



**KHYBER PAKHTUNKHWA
PUBLIC PROCUREMENT REGULATORY AUTHORITY**
Address: Khyber House, Opposite Marbella Wedding Hall,
Justice Talat Qayyum Road, Canal Road,
Warsak Road, Peshawar.
Phone No. 091-9213433

Dairy No. 7294
Dated 19-2-24
Secy Irrigation Department
Civil Secretariate Peshawar

No. KP-PPRA/M&E/MoM/15-61/2023-24

Dated: 14.02.2024

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To

The Secretaries to the Government of Khyber Pakhtunkhwa,

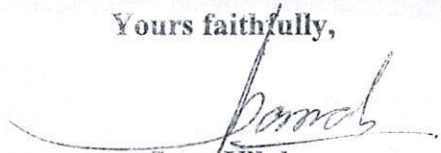
1. Communication & Works Department.
2. Irrigation Department.
3. Public Health Engineering Department.
4. Local Govt. Elections & Rural Development Department.

**SUBJECT: MINUTES OF THE MEETING ON STREAMLINING BID SECURITY
MANAGEMENT AND RESOLVING THE "PAY ORDER" ISSUE.**

Dear Sir,

I am directed to refer to this Office No. KP-PPRA/M&E/Meeting/15-11/2023-24, dated 03.01.2024, on the subject noted above, and to enclose herewith the approved minutes of the meeting held on 09.01.2024 at 1100 hours in the Committee Room of the Local Government, Elections & Rural Development Department for information, please.

Yours faithfully,



Sana Ullah
Assistant Director (M&E)
KP-PPRA

Encl: (As-above)

Endst: No. & Date Even:

Copy to:

PS to Managing Director, KPPRA, Govt. of Khyber Pakhtunkhwa.


Assistant Director (M&E)
KP-PPRA

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Secretary Irrigation

SUBJECT: MINUTES OF THE MEETING ON STREAMLINING BID SECURITY MANAGEMENT AND RESOLVING THE "PAY ORDER" ISSUE.

In pursuance to the decision made in a meeting held dated 23.11.2023, a meeting on the subject noted above was held dated 09.01.2024 at the Committee Room of Local Government, Elections & Rural Development Department, under the Chairmanship of Director (Capacity Building), KP-PPRA. Following attended the meeting:

- | | |
|-----------------------------|---|
| 1. Engr. Ahmad Nabi Sultan | Managing Director, PKHA. |
| 2. Engr. Jamshid Ali Khan, | Chief Engineer (C), C&W Deptt: |
| 3. Engr. Shahzad Afzal Khan | Chief Engineer (CDO), C&W Deptt: |
| 4. Engr. Rashid Ullah | Chief Engineer, Local Council Board, KP. |
| 5. Engr. Akhtar Rashid | Superintending Engineer (M.As), Irrigation Deptt: |
| 6. Engr. Abdul Wadood | Superintending Engineer (Mega), C&W Deptt: |
| 7. Engr. M. Amjad Shamsher | Superintending Engineer, Khyber, PHE Deptt: |
| 8. Mr. Muhammad Iqbal | Senior Planning Officer, LGE&RD Deptt: |
| 9. Engr. Muhammad Ali | Director (Technical), C&W Deptt: |
| 10. Mr. Sajjad Ali Shah | Director (Enforcement), KP-PPRA. |
| 11. Mr. Adnan Nawar | Director (Technical), LGE&RD Deptt: |
| 12. Syed Salman Ali Shah | Dy. Director (Tech), PHE Deptt: |
| 13. Eng. Naveed Khan | Executive Engineer, MP-I PHR C&W Deptt: |
| 14. Mr. Naeem Khan | Procurement Specialist, KP-HCIP Health Deptt: |
| 15. Mr. Ijaz Ahmad | Assistant Director (Technical), LGE&RD Deptt: |
| 16. Dr. Syed Ali Abbas | Assistant Director (Enforcement), KP-PPRA. |
| 17. Mr. Sana Ullah, | Assistant Director (M&E), KP-PPRA. |

2. The meeting started with recitation from the Holy Quran. The Chair briefed the forum on the Agenda Item of the meeting, and informed that in order to streamline management of Bid Security, and upon request of the Works Departments, the option of "Pay Order" was deleted from the available options of Bid Security, vide KP-PPRA Notification No. KPPRA/M&E/Estt/1-12/2017-18, dated April 05, 2018.

