

**EVALUATION OF PROCUREMENT
PROCEDURES FOR WORKS AND
GOODS IN PAKISTAN**

BY

**ENGR. CH. GHULAM HUSSAIN
ENGR. S. A. KASMANI**

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1.0 INTRODUCTION

- i) The responsibility for the execution of the Works, and therefore for the award and administration of contracts under a project, rests with the governmental agencies (generally called “The Employer”) who should ensure that contracts are awarded in a transparent manner without any non-economic influences or considerations, and it has established detailed procedures for this purpose. Following four considerations generally should guide the process.
 - a) provide all eligible bidders the same information and equal opportunity to compete in bidding for works;
 - b) encourage the development of domestic contracting and manufacturing industries in the country;
 - c) the need for economy and efficiency in the implementation of the project, including the procurement of works and the goods involved; and
 - d) the significance of fairness and transparency in the procurement process.
- ii) Open competition is the basis for efficient public procurement. The Employers should select the most appropriate method for the specific procurement. In most cases, International Competitive Bidding (ICB), properly administered, and with the allowance for preferences for domestically manufactured goods and, where appropriate, for domestic contractors for works under prescribed conditions is the most appropriate method.

¹ Managing Partner, National Development Consultants (NDC), Lahore - Pakistan

² Project Manager, Gomal Zam Dam Project, NDC, Lahore- Pakistan

1.1 Transparency in Procurement

- i) In order to ensure fairness and transparency in the process of procurement a level playing field has to be provided to all the prospective bidders. The Conditions of Contract be equitable and clearly set out with no ambiguities and that ample time be allowed for visiting site, seeking clarifications and preparation of bids, to all the prospective bidders.
- ii) The procedures laid down by the Government relating to procurement should be strictly followed including advertisement of calls to bid and avoidance of post bid negotiations except in cases of sole sources procurement or where competition is inadequate (less than three responsive bids). However, in such cases a prior certification authorizing negotiations

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with proper justification will be issued by the competent authority in each such case. Once the Contracts/Agreements are finalized, these should be made public with itemized costs. The Standard Schedule of Rates (SSR) should be periodically revised for changes in market prices and technology. The Consultants should be engaged to carry out prior review of selection process for all major contracts costing US\$ 100,000 and above and assist the Employer in the evaluation of bids and award of the Contract.

2.0 COMPETITIVE BIDDING

The objective of Competitive Bidding (CB) is to provide all eligible prospective bidders with timely and adequate notification of Employer's requirements and an equal opportunity to bid for required goods and works.

2.1 Type and Size of Contracts

The bidding documents shall clearly state the type of contract to be entered into and contain the proposed contract provisions appropriate therefor. The most common types of contracts provide for payments on the basis of a lumpsum, unit prices, reimbursable cost plus fees, turn key, or combinations thereof.

- 2.2 Invitations to prequalify or to bid, as the case may be, shall be advertised as Specific Procurement Notices in at least one newspaper of national circulation. Notification shall be given in sufficient time to enable prospective bidders to obtain prequalification or bidding documents and prepare and submit their responses.

2.3 Prequalification of Bidders

Prequalification is usually necessary for large or complex works, or in any other circumstances in which the high costs of preparing detailed bids could discourage competition. Prequalification shall be based entirely upon the capability and resources of prospective bidders to perform the particular contract satisfactorily, taking into account their (a) experience and past performance on similar contracts, (b) capabilities with respect to personnel, equipment, and construction or manufacturing facilities, and (c) financial position. The invitation to prequalify for bidding on specific contracts or groups of similar contracts shall be advertised and notified as described above.

3.0 BIDDING DOCUMENTS

- 3.1 The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods and works to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract. Document shall generally include: invitation to bid; instructions to bidders; form of bid; form of contract; conditions of contract, both general and special; specifications and drawings; relevant technical data (including of geological and environmental nature); list of goods or bill-of-quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or at some other place in the bidding documents.

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- 3.2 Employers shall use the appropriate *Standard Bidding Documents* (SBDs) approved by the Government, such as Documents issued by Pakistan Engineering Council (PEC) with minimum changes, acceptable to the Employer, as necessary to address project-specific conditions. Any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by introducing changes in the standard wording of the SBDs.

3.3 Conditions of Contract

The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Employer and of the contractor or the supplier, and the functions and authority of the engineer, architect, or construction manager, if one is employed by the Employer, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods or works to be procured and the location of the project shall be included. The conditions of contract shall provide a balanced allocation of risks and liabilities.

