



The Kurdistan Region
Kurdistan Regional Government

Ministry of Planning
Directorate of Public Contracts

Public Procurement Regulation

In accordance with Decision [1] of the KRG Council of Ministers issued in its Ordinary Meeting [1] on [April 5, 2010] and notified by virtue of the Prime Minister/Council Secretariat letter (confidential) no. [1127] on [May 5, 2010],

We hereby promulgate the following:

Regulation No [2] of 2016

Public Procurement Regulation

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I. GENERAL PROVISIONS

Article -1 – Definitions:

1. **Allocated budget** –the funds made available to a contracting authority for a procurement, including the contract price as well as the contracting authority's supervision and other contract administration costs for that procurement, and a contingency percentage.
2. **Bid securing declaration** -- an undertaking by a bidder committing to be debarred from participating in any future procurement activity for a specified period of time in the event it violates any of the conditions stated therein.
3. **Bidder** – any natural or legal person or any combination of them with the formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture submitted with the letter of intent.
4. **Coercive practice** --Impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party, their participation in a procurement process, or affect the execution of a contract.
5. **Collusive practice** --An arrangement between two or more parties, prior to or after bid submission, designed to achieve an improper purpose, including to influence improperly the actions of another party, to allocate procurement contracts among bidders, establish bid prices at artificial non-competitive levels or otherwise to deprive the contracting authority of the benefits of free and open competition.
6. **Contracting authority** –any ministry, non-ministerial entity, governorate or independent administration or any subdivision or multiplicity thereof. The term encompasses a client department / an employer in the context of a works contract, or other end-user entity on whose behalf a contracting authority has conducted a procurement proceeding.
7. **Corrupt practice** --The offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party, in order to influence a procurement process or the execution of a contract, including by inducing the commission of inappropriate acts, interference in the ability of competing bidders to participate in procurement proceedings.
8. **Domestic preference** –a technique to promote the procurement of domestically produced goods and services, and the participation of domestic contractors, by application, in the ranking bids, of a margin of domestic price preference, in accordance with these regulations and the percentages specified in Annex A.
9. **Foreign Companies** – any company established outside of Iraq in accordance with the law and duly registered or has a branch in Kurdistan Region.

10. **Framework agreement** -- An agreement between one or more contracting authorities and one or more suppliers, contractors or service providers (including consultants) the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
11. **Fraudulent practice** --Any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation, or to influence a procurement process or the execution of a contract.
12. **Joint venture** -- a partnership or consortium established by mutual agreement of two or more than one natural or legal persons in order to participate in procurement. Each partner shall be personally and jointly liable.
13. **Life cycle cost** -- an evaluation criterion that measures the cost to the contracting authority of an asset throughout its useful life including initial purchase price, installation, operation and maintenance costs over the life of the asset, and residual (resale) value at the end of its useful life. It is calculated on a net present value basis and it is only used for comparison of bids, rather than for determining the contract price.
14. **National Companies** – any company established inside of Iraq in accordance with the law and duly registered in the Company Registration Directorate in the Ministry of Trade/Federal Government and/or the General Directorate for Company Registration in the Kurdistan Region.
15. **Obstructive practice** –
 - (a) Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (b) acts intended to materially impede the exercise of inspection and audit carried out pursuant to applicable law.
16. **Post-qualification** –a bidder qualification assessment procedure in which the contracting authority verifies the eligibility and qualification information only of the successful bidder', prior to acceptance of that bidder's bid.
17. **Pre-Qualification** – a set of procedures carried out by the contracting authority to ensure that bids are submitted only by bidders that meet the requirements for technical capacities, personnel and financial capabilities and equipment availability to undertake a contract in a satisfactory manner prior to submitting bids or proposals in restricted tenders.

