

IMPLEMENTATION OF PAKISTAN ENGINEERING COUNCIL (PEC) BIDDING & CONTRACT DOCUMENTS

By

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Background: Way back 1997, Pakistan Engineering Council (PEC) initiated standardization of bidding & contract documents in line with International standards for providing equitable basis to contracting parties namely, the employers and the contractors for bidding, evaluation, award and execution of engineering contracts for National development in a transparent manner so as to attain quality construction in scheduled time infusing good governance in the field of engineering procurement. Previously, almost 100 different formats were being used by various project implementation agencies which were one sided and heavily biased in favor of the employers. PEC formed a National Committee of stakeholders and number of Task Groups involving experts, employers, contractors, consultants and relevant Government departments to develop a set of bidding and contract documents with the inputs and consensus of the stakeholders. A set of following six standard bidding and contract documents were notified by the Federal Government in the year 2002 after due processes and approval of Executive Committee of National Executive Council (ECNEC) ; and the revised documents harmonized with Public Procurement Regulatory Authority (PPRA) rules, on 12 February, 2008.

- ! Standard Form of Bidding Documents (Civil Works)
(to be used for estimated value of more than Rs. 25 Millions)
- ! Standard Form of Bidding Documents for Procurement of Works (E & M)
(to be used for estimated value of more than Rs. 25 Millions)
- ! Standard Form of Bidding Documents For Procurement of Works
(For smaller Contracts)
(to be used for all type of procurement for estimated value of not more than Rs. 25 Millions)
- ! Standard Form of Contracts For engineering Consultancy Services
(For Large Projects) - Lump Sum Assignments
(to be used for consultancy fee over Rs. 2 Millions)
- ! Standard Form of Contract For Engineering Consultancy Services
(For Large Projects) -Time Based Assignments
(to be used for consultancy fee over Rs. 2 Millions)
- ! Standard Form of Contract For Engineering Consultancy Services
(For smaller Projects)
(to be used for consultancy fee of not more than Rs. 2 Millions)

The following Six Procedures and Rules have been recently finalized which have also been approved by PEC governing body in its meeting on 30th April 2009 and are in the process on Notification.

- ! Standard Procedure for Pre-Qualification of Constructors
- ! Standard Procedure for Evaluation of Bids for Procurement of Works
- ! Standard Procedure for Pre-Qualification of Consultants

1. Convener, PEC Act & Bye-laws Committee and Chief Executive, Techno Legal Consultants (Pvt.) Ltd.

- ! Standard Procedure for Evaluation of Proposals for Procurement of Engineering Services
- ! Standard Procedure and Formula for Price Adjustments
- ! PEC Rules of Conciliation and Arbitration

These documents can be downloaded from website www.picc.org.pk

Implementation: PEC also issued necessary S. R. Os to enforce these documents uniformly throughout Pakistan. Soon after the notification PEC organized a series of capacity building workshops and seminars in various cities for awareness of the stakeholders and method of utilizing these PEC standard documents. Initially PEC encountered difficulties in enforcing these documents primarily from the Provincial Governments and subsequent publications of Public Procurement Regulatory Authority (PPRA) Rules – 2004. Those who were reluctant to come under the net of PEC Regulations started arguing that since PPRA Rules formulated under a latter enactment and there remained several conflicting provisions in PEC documents and PPRA Rules, as such they are unable to implement the PEC Documents.

