



Government of Pakistan
Public Procurement Regulatory Authority
(Monitoring & Evaluation Wing)

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F. No. 1(5)/M&E/PPRA/2018/ 61

Islamabad, February 15, 2021

Subject: **GENERAL CLARIFICATION REGARDING AWRAD OF CONTRACT TO SECOND MOST ADVANTAGEOUS BIDDER**

The purpose of Regulatory Framework is to streamline the processes rather than creating unnecessary impediments leading towards delay in achieving the desired objectives. **The processes with delayed outcomes are least efficient, whereas having no outcome are treated as inefficient and uneconomical.** Some procurement processes (due to their nature and complexity) are too lengthy, and months or even more than a year may be consumed to conclude these processes. **After issuance of evaluation report (or acceptance of proposal), first ever risk in the procurement process is the escape of the most advantageous (or lowest evaluated) bidder.** If such processes are annulled just due to escape of one of the bidders by forfeiting comparatively a nominal price of bid security, it means the procurement processes are uneconomical and inefficient having **no flexibility or resilience to accommodate the changes in terms of even highly expected risks,** and the same **is against the basic principles of** (project management and) **procurement** (management), also **defined in PP Rule-4, which demands transparent, fair, efficient and economical procurement processes bringing "Value for Money"** in acquiring the objects of procurement. **As per PP Rule-2(1)(i), acquisition in a timely manner is one of the most important aspects of "Value for Money"** in addition to other traits such as quality, reliability, after sale service, upgrade ability, price, source and whole life cost.

2. PP Rule-38 requires that the contract shall be awarded to the most advantageous (or lowest evaluated) bidder, whereas, the rules are silent regarding the very expected case of escape of such (successful) bidder, after the issuance of evaluation report (and acceptance of any such proposal). In such a case, PP Rule-33 cannot be invoked which allows annulment of procurement process only prior to acceptance of bid or proposal. Whereas, PP Rule-34 further qualifies that the annulment in terms of Rule-33 can be attributed to the reasons regarding specifications, evaluation criteria or any other conditions due to which procurement could not be matured, and requires the procuring agency to assess such reasons before rebidding. **Hence, annulment of procurement process in terms of PP Rule-33 is not attracted in case of escape of the successful bidder.**

3. In terms of Rule-44 (a), especially in case of (small) goods, where no formal signing of contract is required, procurement contract shall come into force from the date of acceptance of the bid or issuance of purchase order. However, in case of escape (or withdrawal of the bid in lieu of forfeiture of bid security), the enforcement of any such presumed contract becomes impossible especially when the amount of performance

security / guarantee has yet not been deposited by the most advantageous bidder (the escapee). In such cases, where no performance security is yet deposited and bidder has preferred the forfeiture of his bid security (if any), the contract cannot be assumed to be construed just due to the directory provision of clause (a) of Rule-44, and hence cannot be enforced.

4. In view of the above analysis, we can safely conclude that, procuring agency may not annul the concluded procurement process, just due to silence in rules regarding some important aspect of procurement (i.e. risk management in case of escape of the successful bidder), by violating the letter and spirit of the "Principles of Procurement" defined in PP Rule-4, and "Value for Money" exclusively defined in PP Rule-2(1)(I). **Hence, in case of escape of the most advantageous (or lowest evaluated) bidder after the issuance of evaluation report (and/or acceptance of any proposal by the procuring agency), there is no available most advantageous (or lowest evaluated) bidder other than the second one, who should be substituted as the most advantageous bidder, after forfeiting the securities of the escapee(s), if any, unless:**

- (i) **The prices of the other (i.e. 2nd most advantageous) bidder are abnormally deviating from the allocated budget or market prices (analysed by the procuring agency) as per the practices of that particular business or trade, and procuring agency after making an analysis of combination of all other related aspects, is of the view that the object of procurement may not bring Value for Money;**
- (ii) **There are some indications of collusive practices between the most advantageous (or lowest evaluated) bidder and other bidder(s), and in such case, the process of debarment of the bidder(s) is initiated in accordance with mechanism defined in PP Rule-19, and/or**
- (iii) **There are some other irregularities in the procurement process leading towards misprocurement.**


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All Federal Secretaries/ Heads of the Departments

CC:

Director (MIS), PPRA with a request to upload the same on the Authority's Website for information of the procuring agencies, bidders and general public.