18. **Pre-Qualification Documents** – documents including application evaluation criteria and tables prepared by the contracting authority and reflecting the requirements of the contracting authorities and/or beneficiaries from the execution of the project.
19. **Standstill period** -- means the period starting from the dispatch of a notice as required by article 37-Second or 54-Seventh of these Regulations, during which the contracting authority cannot accept the successful bid or proposal and during which bidders can challenge, pursuant to article 63, the decision so notified.
20. **Supplier (contractor)** -- a natural or legal person, or group of such persons, that provides or could provide, according to the context, goods, works or services; depending upon the context, the use of this term may also encompass a reference to consultants
21. **Sustainable procurement** -- a process whereby contracting authorities meet their needs for goods, works and services in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the contracting authorities, but also to society and the economy, whilst minimizing damage to the environment.
22. **Tied bids or proposals**– responsive bids or proposals from qualified bidders that are identical in rank after evaluation.
23. **Value for money** –use of resources in a way that maximize the benefits that the contracting authority obtains in economy, efficiency and effectiveness of procurement, and applicable, sustainability objectives, based on a life-cycle assessment of costs, benefits and risks.
24. **“in writing” or “written”** -- any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;

Article -2-Objectives and principles

First --These Regulations aim to:

- a- establish the objectives of and general principles applicable to the planning, acquisition and implementation and administration of governmental procurement contracts of the Region’s departments and public sector in the fields of public works, goods and other related services, and consultancy contracts and non-consultancy service contracts with Iraqi and non-Iraqi juridical and natural persons;
- b- regulate implementation methodologies;
- c- designate authorized parties for opening and analyzing bids and awarding contracts;
- d- regulate initiation of an appeal to the Procurement Complaint Review Board (Review Board), established in accordance with article 71;
- e- establish the role and functions of the Contracts Department.

The aforementioned objectives take into consideration that all procedures should be conducted in manner of equal opportunity, value for money, fitness of procurement for its

purpose, transparency, integrity, and fairness in competition, sustainability and accountability.

Second -- Depending upon the nature of the procurement, the objective of value for money when procuring goods or services requires finding the best possible outcome for the total cost of ownership (e.g., life cycle costs), in accordance with the price and non-price evaluation criteria disclosed in the bidding documents.

Article -3- Scope of application

First – The provisions of this Regulation apply to the contracts that are concluded by the government contractual entities (the Region’s department and the public sector) represented by ministries, non-ministerial entities, and governorates, with other Iraqi and non-Iraqi entities to execute state public works and/or consultancy contracts and non-consultancy service contracts, and/or providing good or services related to the said projects.

Second –To the extent that these Regulations conflict with an obligation of the Region under or arising out of any:

a- Treaty or other form of agreement to which it is a party with one or more other States;
or

b- Agreement entered into with an intergovernmental international financing institution,
The requirements of the treaty or agreement shall prevail, but in all other respects the procurement shall be governed by these Regulations.

Third – The provisions of these Regulations shall not apply to the award by the Ministry of Natural Resources of authorizations and contracts for petroleum operations in the Kurdistan Region. These contracts remain subject to the provisions of the applicable Kurdistan Region’s oil and gas law.

Article -4-Procurement planning

First –a– Contracting authorities shall engage in procurement planning, including the preparation of an annual plan for budgeting purposes, preparing procurement plans for projects, and preparing procurement plans for individual procurements. Achieving value for money shall be a central principle in the development of procurement plans.

b- The annual procurement plan, as aligned with the approved budget, shall be published at the beginning of the fiscal year on the official single portal public procurement website established in accordance with article 70-Tenth and Eleventh.

Second – All contracting authorities should meet the following requirements prior to the preparation of the bidding documents:

a- Prior to commencing the procurement proceedings, it is necessary to ensure that the launching of the procurement process is not premature, in that any necessary Technical and Economic feasibility reports have been pre-approved by the Ministry