3.4 Validity of Bids and Bid Security

Bidders shall be required to submit bids valid for a period specified in the bidding documents which shall be sufficient to enable the Employer to complete the comparison and evaluation of bids, and obtain all the necessary approvals so that the contract can be awarded within that period.

- 3.5 Employers have the option of requiring a bid security. When used, the bid security shall be in the amount and form specified in the bidding documents and shall remain valid for a period of four weeks beyond the validity period for the bids, in order to provide reasonable time for the Employer to act if the security is to be encashed. Bid security shall be released to unsuccessful bidders once the contract has been signed with the winning bidder.

3.6 Performance Security

Bidding documents for works shall require security in an amount sufficient to protect the Employer in case of breach of contract by the Contractor. This security shall be provided in an appropriate form and amount, as specified by the Employer in the bidding documents. The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the Employer; alternatively, contracts may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.

In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods.

3.7 Technical Specifications

Technical specifications and standards quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods

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and/or works under procurement. As far as possible, the Employer shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or are inappropriate, national standards may be

specified. In all cases, the bidding documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

3.7.1 Use of Brand Names

Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words “or equivalent” shall be added after such reference. The specifications shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specified.

3.8 Pricing

3.8.1 Bidders for works contracts shall be required to quote unit prices or lump sum prices for the execution of the works, and such prices shall include all duties, taxes, and other levies. Bidders shall be allowed to obtain all inputs (except for unskilled labour) from any eligible source so that they may offer their most competitive bids.

3.8.2 In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, shipment and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all duties, taxes, and other levies.

3.8.3 Price Adjustment

i) Bidding documents shall state either that (a) bid prices will be fixed or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labour, equipment, materials, and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months, but shall be included in contracts which extend beyond eighteen (18) months. Nevertheless, it is normal commercial practice to obtain firm prices for some types of equipment regardless of the delivery time and, in such cases, price adjustment provisions are not needed.

ii) Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis

of documentary evidence (including actual invoices) provided by the supplier or contractor. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable), and the base date for application shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and

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corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

3.8.4 Transportation and Insurance

Bidding documents shall permit suppliers and contractors to arrange transportation and insurance from any eligible source. Bidding documents shall state the types and terms of insurance to be provided by the bidder. The indemnity payable under transportation insurance shall be at least 110 percent of the contract amount in the currency of the contract or in a freely convertible currency to enable prompt replacement of lost or damaged goods. For works, a contractor's All Risk form of policy usually shall be specified. For large projects with several contractors on a site, a "wrap-up" or total project insurance arrangement may be obtained by the Employer, in which case the Employer shall seek competition for such insurance.

3.8.5 Currency Provisions

Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the contract price will be paid. These provisions are intended to (a) ensure that bidders have the opportunity to minimize any exchange risk with regard to the currency of bid and of payment, and hence may offer their best prices; (b) give bidders in countries with weak currencies the option to use a stronger currency and thus provide a firmer basis for their bid price; and (c) ensure fairness and transparency in the evaluation process.

3.8.6 Terms and Methods of Payment

Payment terms shall be in accordance with the international commercial practices applicable to the specific works. Contracts for works shall provide in appropriate cases for mobilization advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.

Any advance payment for mobilization and similar expenses, made upon signature of a contract for goods or works, shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The bidding documents shall specify the arrangements for any security required for advance payments. Bidding documents shall specify the payment method and terms offered, whether alternative payment methods and terms will be allowed and, if so, how the terms will affect bid evaluation.

4.0 FEDERATION INTERNATIONALE DES INGENIEURS CONSEILS' (FIDIC) CONDITIONS OF CONTRACT

FIDIC has published four standard forms of Contract as discussed below:-

4.1 Conditions of Contract for Construction

Under the usual arrangements for this type of contract, the Contractor constructs the works in

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accordance with a design provided by the Employer. However, the works may include some elements of contractor-designed civil, mechanical, electrical and/or construction works. FIDIC recommends this type for building or engineering works designed by the Employer or by his representative, the Engineer. FIDIC has published standard Conditions of Contracts for this type of Works. Contract Documents developed by International Funding Agencies, like World Bank and Asian Development Bank are also based on FIDIC's Conditions of Contracts.

4.2 Conditions of Contract for Plant and Design-Build

Under the usual arrangements for this type of contract, the Contractor designs and provides, in accordance with an Employer's requirements, plant, and/or other works: which may include any combination of civil, mechanical, electrical and/or construction works. FIDIC recommends this type for the provision of electrical and/or mechanical plant, and for the design and execution of building or engineering works.