Whereas, PPRA had published a set of rules and they were yet to develop the detailed documentations under these rules; and whereas, PEC had already developed and notified such detail documentation in the form of complete bidding and contract documents; both the PEC and PPRA under a Cabinet Division Notification started harmonizing the PEC notified documents by taking into consideration the conflicting provisions in the PPRA rules. As such, harmonized PEC documents have been adapted by the PPRA as the National documents and posted in PPRA official web site since 2005. Further, PEC incorporated feedback from the users, directive from the Federal Government and finalized in the joint meeting of PEC, PPRA and the Planning Commission to revise the 2002 notified document on June 11, 2007. These documents after due processes and approval of the Central Development Working Part (CDWP) and ECNEC were again notified by the Planning and Development Division of the Government of Pakistan vide No. 8 (60) WR/PC/2008 (Annex-I) on February 12, 2008 directing all Federal, Provincial and District Governments to implement these documents uniformly. Subsequently PPRA vide SRO No. 805(I)/2008 dated July 11, 2008 (Annex-II) notified these PEC documents to be used by all stakeholders for executing the projects in the Country. Notwithstanding the fact that these PEC documents are to assist the users to increase their efficiency in executing their projects, the legal position is that the PEC documents which have been notified by the PEC, PPRA and the Planning Commission are the only documents which must have to be used for bidding and execution of all projects for National Developments. As such, users of the PEC documents will be in compliance with both the PEC and the PPRA regulations as for the execution of engineering contracts in Pakistan. The said notification of February 12, 2008 also directed the Economic Affairs Division (EAD) to include a provision in all future loan agreements that even for the funded project PEC documents shall be used. Planning Commission by another previous notification in 2004 had warned the Project Executing Authorities that non-utilization of the PEC document may attract suspension of Public Sector Development Programme (PSDP) funds. Planning and Development Division of the Government of Pakistan vide its latest Notification F. No. 1 (780) PP&H/PC/2007/Vol-II dated 24 December, 2009 (Annex-III) reiterated implementation of the above PEC documents. So far PEC is creating awareness and capacity building programs towards implementing these documents and responding to various queries to numerous stakeholders. PEC has also issued letters for compliance of PEC Documents upon receipt of complaints from many quarters. Pointing out such non-compliance and subsequent follow-up by PEC has resulted into improved compliance.

After 2008 notifications on the revised documents; implementation of the PEC documents has been increased many folds. Now almost all the leading project executing authorities such as National Highway Authority (NHA), Capital Development Authority (CDA), Water & Power Development Authority (WAPDA), Pakistan Public Works Department (PAK PWD), National Engineering Services Pakistan (Pvt.) Limited (NESPAK) etc. are utilizing the PEC documents and PEC is receiving queries almost everyday from various agencies in regard of PEC

documents. However, still the gray areas of implementation are the Planning & Development (P & Ds) of the Provincial Governments, who are reluctant to use the PEC documents in its true spirit. Recently after consultations with the relevant Provincial Government Authorities, the Government of AJK, Balochistan and NWFP has started implementing the PEC documents. The Government of Sindh and Punjab are discussing with PEC their few reservations, however have shown their inclination to implement the PEC documents soon. Initiatives are being taken by PEC special teams to pursue the Sindh and Punjab Governments to enforce these documents by their P & D departments.

Salient Improvements: PEC in its revised documents notified on February 12, 2008 has revised some of the provisions in the PEC documents in order to simplify the use of these documents and redress the difficulties encountered by some of the stakeholders:

1. Delayed payment compensation to the contractor has been revised from fixed 8% to KIBOR + 2% (Karachi Inter Bank Offer Rate) for local currency and LIBOR + 1% (London Inter Bank Offer Rate) for the foreign currencies in order to compensate the contractor in case of delay in payment.
2. Due to the stringent conditionality of the Scheduled Banks in Pakistan in issuance of Bid Bonds and Performance Bonds, revised PEC documents permitted the bidders to submit these Bonds from the insurance companies at their own option provided that the insurance companies issuing such bonds must be at least AA rated by Pakistan Credit Rating Agency Limited (PACRA) and JCR (Japan Credit Rating Agency).
3. Payment period by the Employer has been increased to 30 days after the joint verification of the contractor's bill.
4. Provisions of Price Adjustments has been made mandatory and incorporated detailed provisions and International Federation of consulting Engineers (FIDIC) formula for price adjustments to enable both the Employer and the contractor to compensate each other in case of unreasonable fluctuation in the construction material and the services rates.

Use of FIDIC: PEC standard bidding documents which comprise of Invitation for Bids, Instructions to Bidders, various Forms of Securities and Agreement, General Conditions of Contract (GCC), Particular Conditions of Contract (PCC), Special Provisions, Technical Provisions etc; adopted the GCC from International Federation of Consulting Engineers (FIDIC) standards after obtaining proper consent from FIDIC Secretariat in Geneva. FIDIC-GCC is included only in two documents i.e., for Civil and Electro-Mechanical large works, out of the above twelve PEC documents. Objectives of using FIDIC conditions of contract are to make the PEC documents suitable for International bidding, acceptable to the international contractors and the funding agencies. PEC, however has varied some of the provisions of FIDIC General Conditions, in Particular Conditions to make them in conformance to the PEC regulations and relevant laws of Pakistan.