3. Further, the Government of Khyber Pakhtunkhwa, Finance Department notified amendments in the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014 dated 17.08.2022. Wherein, the Rule 2(1)(c) of the Rules *ibid*, states that "*bid security/guarantee*" means *any shape of written guarantee from a scheduled bank, excluding microfinance and financial institutions submitted to the procuring entity, by a bidder with his bid*".

4. As per definition of "*bid security/guarantee*", any shape of written guarantee from a scheduled bank is acceptable, due to which "Pay Order" is also a shape of written guarantee and needs to be accepted as bid security/ guarantee. However, as per statement of the stakeholder departments, "Pay Order" is not a reliable document. Therefore, on the request of the stakeholders

departments, the KP-PPRA placed the instant issue in the 40th BoD, KP-PPRA meeting of the Authority with the request that the KP-PPRA Notification, dated April 05, 2018 regarding deletion of "Pay Order" from available option of Bid Security may be kept intact. The BoD agreed with the proposal, and issued directions to the Authority that regulation regarding deletion of "Pay Order" from available options of Bid Security shall be issued afresh.

5. Furthermore, the KP-PPRA did not issue the said Regulation regarding deletion of "Pay Order" from available options of Bid Security till date, for the reason that the said Regulation will be inconsistent with the amendment in Rule 2(1)(c) of the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014. Therefore, the same issue was once again placed before the 42nd BoD meeting held dated August 28, 2023 and deliberated upon. Wherein, the BoD decided that Works Departments as well as the current members of the Technical Assistants of the Authority may be consulted for finding a doable solution, and come up with its recommendation in the next BoD, KP-PPRA meeting.

6. In view of the foregoing, the instant matter is placed before the Forum to deliberate upon the issue, and find a doable solution on the subject matter.

7. The representatives of the Communication & Works, Irrigation, Public Health Engineering and Local Government, Elections & Rural Development Departments were of the view that the bid security in the shape of "Pay Order" is not a valid and reliable document, therefore, the same may be deleted from the available options of Bid Security.

8. Further, the representative of Public Health Engineering Department apprised that Deposit at Call or Call Deposit Receipt (CDR), and Pay Order are two different financial instruments. In Deposit at Call or Call Deposit Receipt (CDR) are interchangeably terms used for the financial instrument, and is issued on behalf of customers for guaranteed payments to beneficiary such as Government/Semi-Government/Private Organization & Individuals. Whereas, Pay Order is issued by the bank on customer's behalf giving an order to pay a particular amount to a particular person/contractor in a same city. Furthermore, for releasing of CDR, the approval from the procuring entity is required. However, in case of Pay Order the approval from the procuring entity is not required, for which the Pay Order is a weak document, and does not secure the risk of the procuring entity, while conducting public procurement.

9. Moreover, the Managing Director, PKHA, and representatives from Local Council Board, Khyber Pakhtunkhwa endorsed the proposal/suggestion of the stakeholder departments.

Decision-I:

10. *After threadbare discussion, it was decided that the option of Pay Order in case of bid security is not a valid instrument, for which necessary amendment shall be made in the definition of bid security as defined in Rule 2(1)(c) of the KP Procurement Rules, 2014, in the following manner:*



<i>Existing provision</i>	<i>Proposed amendment</i>
<i>"bid security/guarantee" means any shape of written guarantee from a scheduled bank, excluding microfinance and financial institutions submitted to the procuring entity, by a bidder with his bid".</i>	<i>"bid security/guarantee" means any shape of written guarantee, (at the option of procuring entity) from a scheduled bank, excluding microfinance and financial institutions submitted to the procuring entity, by a bidder with his bid".</i>

11. The Managing Director, PKHA emphasized that the KP-PPRA had issued a Notification vide No. S.R.O. (15)/Vol: 1-25/2022-23, August 22, 2022, wherein, Insurance Bond from an insurance company is an acceptable instrument in case of Performance Guarantee, for which the stakeholder departments were not taken on board. Due to insertion of the same, most of the works/contracts have been suffered, and the same instrument does not secure the risk of procuring entities during execution of works.