- of Planning pursuant to the adopted procedures. The said feasibility reports must have the Project Petition Form attached thereto when the project is negotiated to be inserted in the annual project plan among revenue-yielding projects. As for service contracts, infrastructure contracts, and rehabilitation contracts, (unquantifiable revenue projects), it is necessary to check whether the file contains a project technical report (which is prepared in such cases instead of the technical and economic feasibility report).
- b- An updated Cost Estimates Study for the procurement is prepared by the authority concerned with determining the technical specifications, bills of quantities, and implementation requirements to be included in the bidding documents, based on the technical and economic feasibility report or study, or the work to be implemented, as mentioned in paragraph (a) above. The said cost estimates study is used to analyze the bids and award the contracts.
 - c- In estimating the value of procurement, the contracting authority shall include the estimated maximum total value of the procurement contract or of all procurement contracts envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.
 - d- Procurement requisitions shall not be divided with the intention of avoiding monetary thresholds set forth in these Regulations.
 - e- Availability of national budget allocation to implement the contract, confirmed by the specialized authorities (Ministry of Planning and/or Ministry of Finance and Economy). Any special project classification within the projects plan should be indicated in the bid documents.
 - f- All contract terms, specifications, drawings, bills of quantities, terms of reference, and other necessary requirements for the implementation are accurate and completed to avoid any changes or additions in the contract during the implementation, while taking into consideration the financial authorities delegated to decide on this matter as contained in the regulations of implementation of the annual budget in the region and any other related regulations and bylaws in force.
 - g- Ensure that, as preliminary steps to the procurement,
 - 1- that the approval of the competent authorities regarding the location and use of the land, or regarding the required works when executing public works contracts, has been obtained.
 - 2- removal any existing legal and physical obstacles at the work site during the implementation of the public works contracts, including any land acquisition procedures, and extinguishing the rights of disposal over agricultural lands, have been accomplished.
 - 3- the whole work site, or part thereof, has been fully prepared for the commencement of the work, in accordance with the approved schedule.

- h- To conduct any other procedures required due to the nature of the work or the contract to be executed.

Third-All contracting authorities should meet the following requirements prior to the preparation of the bidding documents relating to the procurement of goods and non-consultancy services:

- a- Verification and identification of the contracting authority's need for the materials and services in cooperation between the contracting authorities and the beneficiaries.
- b- The requisition should include the accurate technical specifications.
- c- An updated and accurate Cost Estimates Study of the materials and/or services to be procured, prepared by the contracting authorities and beneficiaries in accordance with the provisions of paragraph (Second-b) of this article.
- d- Availability of budget allocation for the procurement of goods and services, confirmed by the competent authorities in the concerned department.
- e- The contracting authorities' approval of the implementation of the goods and/or services procurement, pursuant to the applicable financial powers.

Fourth– The price for a set of bidding documents is based on their importance and the cost of reproduction of the bidding documents, within the parameters set in Annex C, to promote serious participation therein. A bidder who has already participated in a restated tender is required to include the receipt of his first participation in his renewed bid. In case the purchasing prices of the restated bidding documents are revised, the bidder therefore shall accept the difference between the two prices, and must submit the first and second receipts with his bid.

Article -5-Form of communications

First–a- Documents, notices, decisions and other information, and communications between contracting authorities and bidders provided for by these Regulations, shall be provided in writing.

b- The introduction and use of electronic means in the procurement process shall be subject to approval of the Council of Ministers.

c- The contracting authority, when first soliciting the participation of bidders in the procurement proceedings, shall specify:

1- Any requirement of form;

2-The means to be used to communicate information by or on behalf of the contracting authority to a bidder or to any person, or by a bidder to the contacting authority or other entity acting on its behalf;

3-The means to be used to satisfy all requirements under these Regulations for information to be in writing and for a signature;

4-The means to be used to hold any meeting of bidders;

- 5- Where bids are submitted electronically, the manner in which bidders may obtain information of the electronic submission procedures, including any security and time-stamping measures.

Second—When conducting procurement by electronic means, a contracting authority shall:

- a- Ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, generally available and interoperable with other generally available information technology systems and software, and that do not restrict bidders' access to procurement proceedings.
- b- Maintain mechanisms that ensure the integrity of requests for participation and bids, including establishment of the time of receipt and the prevention of inappropriate access.
- c- In any meeting held with suppliers/contractors/service providers, use only those means that ensure in addition that bidders can fully and contemporaneously participate in the meeting.
- d- Put in place appropriate measures to secure the authenticity, integrity and confidentiality of information concerned.
- e- Ensure that no fee is charged for bidding documents or prequalification documents made available online for downloading.

Third—The Contracting authorities shall specify the level of security required for the electronic means of communication in the various stages of the specific procurement proceeding, in proportion to the risks involved at those various stages, and in accordance with applicable rules and procedures.

Fourth --Use of electronic means in procurement shall include a feature that provides for an audit trail for on-line transactions and shall allow the Audit Bureau to verify the security and integrity of the systems at any time.

