may be, fully into account in preparing their bids.

25. **Form of bids.**— A Procuring Entity shall require bidders to submit sealed written bids or in such other manner as may be prescribed.

26. **Method for submission of bids.**— The method for submission of bids shall be determined by the type, complexity and evaluation method of the procurement in accordance with the rules.

27. **Withdrawal of bids.**— A bidder may withdraw his bid at any time before the deadline for submission of bids, unless otherwise specified in the rules.

28. **Bid receipt and openings.**— All bidding processes shall include a formal bid receipt and public bid opening, unless otherwise specified in the rules.

29. **Minimum qualification of bidders.**— A Procuring Entity shall require all bidders to meet minimum qualification criteria to participate in public procurement. Minimum qualification criteria shall be to assure-

- (a) that the bidder has to legal capacity to enter into the contract;
- (b) that the bidder has the prescribed technical proficiency, equipments/ plant and relevant certified experience;
- (c) that the bidder is neither insolvent, bankrupt or in the process of winding up, nor his properties are under the control of receiver, or his business activities have been suspended, or legal proceedings for any of the foregoing are immediately expected to be initiated or have been initiated against him;
- (d) that the bidder is not involved in litigation with Government or the Procuring Entity; and
- (e) that the bidder has fulfilled all obligations under law for the time being in force;

30. **Evaluation.**— (1) The choice of evaluation methodology shall be determined by the type, value and complexity of the procurement as may be prescribed.

(2) All solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria as may be prescribed.

(3) The contract shall be awarded to the successful bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated bid substantially in conformance with the pre-bid cost estimate; provided that the bidder is found to be qualified to perform the contract satisfactorily, ascertained on the basis of the methodology and criteria detailed in the bidding documents.

(4) No evaluation criteria other than those stated in the solicitation documents shall be taken into account.

31. **Change to bid details.**— No change in the substance of bids, including changes in price, shall be sought, offered or permitted after the date and time of bid closing, except as otherwise provided for in the rules.

32. **Clarification of bids received.**— A Procuring Entity may ask bidders for clarification of their bids, including the bid pricing, in order to assist in the evaluation. To avoid delays, the Procuring Entity may hold a pre-bid conference with the prospective bidders at least ten days before the closing date of the bid if the procurement is of complex nature and value.

33. **Post-bid negotiations.**— In competitive bidding procedures, negotiations shall not be permitted with any bidders on any aspect of their bids, except under exceptional circumstances as may be prescribed.

34. **Rejection of bids.**— A Procuring Entity may reject any or all bids at any time prior to the award of a contract.

35. **Award of contract.**— (1) The procedure for award of contract shall be such as may be prescribed.

(2) A Procurement Entity shall complete evaluation of bids and award of contract within the initial period of bid validity to avoid the necessity of extensions.

(3) An extension of bid validity, where inevitable, shall be requested only in exceptional circumstances as may be prescribed and shall always be sought in writing from all bidders before the expiration date.

36. **Contracts.**— (1) No contract award shall be confirmed by a Procuring Entity, unless funding has been approved in full over the required period.

(2) All contracts shall be confirmed by a written contract signed by both the successful bidder and the Procuring Entity, except as otherwise provided for in the rules.

37. **Notification to unsuccessful bidders.**— Promptly after the award of contracts, the Procuring Entity shall notify unsuccessful bidders in writing. The notice, at a minimum, will include the number of bidders who obtained solicitation document and the number of bids received, the name and address of each bidder receiving an award, the items, quantities, unit prices and total amount of contract.

38. **Changes in bidders circumstances.**— Any changes in the circumstances of the bidder during the procurement proceedings that could materially affect the capacity to execute the contract shall be immediately drawn to the attention of the Procuring Entity by the bidder or any other stakeholder.

39. **Methods of procurement.**— (1) Procuring Entities in respect of each procurement activity shall use one of the procurement procedures specified in the rules, whereby open competitive bidding shall be the preferred procedure, and any other procedure shall be used exceptionally in accordance with the rules.

(2) The choice of procurement procedure shall be made in accordance with the rules and shall be approved by the Procuring Entity prior to commencement of any procurement proceedings.

40. **Redressal of grievances.**— A bidder may file a complaint, if any, in writing to the head of Procuring Entity prior to award of contract, in accordance with the procedures specified in the rules, for any omission or breach of this Ordinance or the rules or of the provisions of bidding documents by a Procuring Entity. The redressal of all such complaints shall be carried out in an efficient and equitable manner in accordance with the procedures specified in the rules but not later than seven days of the receipts of such complaint. No complaint shall be entertained thereafter.

