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**GOVERNMENT OF THE PUNJAB
PUNJAB PROCUREMENT REGULATORY
AUTHORITY, S&GAD**

Alfalah Building, 3rd Floor, The Mall Road Lahore
Dated Lahore, 11th October, 2024

CIRCULAR

No. L&M(PPRA)10-1/2011 ²⁰⁸⁵⁹⁶ Punjab Procurement Regulatory Authority (PPRA) has observed through monitoring of e-Punjab Acquisition and Disposal Systems "e-PADS" as well as is being frequently received reports from focal persons of the PPRA that during the procurement process bidders do not submit financial instrument (Bank Guarantee(BG), Cash Deposit Receipts (CDRs), Pay Order (PO) etc.) in original on the time of opening of bids against e-bids submitted on e-PADS. In terms of Regulation-8(6) of Punjab Procurement Regulations 2024 bidders are required to submit hard copy of financial instrument (BG/CDR/PO etc.) as bid security before the opening time of bid or proposal as required under rule 27 of PPR-14 as provided by procuring agency in the bidding documents. The ibid Regulation is reproduced as under:

"8. E-submission of e-bid or proposal and e-application.- (6) The bidder shall submit hard copy of the financial instrument in addition to the soft copy uploaded on the e-PADS as bid security. The bid security shall only be released upon the hard copy."

2. it has been observed in number of cases that the bidders (without any cogent/plausible reasons) have not submitted original bid security collectively except one or two bidders to actually make them eventual responsive bidders and potential beneficiaries. Such act of bidders/contractors has raised serious questions on the transparency and fairness of the procurement process. In such a scenario, the procurement process is clearly being

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managed/pooled by the bidders/contractors to the advantage of few and against the larger public interest. The very purpose of requiring the bid security from bidders or contractor together with a bid is to secure the obligations of the bidder participating in a bidding process as defined under rule 2(h) of PPR-14. The rule ibid is reproduced as under:

"2(1)(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 proceedings;"

3. PPRA is of the view that after submission of bids, the bidders have clearly committed to participate in procurement process till its finalization. Besides, the bid security instrument, the soft copy of which uploaded with the bid on e-PADS portal, as a matter of fact, is the property of the procuring agency and bidder cannot hold it back. Furthermore, the bid security instrument unless released in favour of bidders by the procuring agency cannot be encashed. The procuring agency is well within its legal rights to demand original bid security from the bidders by all means. Therefore, encashment of all such financial instruments by the issuer/financial institution (without release/explicit consent of the procuring agency in the name of which such financial instrument has been issued) has certain legal and criminal consequences. The act of any bidder to step back after submission of e-bids on e-PADS tantamounts to back out the legal obligations and any such collective willful refusal to submit the bid security amounts to rig the procurement process which falls under collusive practices as defined under section 2(d)(ii) of Punjab Procurement Regulatory Authority Act 2009; which is reproduced as under:

"2(d)(ii) Collusive Practice by arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring agency to establish prices at artificial, noncompetitive levels for any wrongful gain."



It is important to mention here that a Procuring Agency is empowered under section 17A(1) read with rule 21(1) and schedule providing mechanism of process append to PPR-14, to blacklist a bidder/ contractor for a specified period from participating in any procurement process of the Procuring Agency if the bidder/ contractor has indulged in corrupt practices. Ibid provisions and schedule are reproduced as under:

“17A. Blacklisting.– (1) A procuring agency may, for a specified period and in the prescribed manner, debar a bidder or contractor from participating in any public procurement process of the procuring agency, if the bidder or contractor indulges in corrupt practice or any other prescribed practice.”

“21. Blacklisting.–(1) A procuring agency may, for a specified period, debar a bidder or contractor from participating in any public procurement process of the procuring agency, 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 practice.”

“[SCHEDULE

{see sub-rule (6) of rule 21}

BLACKLISTING MECHANISM OR PROCESS

1. The procuring agency may, 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, against the bidder or contractor;
 - (b) the maximum period for which the procuring agency proposes to debar the bidder or contractor from participating in any public procurement of the procuring agency; and
 - (c) the statement, if needed, about the intention of the procuring agency to make a request to the Authority for debarring the bidder or contractor from participating in public procurements of all the procuring agencies.
3. The procuring agency shall give minimum of seven 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 procuring agency may issue notice for personal hearing to the bidder or contractor/ authorize representative of the bidder or contractor and the procuring agency 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 procuring agency may decide to file the matter or direct issuance of a notice to the bidder or contractor for personal hearing.