Article -6- Formulation of technical specifications

First- In preparing the bidding documents, any specifications, plans, drawings and designs setting forth the technical or quality characteristics of the supplies, works or services to be procured, and requirements concerning testing and test methods, packaging, marking, labeling, or conformity certification, symbols and terminology, or description of services, and any contract terms, shall, to the extent possible, be drawn up in an objective, and performance and function based manner, so as to maximize competition and avoid creating unnecessary obstacles to participation by bidders in the procurement proceedings.

Second –Except where necessary for reasons of standardization in accordance with article 45, no requirement or reference shall be made in the technical specifications or other parts of the

bidding documents to a particular trademark or name, patent, design or type, specific original, producer or service provider, unless there is no sufficiently precise or intelligible way of describing the procurement requirements or characteristics and words such as “or equivalent in performance” or any similar clause are included in the specifications or requirements.

Third –a -Standardized features, requirements, symbols and terminology relating to the technical, quality and performance characteristics of the subject matter of the procurement shall be used, where available, in formulating the description of the subject matter of the procurement to be included in the pre-qualification documents, if any, and in the solicitation documents;

b –Due regard shall be had for the use of standardized trade terms and any mandatory standardized conditions, where available, in formulating the terms and conditions of the procurement and the procurement contract or the framework agreement to be entered into in the procurement proceedings, and in formulating other relevant aspects of the pre-qualification documents, if any, and solicitation documents.

Article -7- Sustainability policies in public procurement

First –Pursuant to and in accordance with policies and guidance issued by the Ministry of Planning or other competent authorities, in addition to quality and cost, value-for- money considerations in defining procurement requirements, qualification criteria, evaluation criteria and contract performance indicators shall include sustainable procurement elements such as:

- a- Life-cycle assessment of costs and benefits;
- b- Procurement of environmentally friendly goods, works and services, including, for example, energy efficient goods and vehicles, as part of the overall strategy of reducing greenhouse gas emissions;
- c- Utilization of renewable energy;
- d- Reduced consumption and loss of water;
- e- Reduction and prevention of waste and promoting diversion of material from the waste stream, including by promoting use of recycled materials in manufacture, reuse, and recycling at disposal;
- f- Vehicle, equipment and other supplies policies and practices that stress fuel efficiency, alternative fuels;
- g- Fostering a culture of corporate responsibility, including not only environmentally friendly practices, processes and products, but also “social performance” (e.g., working conditions, transparency), “civic performance” (dialogue with civil society, NGO’s, etc.) and “economic performance” (good prices and quality, good commercial relations with clients and contractors);

- h- Promoting the economic and social development of the Region, including its small and medium sized business sector.

Second --Any obligations imposed on the successful bidder as a result of sustainable procurement policies shall be disclosed in the bidding documents, and demonstrate a connection to the execution of the contract.

Article -8-Eligibility requirements

First --In order to be eligible to be awarded a contract (or to submit a bid if prequalification proceedings take place), a bidder shall meet the following eligibility requirements, which must be disclosed in the bidding documents (or, if applicable, in the prequalification requirements), and evidenced in the manner indicated in the solicitation documents, or, if applicable, the prequalification documents:

- a- have the legal capacity to enter into the contract;
- b- not be insolvent, in receivership, bankrupt or being wound up, its business activities have not been suspended, and it is not the subject of legal proceedings for any of the foregoing;
- c- compliance with tax and social security obligations;
- d- not have a conflicting interest which would cause it to benefit by failing to conclude the procurement contract;
- e- not have been, within a period of three years prior to the procurement proceedings, convicted of any criminal offence relating to business or professional misconduct, or that involved false statements as to its qualifications to enter into a procurement contract;
- f- not be subject to debarment pursuant to article 94.
- g- not have been associated with and neither a relative of a bidder or supplier (contractor) currently subject to debarment;
- h- fulfil any applicable registration or classification requirement.
- i- not be barred by any laws or instructions issued by the Government of Kurdistan Region and/or the Federal Government of Iraq that prohibit commercial relations with the country submitting a Pre-Qualification application or bid.
- j- In compliance with United Nations Security Council Resolutions taken under Chapter VII of the United Nations that prohibit the Federal Republic of Iraq from importing any goods or contracting any works or services from the country of a bidder, or any payment to persons or entities in that country.