FIDIC Conditions of Contract are used globally and understood by the international consultants & contractors. Association of Consulting Engineers Pakistan (ACEP) is also one of its Member Association. Nevertheless, by using FIDIC General Conditions of Contract (GCC), Pakistani contractors and employers are not losing any of their rights, as, such provisions are appropriately varied by the PEC in the Particular Conditions of Contract (PCC). Moreover, by getting familiar and adopting one of the most widely accepted contract conditions, Pakistani contractors' entry into global market is facilitated which is essential to meet the challenges of World Trade Organization (WTO) in Services Sector. Like all other man made documents, FIDIC documents are also subjected to improvement which is being done continuously by FIDIC relevant committees.

Conclusion: PEC being the regulator to regulate the engineering profession of Pakistan and being an independent authority having no stake in executing the development projects; its efforts in standardizing the set of bidding / contract documents shall be used by the stakeholders for their own benefit. Implementation of the PEC standard documents will ensure quality construction on scheduled time; ensure good governance in the field of engineering procurement and will minimize misuse of public money.

**GOVERNMENT OF PAKISTAN
PLANNING & DEVELOPMENT DIVISION
PLANNING COMMISSION**

No. 8 (60) WR/PC/2008

Islamabad, the 12th February, 2008

SUBJECT : IMPLEMENTATION of REVISED PEC STANDARD BIDDING/CONTRACT DOCUMENTS

1. In pursuance of Executive Committee of National Economic Council's (ECNEC) decision taken in its meeting held on 12th November 2007, it is hereby notified that :
 - (a) The following revised standard form of bidding / contract documents prepared by Pakistan Engineering congress (PEC) a statutory body shall be applicable to procurement of all engineering goods, works and services. The Federal, Provincial Departments / Organizations and District Governments will be responsible to implement the decision of ECNEC.
 - (i) Standard Form of Bidding Documents (Civil Works) dated June 11th, 2007.
 - (ii) Standard Form of Bidding Documents for Procurement of Work (E & M) dated June 11th, 2007.
 - (iii) Standard Form of Bidding documents for Procurement of Work (For Smaller Contracts) dated June 11th, 2007.
 - (iv) Standard Form of Contracts for Engineering Consultancy Services (For Large Projects) – Time Based assignments dated June 11th, 2007.
 - (v) Standard Form of Contracts for Engineering Consultancy Services (For Large Projects) – For Lump sum assignments dated June 11th, 2007.
 - (vi) Standard Form of Contracts for Engineering consultancy Services (For Smaller Projects) dated June 11th, 2007.
 - (b) The aforesaid documents have been hoisted on PEC website i.e. www.pec.org.pk and also available from PEC.
 - (c) Economic Affairs division will include provisions in all loan agreements for use of PEC documents for procurements of engineering goods, works and services.
 - (d) The above rules / regulations would prevail notwithstanding the existing procurements procedures / regulations.
2. This supersedes SRO No. 8 (60) WR/PC/2002 dated 21st August 2002 on the subject.

(Naseer Ahmad Gillani)
Chief (Water)

- All Federal Secretaries of Ministeries / Divisions*
- Chief Secretaries of Provinces*
- Chairman P & D Board Punjab, ACS Development of Provinces*

*They are requested to kindly circulate the documents to the concerned department for implementation.

NOTIFICATION

S. R. O. 805(I)/2008

Islamabad, the 11th July, 2008

S. R. O. 805(I)2008 – In exercise of the powers conferred by section 27 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Authority is pleased to make the following regulations, namely :