4.3 Conditions of Contract for EPC/Turnkey Projects

Under the usual arrangements for turnkey projects, the Contractor carries out all the Engineering, Procurement and Construction (EPC): providing a fully-equipped facility, ready for operation (at the "turn of the key"). As per FIDIC this type may be suitable for the provision on a turnkey basis of a process of power

plant of a factory or similar facility, or of an infrastructure project or other type of development, where (i) a higher degree of certainty of final price and time is required, and (ii) the Contractor takes total responsibility for the design and execution of the project, with little involvement of the Employer.

4.4 Short Form of Contract

Under the usual arrangements for this type of contract, the Contractor constructs the works in accordance with a design provided by the Employer or by his representative (if any), but this form may also be suitable for a contract which includes, or wholly comprises, Contractor-designed civil, mechanical, electrical and/or construction. FIDIC recommends this type for building or engineering works of relatively small capital value. Depending on the type of work and the circumstances, this form may also be suitable for contracts of greater value, particularly for relatively simple or repetitive work or work of short duration.

5.0 PAKISTAN ENGINEERING COUNCIL'S (PEC'S) DOCUMENTS

5.1 Pakistan Engineering Council (PEC) has prepared Conditions for Civil Engineering Contracts and have made it mandatory for use by the Government's agencies. Simultaneously for the comparatively larger contracts especially those co-financed by the foreign donor agencies, the Conditions of Contract prepared by FIDIC have been extensively in use in Pakistan. Apart from these kinds, other mode of execution are also in use as mentioned below.

5.2 PEC has recommended to use its document prepared for International Competitive Bidding (ICB) for the works costing more than Rs. 50 million. For this type of contract the Engineer estimates their bill-of-quantities which shall be read in conjunction with the: Instructions to Bidders; Conditions of Contract; Specifications; and Drawings. The acceptable rates tendered in the priced bill-of-quantities

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are deemed to be payable to the contractor for completion of the works.

5.3 Regarding the works costing less than 50 million, PEC recommends to use its documents for Local

Competitive Bidding (LCB). For such type of contract the Employer asks the bidders to quote their

prices on percentage above/below basis of the schedule prepared by the Employer. In Government

Agencies generally, Composite Schedule of Rates (CSR), has been used for this purpose. This CSR

is revised periodically to cater for the prevailing market rates of various inputs to the works.

6.0 CONTRACT DOCUMENTS PREVIOUSLY IN USE

- 6.1 The Contract Documents introduced by the British Government in the Sub-Continent remained in use in Pakistan, for a long time after independence in 1947. Some additional conditions were introduced from time to time depending upon the nature of the project/works and developments in the engineering profession.
- 6.2 Aforementioned contracts used to be predominantly in the nature of labour contracts, as most of the major construction materials like cement, steel, bricks, bitumen and aggregates used to be procured by the Employer and supplied to the Contractor for use in the construction of works. Likewise sanitary fittings, electricity fittings, door fittings etc. used to be purchased and stored for consumption on the works by the Employer. This practice led to numerous accounting problems, wastage and pilferage of materials which eventually led to the discontinuation of this system by requiring the contractors to quote their rates for the different items of work including cost of materials. It brought a major improvement in the procurement process of the contracts for works in the public sector.
- 6.3 An equitable and just basis of contract agreements is crucial for a successful and smooth administration of the Contracts for implementation of any project. Although these aspects have always been kept in view, yet room for improvement had always been there and contract documents had thus been revised/amended from time to time in the past in the light of problems/difficulties experienced in the implementation of the projects. Besides, engagement of international contractors on mega projects brought with it the internationally accepted contracting systems/Conditions of Contract which influenced the local contracting practices and documents in vogue.

6.4 Adoption of FIDIC Conditions of Contract by WAPDA

- 6.4.1 Indus Basin Works, comprising two reservoirs of Mangla and Tarbela, five (5) barrages, eight (8) new link canals and the remodeling of the various link canals, barrages and canal systems were constructed under Indus Basin Treaty in 1960s by WAPDA under the auspices of the World Bank. These Works were designed and constructed by International Consultants and Contractors.
- 6.4.2 Prior to development of the contract documents for works to be constructed under the Indus Basin Project, the World Bank stipulated that standard conditions of contract were to be adopted for construction of each of the works in order to insure uniformity of contract requirements, to facilitate review and eliminate conflicts in contract administration. The Conditions of Contract as adopted were based upon those which had been developed by the Federation Internationale des Ingenieurs Conseils (FIDIC) entitled “Conditions of Contract (International) for Works of Civil Engineering Construction”. Because of the varying types of works

to be constructed, however, development of
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standardized technical specifications was not considered feasible. Accordingly, these provisions were separately developed by each of the consultants to adequately cover the work to be performed.

