PROCUREMENT OF CONSULTANCY SERVICES REGULATIONS, 2010

S.R.O.1077(I)/2010.- In exercise of powers conferred by section 27 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Public Procurement Regulatory Authority is pleased to make the following regulations, namely:-

1. Short title and commencement.- (1) These regulations may be called the Procurement of Consultancy Services Regulations, 2010.

(2) They shall come into force at once.

2. Definitions.-(1) In these regulations, 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) "committee" means the Consultant Selection Committee of the procuring agency;

(c) "consultant" means an individual consultant or a consulting firm as the case may be;

(d) "consulting services" means the provision of independent expert advice of a quality at least equal to the applicable professional standards in relation to acquisition of goods, services other than consulting services and works;

(e) "expression of interest" means to express willingness for undertaking a consultancy assignment by providing necessary information required by the procuring agency for consideration;

(f) "request for proposal" means set of bidding documents sent to short listed or interested consultants and includes at least:-

(i) letter of invitation;
(ii) instructions to consultants;
(iii) terms of reference;
(iv) evaluation criteria; and
(v) the proposed contract.

(2) The expressions used but not defined in these regulations shall have the same meanings as are assigned to them in the Public Procurement Regulatory Authority Ordinance, 2002 and Public Procurement Rules, 2004.

3. Methods for selection of consultants.-The method for selection of consultants shall be determined by the procuring agency prior to issuance of the request for proposal from prospective consultants. A procuring agency may utilize one of the following methods for selection of consultants, namely:-

A. (i) Quality based selection.- This method will be used for highly specialized and complex assignments, where quality is the only factor taken into consideration:

Provided that any procuring agency desirous of using quality based selection as a method of procurement shall record its reasons and justifications in writing for resorting to this method and shall place the same on record; and

(ii) Procedure for selection under the quality based selection.-

(a) a request for expression of interest as laid down under regulation 5 is advertised to invite interested applicants or firms to contest;

(b) a request for proposals shall be prepared and sent to short-listed consultants selected following the laid down criteria;

(c) the evaluation of proposals shall be carried out in two stages in the following manner, namely:-

(i) the technical proposals shall be evaluated and the procuring agency may discuss technical details, if it may deem necessary;

(ii) the financial proposals of technically responsive or highest ranked proposal only shall be opened in the presence of the applicants or their representatives who may wish to attend the opening session; and

(iii) highest ranked proposal is accepted, if it suits to the procuring agency in all respects;

B. (i) Quality and cost based selection.-This method shall be used where high quality is the prime consideration while cost is a secondary consideration; and

(ii) Procedure for selection under the quality and cost based selection.-

(a) a request for expression of interest as laid down in regulation 5 is advertised to invite interested applicants or firms to contest;

(b) a request for proposals shall be prepared and sent to short-listed consultants selected following the laid down criteria; and

(c) the evaluation of proposals shall be carried out in two stages in the following manner, namely:-

(i) the technical proposals shall be evaluated and the procuring agency may discuss technical details, if it may deem necessary;

(ii) the financial proposals of technically responsive proposals shall be opened in the presence of the applicants or their representatives who may wish to attend the opening session; and

(iii) a combined evaluation of technical and financial proposals shall follow and the applicant with the winning proposal will be accepted.

C. (i) Least Cost.-This method will only be used for assignments of standard or routine nature, where well established practices and standards exist;

(ii) Procedures for Selection under Least Cost Selection.-

(a) following evaluation of technical proposals and opening of financial proposals, the applicant offering the lowest evaluated price shall be selected for discussions on technical issues if deemed necessary; and

(b) under this method proposals passing the technical score threshold shall then be treated equally and evaluated on the basis of cost only;

D. (i) Single Source or Direct Selection.- This method will be used only in exceptional cases, where it provides clear advantage over competition in following cases (only), namely:-

(a) for tasks which are natural continuation of previous assignment and where continuity of technical services is unavoidable;

