



No.1(01)/MD/PPRA/2019
Government of Pakistan
Public Procurement Regulatory Authority
(Cabinet Division)

Engr. Muhammad Zubair
Managing Director
Tel: 051-9224824
Fax: 051-9224823

Islamabad, the 14th August, 2019

Subject: **DETERMINATION OF MODALITIES TO INVOKE THE CLAUSE-77.1 OF THE PARTICULAR CONDITIONS OF THE CONTRACT PRESCRIBED IN PEC BIDDING DOCUMENTS FOR CIVIL WORKS**

Dear Secretary;

It has been observed with serious concerns that "Clause 77.1 of the Particular Conditions of the Contract prescribed in Pakistan Engineering Council (PEC) Bidding Documents for Civil Works" is being invoked without determining any mechanism/modalities or any evidence of predefined qualifying criteria to determine the capabilities of new JV Partner(s), in case of leaving partner(s) or complete dissolution of JV partnership during Contract Management Phase of Construction/Engineering Works.

2. Clause-77.1 of Part-II-"Particular Conditions of the Contract" prescribed in the Standard Bidding Documents (Civil Works) finalized by PEC defines the Joint & Several Liabilities of the JV Partners, and allows the alteration in the composition or constitution of JV with prior consent of the employer. The second part of the particular clause is very general in nature, and needs to be certain, otherwise it may lead towards delay in public contracts and pose serious issues of fairness and transparency. The particular clause reads as follows:

"If the Contractor is a joint venture of two or more persons, all such persons shall be jointly and severally bound to the Employer for the fulfilment of the terms of the Contract and shall designate one of such persons to act as leader with authority to bind the joint venture.

The composition or the constitution of the joint venture shall not be altered without the prior consent of the Employer".

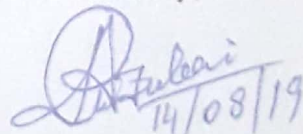
3. Since the Public Procurement Contracts are the Public Contracts involving huge amount drawn from public exchequers and entered into on the basis of competitive bidding process, so to incorporate the new partners without passing through any well-defined process or qualification proceedings erodes the most essential Principle of Procurement i.e. "Procurement in a Fair & Transparent Manner" referred in Public Procurement Rules, 2004. The same principle is also enshrined in Subsection-1 of Section-5 of PPRA Ordinance, 2002.

4. To fulfil the objectives of the principles of procurement i.e. "Fairness and Transparency", "Value for Money" and "Efficiency and Economy" in procurement processes, some parameters need to be established in case of change in the composition or constitution of the JV, so as the referred clause of the Contract may be invoked in a fair and transparent manner, if needed. Following parameters are essential to be determined:

- i. The terms "Composition" and "Constitution" need to be defined in the interpretation/definition clauses of the Contract by outlining the scope of the terms in a certain manner, otherwise the scope of these terms may be so broad and can be interpreted in different ways, ranging from the change in the shares, responsibility matrix, Articles/Memorandums of Association of the JV to substituting the leaving partner(s) and/or complete dissolution of the JV Partnership;
 - ii. The Scenarios need to be defined in which the provisions of the Clause may be invoked e.g. insolvency or the default of the JV Partner(s);
 - iii. The Mechanism to determine the extent of joint and several liability of the JV partners need to be clearly defined in case of insolvency or default of one or more partners of the JV;
 - iv. The scenarios and mechanism need to be defined in which the decision may be made whether to proceed with the lead partner by allowing him to accomplish the work by subcontracting (by analysing his capacity and capability to manage such eventualities), or by replacement of the old partner(s) with the new one(s);
 - v. The procedure and parameters need to be developed to assess and verify the qualification of the firm(s) to be incorporated as new JV partner(s) in accordance with predefined appropriate and unambiguous criteria, keeping in view of the pace and progress of the work and remaining activities of the project.
5. This Authority is available to extend any further support and cooperation, if required, in the larger national interest and for best use of the public funds.

With best regards,

Yours Sincerely,


14/08/19
(Engr. Muhammad Zubair)

All Federal Secretaries/Heads of Organizations

Copy to:

Chairman Pakistan Engineering Council

Engineer M. Mzhar-ul-Islam Advocate (Convener PEC Prequalification/Bidding Documents)