7.0 REVIEW OF CONTRACT DOCUMENTS IN USE IN SOME GOVERNMENT DEPERATMENTS

- i) The Contract Documents in use in the Departments of Government of Punjab till late eighties were deficient in many ways as compared to the standard format as mentioned below:
- Priorities of various documents forming part of the Contract were not identified leading to different interpretation.
 - Key terms used in the Contract Document were not defined leading to different meanings and interpretations.
 - Additional Conditions were attached without quoting any reference to the General Conditions of Contract. Most of the Additional Conditions were in fact of the nature of Instructions to Bidders or a repetition (in part) of the General Conditions of Contract. Some of the Additional Conditions were a sort of specification for certain items of work. Certain Conditions were unfair towards the Contractor such as no compensation for stoppage of work due to any reason whatsoever.
 - Preamble explaining the Bid Schedule was not included.
 - The documents were not thoroughly reviewed and, therefore, many errors of grammar and spellings in the text.
 - Technical Specifications generally are not bound in the Contract Documents.
- ii) The Finance Department Govt. of Punjab introduced a revised document in late eighties to bring them in conformity with the standard internationally used documents but all the above deficiencies still remained un-addressed except inclusion of definition of some key terms. About seventy (70) so called Additional Conditions are still being made a part of the Contract whereas most of these are in-appropriately termed as 'Additional Conditions' as explained above. Moreover, the spirit of fair play to both the parties to the Contract embodied in the standard documents used internationally was removed in favour of the Employer, some instances of which are explained hereinafter.

7.1 Adjustment in Contract Price for Price Variation

In the earlier contract documents in use in the Govt. Departments there was no provision for adjustment of Contract Price due to price variation. The manifold increase in the prices of fuel immediately after the Gulf War coupled with substantial devaluation of Pakistan rupee forced the Government to allow a one

time ex-gratia payment as compensation for the resulting tremendous increase in prices, in the Contracts affected by such increase. However, a price variation Clause for adjustment of Contract Price was introduced by the Govt. of Punjab for the first time in March 1980, and that too for some specified construction materials like cement, steel (bars and sections), asbestos cement pipes, PVC pipes, and RCC/PCC pipes only. No adjustment was allowed for changes in prices of other inputs like fuel, labour, machinery, equipments and other stores etc. The same is continuing without any further amendment. The Pakistan Engineering Council documents place no such restrictions on the elements to be considered for price adjustments. For a country like Pakistan where rate of inflation is usually high and prices of all inputs substantially increase during the construction period unpredictably, PEC's documents offer better alternative to the price variation clause introduced by the Govt. of the Punjab. Stipulation for adjustment due to variation in prices of materials helps in generating healthy competition as the prospective bidders can quote rationally

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worked out prices without any built-in risk for variation in prices of inputs based on wild guess work.

7.2 Time for Payment

The Conditions of Contract in use in the Departments of Government of Punjab do not require the Employer to pay any compensation for delayed payments. These documents only stipulate that payment should be made, if possible, before the expiry of 10 days from the presentation of the bills. Thus it is not an obligation on the Employer to make payments within certain specified period. The Employer thus may delay the payments indefinitely, as is usually the case, without any fear or obligation to pay interest on the amount due but not paid within a certain time. The PEC's and FIDIC's documents, however, stipulate some mark-up in the event of delay in payment beyond specified period.

7.3 Defect Liability Period

The Defect Liability Period is stated as 'Period of Maintenance' and is misconstrued by asking the Contractor to maintain the works completed by him for a certain period whereas he is only responsible to repair/remove the defects that appear in his works (other than normal wear and tear) during the Defect Liability Period which is the term used by FIDIC / PEC and is more appropriate.

7.4 Termination of Contract by the Contractor

The FIDIC's document entitles the contractor to terminate the Contract in the event of default of the Employer to make payment, Employer's substantial failure to perform his obligations under the contract, prolonged suspension of

work by the Employer whereas the PEC's document entitles the contractor to terminate the Contract in the event of default of the Employer to make payment and prolonged suspension of work by the Employer. PEC's document does not mention Employer's substantial failure in performing his obligations as a reason for the termination of the contract by the contractor. In the documents in use in the Departments there is no such clause which may entitle the contractor to terminate the contract on the above grounds. The contractor is thus left at the mercy of the Employer.