(b) repeat orders as provided under sub-clause (iv) of clause (c) of rule 42 of Public Procurement Rules, 2004;

(c) in cases of emergency as provided under sub-clause (v) of clause (c) of rule 42 of Public Procurement Rules, 2004; and

(d) where only one consultant is qualified or has experience of exceptional worth with reference to clause (c) or (d) of rule 42 of the Public Procurement Rules, 2004; and

(ii) Procedures for Selection under Single Source Selection.-

(a) the justification for single source selection method shall be examined in the context of the overall interests of the procuring agency to ensure economy and efficiency and provide equal opportunity to all eligible consultants, therefore, the decision to use single source selection method shall be approved in writing by the principal accounting officer, concerned on recommendation by a Committee; and

(b) the request for proposals or TOR, as the case may be, shall be issued to the selected consultant and the selected consultant shall be requested to submit a technical and financial proposal upon the receipt of which discussions shall be held between the proposal evaluation committee and the selected consultant and all aspects of its proposal, whether technical or financial, shall be discussed together in order to reach an agreement or contract etc; and

E. (i) Fixed Budget.-This method shall be used only when the assignment is simple, can be precisely defined and when the budget is fixed. The request for proposals shall indicate the available budget. Proposals that exceed the indicated budget shall be rejected. The ranking shall be based only on evaluation of technical proposals of the qualified bidders.

(ii) Procedures for Selection under Fixed Budget.- The Procedures to be followed for the selection under fixed budget method shall be the same as for the quality and cost based method, with the following exceptions, namely;

(a) the request for proposals shall indicate the available budget including taxes and ask the applicants to provide, in separate envelopes, their best technical and financial proposals within the budget;

(b) the terms of reference shall be as complete as possible to make sure that the budget is sufficient for the consultants to perform the expected tasks;

(c) the request for proposals shall require the applicants to provide breakdowns of their costs for the different activities with a provision that applicants who decline to provide the breakdown may risk the rejection of their proposals; and

(d) the request for proposals shall state that, following opening of proposals, all proposals that exceed the indicated budget shall be rejected and the applicant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to discuss further details for concluding the contract.

4. Criteria for eligibility of consultants.-The procuring agency shall not hire a consultant for an assignment in which there is possibility of conflict of interest. If a consultant has been engaged by the procuring agency to provide goods or works for a project, it shall be disqualified from providing consulting services for the same project. Similarly, a consultant shall not be hired for any assignment which by its nature, may be in conflict with another assignment of that consultant.

5. Expression of interest.- (1) A request for expression of interest shall be advertised by giving applicants at least fifteen calendar days for national competition and thirty calendar days for international competition to submit their interest to provide consultancy services.

(2) The expression of interest shall contain at least the following information, namely:-

(a) the name and address of procuring agency;

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

(c) deadline and place of the submission of the expression of interest; and

(d) evaluation criteria required to be followed.

6. Criteria for short-listing of consultants.- (1) Whenever short-listing is deemed necessary, the procuring agency shall predetermine a criteria for short listing. Except for single source, there will normally be a minimum of three consultants in the shortlist, but there is no upper limit for number of candidates to be short listed. However, if less than three candidates apply, their proposals may be considered on merit.

(2) The procuring agency while engaged in short-listing of consultants will take into consideration the following factors, namely:-

(i) qualification;
(ii) experience; and
(iii) any other factor that a procuring agency may deem relevant, not inconsistent with these regulations or Public Procurement Rules, 2004.

(3) All applicants shall be informed whether or not they have been short-listed.

7. Criteria for prequalification of consultants.-(1) Whether short listing is done or not, the procuring agency may engage in prequalification of consultants in case of complex assignments.

(2) The procuring agency while engaged in prequalification of consultants will take into consideration the following factors, namely:-

(i) qualification;
(ii) general experience;
(iii) specific experience;
(iv) past performance; and
(v) any other factor that a procuring agency may deem relevant, not inconsistent with these regulations or Public Procurement Rules, 2004.