Second - The bid of a bidder that fails to meet the requirements referred to in paragraph First shall be rejected.

Third—A bidder may submit or participate in only one bid in a procurement proceeding and, if applicable, in only one prequalification proceeding, either individually or as a partner in a Joint Venture. An applicant, who participates in more than one application in the same Pre-Qualification process, or in more than one bid in the same procurement proceeding will cause all the applications or bids in which the applicant has participated to be disqualified. That shall not, however, prevent companies or individuals from participating as:

- a- sub-consultants or sub-contractors in more than one bid or proposal; or
- b- as bidder or consultant and sub-contractor simultaneously in different bids or proposals.

Article -9- Qualification requirements

First -- In order to be awarded a procurement contract, or, if prequalification proceedings are being held, to participate in the procurement proceedings, a bidder must meet, on a pass-fail basis, the qualification requirements deemed appropriate by the contracting authority to implement the procurement contract and disclosed in the bidding documents or in the prequalification documents.

Second - Qualification requirements, as detailed in the bidding or prequalification documents, may pertain only to bidders' technical capacities, financial and administrative capabilities and the extent of their contractual commitments, in accordance with the following criteria and in proportion to the scope, value and complexity of the procurement contract:

- a— The bidder's general and specific expertise and similar works in terms of nature, volume and components, and acceptable track record of previous performance.
- b— The bidder's financial capacity (cash flow and annual capital turnover rate).
- c— The bidder's capacity to provide personnel and management capabilities, to have access to the necessary specialized equipment, and other requirements necessary for the execution of the contract.
- d--The bidding documents or, if prequalification proceedings are held, the prequalification documents shall specify the qualification requirements and indicate the information and documentation to be provided by bidders in order to evidence that they meet the requirements. Such information and documentation pertain to matters such as
 1. The submission of the final accounts of the previous year, or the number of years specified in the bidding documents, with the final accounts duly certified by an accredited accountant.
 2. The annual revenues for the number of years specified in the bidding documents, subject to special provision that may be made for new companies in accordance with instruction issued by the Ministry of Planning.
 3. The volume of financial obligations of the bidder during the year.
 4. Extent of the bidder's current and forthcoming contractual commitments.
 5. An acknowledgement of the bidder effective accomplishment of works, or similar works, issued by the governmental contracting authorities.

6. Evidence of the technical and skill capacities for the implementation of the contract (engineering, technical staff, and special equipment).

Third - The contracting authorities may request additional participation terms from foreign companies, such as:

- a- Employing domestic specialized technical cadres of no less than (25%) of the volume of the specialized technical cadre employed by the foreign company.
- b- Employing domestic labor force of no less than (50%) of the size of the labor force employed by the foreign contractor.
- c- Requiring foreign companies to use domestic construction material available in Kurdistan Region (sand, pebbles, stones, bricks and tiles, rebar...), provided that this material passes laboratory testing.

Fourth -- Prequalification shall be utilised for the procurement of large or complex public works. Also in other cases of procurement of a particularly high value or complexity, in which the high costs of preparing detailed bids could discourage competition, such as custom-designed equipment, industrial plant, specialized services, some complex information technology, contracts to be let under single responsibility (including turnkey), design and build, or management contracting, the contracting authority may engage in prequalification proceedings, with a view to identifying, prior to the invitation of bids, bidders that are qualified. When prequalification proceedings are held, the contracting authority shall provide prequalification documents to all bidders responding to the invitation to prequalify.

Fifth-- If prequalification proceedings are not conducted, the contracting authority shall carry out post-qualification, in which the contracting authority verifies the qualifications of the bidder selected for award against the criteria stated in the bidding documents.

Sixth-- The contracting authority may request bidders to provide it with information and documents about the sub-contractors, suppliers or service providers who will participate in carrying out the procurement contract to be signed by the successful bidder and the contracting authority pursuant to the provisions of these regulations issued pursuant thereto. The contracting authority in meeting the public interest may directly determine the validity of qualifications of sub-contractors.

Seventh--The contracting authority shall reject bids of contractors which have not shown evidence of efficiency in their previous contracts of similar work as may be required by the solicitation documents. This shall equally apply to contractors and consultants. The poor efficiency shall be documented in an official letter issued by the concerned contracting authority.