41. **Effect of inducement, collusion, unethical practices, etc.**— The Procuring Entity, under intimation to Government, shall reject a bid, if any bidder is found by the Procuring Entity to be engaged in:

- (a) offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution and/or;
- (b) misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Procuring Entity, and includes, collusive practices among bidders designed to establish prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.

(2) Government will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in such practices, as listed in clauses (a) and (b) of sub-section (1) in competing for, or in executing, a contract.

42. **Code of conduct.**— (1) Public Officials as well as experts engaged to deliver specific services or evaluation of bids shall be required to sign a Code of Ethical Conduct as provided in the Schedule to this Ordinance.

(2) All providers of works, services or goods shall be required to sign a declaration of compliance with such Codes of Conduct as may be determined by Government from time to time.

43. **Removal of Difficulties.**— If any difficulty arises in giving effect to any of the provisions of this Ordinance, Government may, by notification in the official Gazette, make such provision as may appear to it to be necessary for the purpose of removing the difficulty.

44. **Saving.**— Until the rules, bidding documents, and other procedures under this Ordinance are notified by Government, existing procedures for procurement of goods, works, services, and consulting services shall continue to operate.

45. **Power to make rules.**— Government may make rules for carrying out the purposes of this Ordinance.

Peshawar,
Dated the 30th May, 2002.

Lt. Gen. (Rtd.) IFTIKHAR HUSSAIN SHAH,
Governor of the North-West Frontier Province.

SALIM KHAN,
Secretary to Government of North-West Frontier Province,
Law Department.

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SCHEDULE
[See section 42]

CODE OF ETHICAL CONDUCT IN BUSINESS

1. **Ethical principles.**— (1) Employees of the Board or, as the case may be, of the Procuring Entity, shall not use their authority or office for personal gain and shall seek to uphold and enhance the reputation of Government at home and abroad by-

- (i) maintaining an impeccable standard of integrity in all business relationships both inside and outside the organizations in which they are employed;
- (ii) fostering the highest possible standards of competence;
- (iii) optimizing the use of resources for which they are responsible to provide the maximum benefit to Government; and
- (iv) complying in letter and spirit-
 - (a) all laws and regulatory guidance for the time being in force;
 - (b) accepted business practices in commercial markets; and
 - (c) contractual conditions.

2. **Ethical practices.**— Employees shall reveal any personal interest that may impinge or might reasonably be deemed by others to impinge on an employee's business dealings with an industry.

3. **Confidentiality and accuracy of information.**— (1) Employees shall respect the confidentiality of information received in the course of business dealings and shall never use such information for personal gain.

(2) Information given by employees in the course of business dealings shall be true and fair and not designed to mislead.

4. **Competition.**— Employee shall avoid any business or arrangement that might, in the long term, prevent the effective operation of fair competition.

5. **Business gifts.**— Employees shall not accept business gifts from current or potential suppliers, unless such gifts are of very small intrinsic value such as a calendar or a pen.

6. **Hospitality.**— Employees shall refrain from any business hospitality that might be viewed by others as having an influence in making a business decision as a result of accepting that hospitality.

7. **Restrictiveness.**— A member of a Procuring Entity or expert contracted to deliver specific services shall not use to his or her personal or organizational advantage, information acquired by him or her by virtue of his or her association with the Procuring Entity for a period of one year after vacating office or ceasing to render the specific services.

STANDARD DECLARATION FORM

I....., presently posted as
....., Department....., Government
of N.-W.F.P., do solemnly swear to abide by the rules of Government of N.-W.F.P.
including the principles of natural justice, equity, the Code of Ethical Conduct
and best practices in the furtherance of the activities as a member of the
Procurement Committee/Procuring Entity.

I also confirm that I do not have any direct or indirect interests of whatsoever
nature in any item on the agenda that may give rise to the principles of conflict of
interest or cause unfair advantage to any party that is directly or indirectly
involved in the particular agenda item.

I shall also, at all times, maintain a requisite level of confidentiality and
professional standards in pursuance of my duties as a member of the
Procurement Committee/Procuring Entity.

Subscribed and solemnly declared by me at.....on
the day of..... 20

Signed by,.....

Member of a Procurement Committee/Procuring Entity/
Bid Evaluation Committee