1. Short title and commencement : (i) These regulations may be called the Public Procurement Regulations, 2008.
(ii) They shall come into force at once.
2. Definitions – (a) In these regulations, unless there is any thing repugnant in the subject of context.
 - (i) “Ordinance” means the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002) ; and
 - (ii) “Rules” means the Public Procurement Rules, 2004.
 - (b) The expression used but not defined herein shall have the same meaning as are assigned to them in Ordinance and rule.
3. Bidding documents – A Procuring agency when engaged in procurement of works, shall use the standard form of bidding documents prescribed by the Pakistan Engineering council constituted under the Pakistan Engineering Council Act, 1975 (V of 1976).
4. Record to be kept – A Procuring agency shall keep the following record of the procurement proceedings for at least five years from the date of completion of procurement of contract or rejection of all bids under rules 33 of the rules, namely :
 - (a) A brief description of the goods or works to be procured or of the procurement need for which the procuring agency requested proposal or offers ;
 - (b) The names and addresses of suppliers or contractors that submitted bids, proposals, offers or quotations and name and address of supplier or contractor with whom the procurement contract is entered into and the contract price ;
 - (c) The names and address of suppliers or contractor who were pre-qualified or selected and invited to submit bids or technical proposals ;
 - (d) Information related to the qualifications or disqualifications of suppliers or contractors who have submitted bids, proposals, offers or quotations ;
 - (e) The qualification and procurement contract stipulated by the procuring agency ;
 - (f) Evaluation report prepared under rule 35 of the rules, alongwith any reservation and preference under rule 24 ibid ;
 - (g) In case of rejection of bids pursuant to rule 33 of the rules, its complete record ;

- (h) In case of any other method of procurement except open competitive bidding which does not culminate in procurement contract, a statement to that effect and the reasons thereof; and
- (i) A summary of any request for clarification of the pre-qualification or solicitation documents, the response thereto, as well as a summary of any modification to those documents.
5. Obtaining the record – (i) After acceptance of the bids or, as the case may be, termination of the procurement proceedings without resulting in a contract, any person may, on request, obtain the records referred to in clauses (a) and (c) of regulation 4.
- (ii) After acceptance of the bids or, as the case may be, termination of the procurement proceedings without resulting in a contract, any person who submitted bids proposals, offers or quotations or applied for pre-qualification may obtain, on request, the records referred to in clauses (b), (d), (e), (f) and (g) of regulation 4.
- (iii) The record referred to in regulation 4 may also be made available within a reasonable time to the Auditor General of Pakistan or any authorized officer of the Authority or the Federal Government.
6. No liability to suppliers etc. – A procuring agency shall not be liable to suppliers or contractors for damages owing solely to a failure of keeping record of the procurement proceedings in accordance with these regulations.

(F. No. 2/1/2008/PPRA-RA-III)

(Muhammad Farooq)
Section Officer (RA-III)

Annex-III

**GOVERNMENT OF PAKISTAN
PLANNING & DEVELOPMENT DIVISION
PHYSICAL PLANNING & HOUSING SECTION
(CHUGHTAI PLAZA, BLUE AREA)**

F. No. 1 (780) PP&H/PC/2007/Vol-II

Islamabad, the 24th December, 2009

**SUBJECT : IMPLEMENTATION of REVISED PAKISTAN ENGINEERING COUNCIL (PEC)
STANDARD BIDDING/CONTRACT DOCUMENTS**

1. The Prime Minister of Pakistan constituted a two member committee comprising Secretary, Ministry of Housing and Works and Member (Implementation & Monitoring), Planning Commission to review the proposals made by a delegation of APCA in a meeting held with the Prime Minister of Pakistan on 7th May, 2008 and submit recommendations for consideration of the ECC.
2. A series of meetings were held under the chairmanship of Secretary, Ministry of Housing and Works with all the Stakeholders. In the 3rd Meeting of Deliberation Committee held on 31st March, 2009 in the Committee Room of Ministry of Housing & Works, Pak Secretariat, Islamabad, the following decision was taken with reference to the implementation of PEC Standard Form of Bidding / Contract Documents :

“The dead line of 1st July, 2009 has been fixed for the departments to adopt the PEC bidding documents failing which Planning Commission and Finance Division shall not make the releases”.

3. Planning Commission vide letter No. 8 (60) WR/PC/2008 dated 12th February, 2008 has already circulated the Decision of ECNEC taken in its meeting held on 12th November, 2007 on the subject matter.
4. Besides, Planning Commission has requested the Ministries / Divisions and the Provincial Governments vide letter of even number dated 23rd February, 2009 to apprise about the implementation status in this regard.
5. It is once again requested that implementation status on the "Revised PEC Standard Bidding / Contract Documents" for each and every project under execution in your Ministry / Division as well as respective Province be intimated to this Division by 10th January, 2010.
6. The matter may be accorded priority, please.

(Imtiaz Ahmad Vohra)
Chief
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1. All Federal Secretaries of Ministries / Divisions.
2. Chief Secretaries of Provinces.
3. Chairman, P & D Board Punjab, ACS Development of Provinces.

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