Eighth--The contracting authority shall reject bidders if they are found to have submitted false eligibility or qualification information, and such bidders shall be subject to prosecution before the judiciary.

Art. -10- Joint ventures

First -If the contracting authority solicits or permits the participation of joint ventures in the procurement proceeding, the bidding documents, or the prequalification documents, or request for proposals, if applicable, shall indicate:

- a- the manner in which the qualifications of bidders in the form of joint ventures will be evaluated, including which criteria may be met by the joint venture collectively, and which criteria must be met by each member of the joint venture individually.
- b- That it is sufficient for the group to provide, as part of the bid, application for prequalification or expression of interest, as the case may be, a legally certified letter of intent to formally enter into the joint venture should the contract be awarded to the joint venture
- c- That, in submitting a bid, the group shall designate a lead partner, for the bidding process and, should the contract be awarded to the joint venture, for the contract implementation

Second -In the case of a Joint Venture, all parties shall be fully and jointly liable for the execution of a contract by virtue of its provisions.

Article -11-Abnormally-low priced bids

If a bid price appears to be abnormally low in relation to the goods, works or services being procured, taking into account the cost estimate prepared by the contracting authority, the contracting authority shall verify the cost estimate and may reject the bid provided that it first requests in writing from the bidder details of the constituent elements of that bid that would satisfy the contracting authority that the bidder would be able to perform the contract at that bid price. The contracting authority shall verify those constituent elements taking account of the evidence supplied and shall take the information provided by the bidder into account in reaching its decision. Those details may relate in particular to:

First –The economics of the construction method, the manufacturing process or the services provided;

Second –The technical solutions chosen and/or any exceptionally favourable conditions available to the bidder for the execution of the work, for the supply of the goods or services;

Third–The originality of the work, supplies or services proposed by the bidder;

Fourth–Compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

Fifth –If the contracting authority decides to accept the bid, it may require that the amount of the performance security pursuant to Article 81/Second be increased up to an additional 5 percent against financial loss in the event of default of the bidder under the contract

Article -12- Time periods

The deadlines for submission of bids, applications to prequalify, and for responding to notices seeking expressions of interest to participate in restricted tendering and to be shortlisted for

procurement of consultancy services shall be set so as to allow interested bidders sufficient time to see the notice and respond, in accordance with the parameters specified in Annex A to these Regulations.

Article -13- Tied bids

First – When two or more responsive bids or proposals from qualified bidders are tied for the best ranking after the evaluation of bids, the winning bid shall be determined in accordance with this article.

Second—a- If the tied bidders include only one bidder from the Region, the bidder from the Region shall be given the award.

b- If the tied bids were submitted only by bidders from the Region, and bids have been evaluated on the basis of price and non-price criteria, the award shall be made to the bidder that submitted the bid with the lowest bid-price among the tied bids.

c. If, in the case of proposals, the combined technical and financial evaluation reports result in tied scores, the contract shall be awarded to the bidder whose technical proposal received the highest score.

d- If the tied bids or proposals were submitted only by bidders from outside of the Region, and bids have been evaluated on the basis of price and non-price criteria, the award shall be made to the bidder that submitted the bid with the lowest bid-price among the tied bids.

Third--In all other situations, the award shall be made by drawing of lots unless the contracting authority determines that splitting the award is in the Region's best interest because of a need to ensure delivery, or is necessary or desirable to promote future competition, and provided the affected bidders agree to the split award.

Article -14-Rejection of all bids and cancellation of procurement proceedings

First—The contracting authority may reject all bids before issuance of the awarding letter where none of the bids that have been received are substantially compliant with the requirements in the bidding documents, or the prices of all bids exceed the amount of financing available for the procurement contract, subject to provision of Clause 38-First-b and c

Second --The rejection of all bids, and the grounds therefore, shall be noted in the record of the procurement proceedings and promptly communicated to the participating bidders.