8. Request for proposals.- (1) The procuring agency shall use a request for proposals for seeking proposals from the consultants whether short listed or prequalified or not, which shall include the following, namely:-

(a) Letter of Invitation.-The letter of invitation shall mention the name and address of the procuring agency and shall state the intention of the procuring agency to enter into a contract for provision of consulting services.

(b) Instruction to consultants.- The instructions to consultants shall contain all necessary information that would help them prepare responsive proposals and shall bring as much transparency as possible to the selection system.

(c) Terms of reference.-Terms of reference shall unambiguously define the objectives, goals and scope of the assignment besides conditions of contract. Terms of reference shall list the services and surveys necessary to carry out the assignment and expected outputs.

(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 contract.-The procuring agency, depending on the circumstances, may use one of the following types of contract, namely:-

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

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

(iii) hourly or daily rates based contract will be used for small projects, especially when the assignment is for less than a month; and

(iv) any other contract based on combination of the above and including out of pocket expenses, where required.

(f) Proposed contract format.-The procuring agencies shall propose a draft specimen contract to be entered into with the successful bidder.

(g) Special Provisions.- The procuring agency may specify any other requirement related to the assignment or contract etc. where required.

(2) The procuring agency shall invite the prospective consultants to submit their technical and financial proposals in separately sealed envelopes. The procuring agency shall give deadline for submission of proposals. Consultants shall be given adequate time to prepare their proposals which shall be in accordance with response time stipulated under rule 13 of the Public Procurement Rules, 2004.

9. Selection Committee.- (1) The procuring agency shall appoint Committee for short listing and selection of consultant. The Committee shall comprise of at least three competent relevant persons to evaluate the consultants as per evaluation criteria. In case of non-availability of in-house expertise the procuring agency may engage outside appropriate sources.

(2) The Committee shall advise on short listing and prequalification of consultants.

(3) Except for single source selection, the Committee shall evaluate the request for proposals in accordance with clause (b) of rule 36 of the Public Procurement Rules, 2004.

(4) The bidder whose technical and financial proposal is the most advantageous shall be ranked highest and his bid accepted:

Provided that adjustments in the main days of various level of professionals etc. may be negotiated, as per requirement if deemed necessary, without any price or rate negotiations.

10. Extent of Negotiations or discussions.- The Committee of the procuring agency may negotiate with the highest ranked bidder regarding methodology, work plan, staffing and special conditions of the contract. The Committee shall not permit substitution of key staff, unless both parties agree that undue delay in selection process makes such substitution unavoidable. In case of failure of negotiations with highest ranked bidder, the Committee may invite the next ranked bidder for such negotiations or

discussions. Negotiations are to be carried out by committee and its minutes shall be recorded. Negotiations by a single person Committee shall never be allowed:

Provided that negotiations shall not seek changes in the rates quoted by the bidder in accordance with restriction imposed on financial negotiations under Rule 40 of the Public Procurement Rules, 2004.

11. Professional liability of consultants.- (1) The consultant selected and awarded a contract shall be liable for consequence of errors or omissions on its part. The extent of liability of the consultant should be incorporated in the contract and in no case should it be less than remunerations excluding the out of pocket expenses, nor should the liability exceed twice the remunerations.

(2) The procuring agency may demand insurance on part of the consultant to cover its liability under sub-regulation (1) and necessary costs shall be borne by the consultant which shall be reimbursed by the procuring agency as out of pocket expenses by the consultant.

(3) The consultant shall be held liable for all losses or damages suffered by the procuring agency on account of any misconduct and unsatisfactory performance by the consultant in performing the consulting services.

12. Inconsistency.-The Public Procurement Rules, 2004 and these regulations are to be taken as mutually explanatory of one another but in case of in consistency, the Public Procurement Rules, 2004 shall take precedence over these regulations.

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Sd/-
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