12. The Chair apprised that the Government of Khyber Pakhtunkhwa, Finance Department had notified amendments in the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014, dated 17.08.2022, wherein, **sub-clause (i-i), of rule 2(1)** states that:

(i-i) "performance guarantee" means the bank guarantee or any other financial guarantee approved by Board, from time to time, submitted by the bidder to secure obligations under the contract in accordance with the requirements set out in the bid solicitation documents.

13. In furtherance of rule sub-clause (i-i), of rule 2(1), with the approval of Board of Directors, KP-PPRA had issued the said Notification regarding performance guarantee vide No. S.R.O. (15)/Vol: 1-25/2022-23, August 22, 2022.

Decision-II:

14. *After detailed discussion, it was decided that the instant issue may be placed before the Board of Directors of the Authority with the request to delete the Insurance Bond from an insurance company from the available options of performance Guarantee.*

15. In addition to the above, the matter concerning Enlistment and Pre-registration & Market Rate System (MRS) were also deliberated in the meeting. The stakeholder departments urged that the Khyber Pakhtunkhwa Public Procurement Regulatory Authority (KP-PPRA) is a regulator of public procurement in the Province, therefore, it would be appropriate if Enlistment and Pre-registration & MRS may be operationalized at the level of KP-PPRA, providing one window facility to the stakeholders. It was also discussed that at present the C&W Department is carrying out the enlistment of only contractors while the enlistment of consultants supplies/vendors is yet to be carried out by any other office. It was further highlighted that Section 26 of the KP-

PPRA Act and Rule 32A of the Procurement Rules are in contravention to each other therefore, it would be in fitness of situation that KP-PPRA may issue an SRO/Regulation under the KP-PPRA Act to operationalize the Enlistment of Contractors, Consultants, Suppliers and Auctioneers being mandate of the Authority.

Decision-III:

16. After detailed deliberation, it was decided that in the first instance, the Enlistment and Pre-registration of Contractors, Consultants, Suppliers and Auctioneers being mandate of the Authority shall be operationalized at the level of the KP-PPRA, with consultation of C&W Department. Necessary SRO/Regulation in this Respect be issued by the Authority after approval of the BOD and amendments in Section 26 of the KP-PPRA Act, 2012, read with Rule 32A of the KP- Public Procurement Rules, 2014 may subsequently be made to avoid confusion. In second phase, MRS and PPP may also be shifted to the KP-PPRA for smooth functioning, and ease of the procurement activities in the Province as a one window operation and availability of one platform to the Public as well as PEs.

17. During the meeting, the issue regarding low bids, and abnormal low bids were also discussed. The Chief Engineer (CDO), C&W Department stated that the Additional Security Notification issued by the KP-PPRA vide S.R.O. (14)/Vol: 1-24/2021-22, dated May 10, 2022, wherein, different slabs have been defined for submission of additional security, needs revision. He further elaborated that, if a contractor quotes its bid below the engineer estimate, shall also submit an additional security equals to the differential amount of its submitted bid, and Engineers' Estimated cost along with detailed rate analysis, and 2% bid security of the estimated cost. In case, if the bid is not accompanied by the detailed rate analysis, and / or required amount of additional security, then the said bid shall be considered as non-responsive. All the securities submitted along with such non-responsive bid shall be forfeited in favour of Government, and the 2nd lowest bidder, and so on will be considered accordingly.

Decision-IV:

18. *The forum agreed with the proposal, and decided that the instant proposal may be placed before the Board of Directors of the Authority for deliberation, and viable solution of the issue once for all.*

19. Apart from the above discussion and deliberation, the forum was suggested that the KP-PPRA may arrange a meeting of stakeholder departments after every two months to discuss the issues related to public procurement, and for finding a doable way forward, accordingly.

The meeting ended with a mutual vote of thanks.