6. The procuring agency shall give minimum of seven days to the bidder or contractor for appearance before the specified officer of the procuring agency for personal hearing.

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

8. The procuring agency shall decide the matter within fifteen 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.

9. The procuring agency shall communicate to the bidder or contractor the order of debaring the bidder or contractor from participating in any public procurement with a statement that the bidder or contractor may, within thirty days, prefer a representation against the order before the Managing Director of the Authority.

10. The procuring agency shall, as soon as possible, communicate the order of blacklisting to the Authority with the request to upload the information on its website.

11. If the procuring agency wants the Authority to debar the bidder or contractor from participating in any public procurement of all procuring agencies, the procuring agency shall specify reasons for such dispensation.

12. The Authority shall immediately publish the information and decision of blacklisting on its website.

13. In case of request of a procuring agency under para 11 or representation of any aggrieved person under rule 21, the Managing Director 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.

14. In case of representation of any aggrieved person or procuring agency under rule 21, the Chairperson shall issue a notice for personal hearing to the parties and may call for the record of the proceedings. The parties may file written statements and documents in support of their contentions.

15. In every order of blacklisting under rule 21, the procuring agency shall record reasons of blacklisting and also reasons for short, long or medium period of blacklisting.

16. The Authority shall upload all the decisions under rule 21, 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.

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

4. In the wake of all above, procuring agencies are advised to:

- a) Require the bid security as per rule 27 of PPR-14 and ensure that bidders who have uploaded bids on e-PADS, deposit financial instrument by all means upto the deadline of time of submission of bids.

- b) Any bidder who fails to submit financial instrument upto the deadline for the submission of bid, shall not be considered for further evaluation and his bid will be declared as **non-responsive**. However, all such bidders shall be under an obligation to submit the financial instrument to the procuring agency (with cogent/plausible/justified reason for not submitting the same in time) as soon as possible in order to get the financial instrument released for encashment purpose from the issuing financial institution. In case of failure of submission of original bid security instrument/CDR (without any cogent/plausible/justified reason) as bid security by a bidder/contractor prior to the deadline for submission of bids, the procuring agency may forfeit the same after providing an opportunity of hearing to the concerned bidder. However, in terms of Rule 67A of PPR-14, the bidder may file a representation against such decision of procuring agency before Managing Director, PPRA.
- c) If majority of the bidders do not submit the financial instruments in original form upto the deadline for submission of bids, it will be deemed pooling/cartelization, collusive practice and manipulation of the procurement process. In such a case, the procuring agency shall take cognizance of the matter and also proceed to blacklist (in addition to forfeiture of bid security) the defaulter bidders or contractors for non-submission of CDR as per aforementioned provisions of PPRA legal framework under intimation to this office. The procuring agency shall also approach the issuer/financial institution, on the basis of soft copies of such financial instruments, with the intimation that such financial instrument must not be en-cashed unless released by the concerned procuring agency being its legal addressee.



-sd-
(WAQAR AZIM)
Managing Director, PPRA

No. & Date even.

A copy is forwarded for information and necessary action to:-

1. The Senior Member, Board of Revenue, Punjab.
2. The Chairman, Planning & Development Board.
3. The Inspector General of Police, Punjab.
4. The Accountant General, Punjab.
5. All the Administrative Secretaries, Govt. of the Punjab.
6. All the Divisional Commissioner in Punjab.
7. All the Heads of Attached Departments, Punjab.
8. All the Heads of Autonomous Bodies, Punjab.
9. The Director General Anti-Corruption Punjab.
10. All the Deputy Commissioners in Punjab.
11. PSO to the Chairman PPRA/Chief Secretary, Punjab.
12. PSO to the Additional Chief Secretary, Punjab.
13. Web-Developer/Data Administrative, PPRA with the direction to immediately upload the same on the website of the PPRA.
14. PS to MD, PPRA.

Abdus Salam
SENIOR LAW OFFICER
PPRA S&GAD

11/x/2024

Cc:

1. The Registrar, Lahore High Court Lahore.
2. The Director General NAB, Lahore.
3. The Ombudsman, Punjab.