7.5 Compensation for Delay/Bonus for Early Completion

The Contract Documents in use in the Departments of Govt. of Punjab provide for compensation for delay in the completion of work by the Contractor. However, there is no incentive in the form of payment of bonus to the Contractors for completion of work before the due date. The internationally accepted documents and PEC's documents do provide for payment of bonus if so agreed upon.

7.6 Alterations, Additions and Omissions

The possibility of variation in quantities of different items of work during the execution of works including omissions of certain parts of work during the execution of works is always there. The documents in use in the Government departments as well as PEC's document considers impact of these alterations, additions and omissions in the overall context and allow for further adjustment in Contract Price, if their cumulative effect is more than 25% of the contract price as per documents in

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use in the departments and 15% as per PEC's documents. Corresponding clauses in the FIDIC take into consideration the impact of variation of each item of work individually and allow for adjustment of rates of those items of work, impact of variation of which exceeds the limits specified in the clauses. Omission of any part of work is considered separately. FIDIC's documents thus offer a more realistic and rational mechanism as compared to the PEC's documents or documents in use in the departments.

The FIDIC and PEC's documents entitle the Employer to omit any part of work from the scope of work, but not if the omitted work is to be carried out by the Employer or by another Contractor. This clause ensures transparency and fairness to the parties to the contract. Contrary to this the documents in use in the Government Departments entitle the Employer to re-allot the omitted work to any other agency which is against the spirit of Justice and fair play.

7.7 Adjustments for changes in Legislation

There is always a possibility of impact of changes in legislation on the Contract Price. The FIDIC and PEC's documents stipulate that the Contract Price shall be adjusted to take account of any increase or decrease in cost resulting from a change in the Laws of the country (including introduction of a new Law) 'made after the Base Date. There is no such clause in the documents in use in the departments wherein, against all reason and logic, it is provided that all rates included the cost of taxes, duties and levies imposed by the Central or Provincial Governments and Local Authorities. It is irrational to assume that Contractor can foresee changes in legislation and provide for the same in his rates at the time of preparation of his bid.

7.8 Optional Termination/Release from Performance

The FIDIC's document, under separate clauses, provides that if the execution of substantially all the works in progress is prevented for a continuous period of 84 days by reason of Force Majeure, then either party may give to the other party a notice of termination of the contract. In this event, the Contractor shall be settled for the work done and compensated for termination of the Contract. Similarly if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both parties to fulfill its or their contractual obligations, then upon notice by either Party to other Party of such event or circumstance, the parties shall be discharged from further performance. Provision in the PEC's documents are similar. However, in the documents in use in the Departments there is no such clause which may entitle the contractor to terminate the contract on the above grounds. The contractor is thus left at the mercy of the Employer.

7.9 Employer's Risk/Force Majeure

The FIDIC and PEC's documents provide for compensating the contractor for the losses suffered by him due to any of the reasons mentioned under Employer's Risk/Force Majeure. However, there is no such provision in the documents in use in the departments which say that no claims for payment of extra-ordinary nature or claim for compensation where the work has been temporarily brought to a standstill through no fault of the contractor shall be allowed unless the same shall have been expressly sanctioned by the Government.

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7.10 Provisional Sums

It is a standard practice to provide for the provisional sums in the Bill-of-Quantities for certain works scope of which is immediately not clear and which is later got executed

through a variation order. However, this practice is not followed in the departments.

8.0 CONCLUSIONS AND RECOMMENDATIONS

- 8.1 The Contract Documents mostly in use in Government Departments/Agencies do not conform to the provisions recommended by FIDIC/International Agencies like World Bank.
- 8.2 Pre-bid Conference may be arranged whereby potential bidders may meet with the Employer's representatives to seek clarifications. Minutes of the Conference should be provided to all prospective bidders. All prospective bidders should be provided the same information and should be assured of equal opportunities to obtain additional information on timely basis.
- 8.3 Appropriate Standard Bidding Documents (SBDs) approved by the Government should be used. SBDs issued by Pakistan Engineering Council with minimum changes necessary to address project – specific Conditions should be used by the Employers in Pakistan. Any such changes shall be introduced only through bid/contract data sheets or through Special Conditions of Contract and not by introducing changes in the standard wording of the SBDs.
- 8.4 Bidding Documents should state either that (a) bid prices will be fixed or (b) that price adjustments will be made to reflect any changes in major cost components, such as labour, materials, fuel and equipment of the Contracts which extend beyond eighteen (18) months.
- 8.5 The procedures laid down by the Government relating to procurement should be strictly followed including advertisement of calls to bid and avoidance to post bid negotiations except in case of single source procurement.

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