Third—a- The contracting authority may only cancel the procurement proceeding, acting in the public interest, if:

1. the goods, works or services are no longer required and it would therefore not be in the public interest to continue the procurement proceedings;

2. a gap or error in the bidding documents has been discovered that is so serious that it is not feasible to continue the procurement proceedings;
3. exceptional economic circumstances render it unfeasible to continue the procurement proceeding; or
4. it has been established that there has been collusion among the bidders, or that fraudulent, corrupt, collusive, or coercive practices have taken place.

b- In the cases referred to in paragraph Third-a, any fee paid by a bidder for the bidding documents shall be reimbursed, with the exception of bidders, in the case referred to in subparagraph a(4), found to have colluded. No other compensation shall be owing to bidders from the contracting authority.

Fourth--Express reference shall be made in the bidding documents to the right of the contracting authority to reject all bids, and to cancel the procurement proceedings prior to the issuance of the awarding letter.

Article -15- Language

All bidding documents, agreement and contract conditions must be in Kurdish or Arabic; in the case of international procurement proceedings, the documents shall be in English as well as in Kurdish or Arabic. When such documents are in more than one language, the documents shall indicate which shall be the governing language in case of discrepancy between the language versions. The bidding documents may in any case authorize the specifications, layouts, technical reports and correspondence to be in English, subject to any provision in these Regulations to the contrary.

Article -16- Public notice of procurement contract awards

The contracting authority shall, in the cases specified in instructions issued by the Ministry of Planning, publish, on its advertisement board and on the official procurement website established pursuant to article 70-Tenth and Eleventh the awarding letter for the procurement contract.

Article -17- Debriefing of unsuccessful bidders

First --Any bidder who has submitted a bid, application to prequalify, or expression of interest to be included in a short list of consultants, shall be entitled to request the contracting authority, in writing, to explain the grounds on which his bid, application to prequalify, or expression of interest was dismissed or rejected, within a period of time specified in Annex A.

Second --The contracting authority shall, within a period of time specified in the Annex A following the date of receiving the request referred to in paragraph First of this article, answer the bidder.

Article -18- Retention of documents

First --The contracting authority shall open a special file for every procurement proceeding. All the information and documentation relating to the procurement proceeding such as the tender

invitation, bidding documents, summary of submitted bids, including unsuccessful bids, all bids and applications submitted during the course of the procurement, evaluation reports, notice of awarding letter, copy of the successful bid and procurement contract, as well as all correspondence that occurred after the contract has been signed, until the items being procured have been delivered and the contract completed, shall be kept in the file.

Second- The contracting authority shall retain the reports, registers and other documents issued or submitted during the procurement proceedings, including the winning and all other bids and the procedures for implementing the procurement contract for a period not less than (7) years starting the date of initiating the procurement process, or such other longer period as may be specified in the archiving rules applicable to governmental operations, including rules on the electronic archiving and storage of documents.

Third - The contracting authority shall maintain a record of all the key information concerning all stages of the procurement proceeding, including the information specified in Annex B. The record and documents of the procurement proceedings shall be made available for inspection upon demand by the Council and other oversight organs.

Article -19-Reports on procurement proceedings

Contracting authorities and contracting authorities shall report to the Directorate of Public Contracts at the Ministry of Planning on their procurement activities in accordance with the requirements and formats issued thereby.

II. PROCEDURES FOR CONDUCTING PROCUREMENT

Section One: Choice of procurement method

Article -20- Types of procurement methods

First -The contracting authority shall choose one of the methods listed below in accordance with the rationale provided in these Regulations:

- a - For procurement of goods, public works and non-consultancy services:
 - 1. Open tendering, which may in appropriate cases be preceded by a pre-qualification proceeding
 - 2. Restricted/limited tendering, in the cases referred to in article 39;
 - 3. Two-phase tendering, in the cases referred to in article 41;
 - 4. Request for quotations(purchasing), in the cases referred to in article 43;
 - 5. Single-source procurement, in the cases referred to in article 45;
 - 6. Framework agreements, in the cases referred to in article 60;
 - 7. Direct implementation, in the cases referred to in article 47.
- b - Procurement of goods, works and non-consultancy services shall only be conducted using the open bidding method. Use of any other method is permissible only in the cases authorized by these Regulations.

- c - The open bidding proceedings may include a prequalification stage or apply a post qualification procedure prior to selection of the successful bidder.

Second -For procurement of consultancy services:

Unless some other method is justified in accordance with this Law, the method to be used for engagement of consultancy services is competitive procedure by Request for Proposals for consultancy services, with selection of the consultant on the basis of

- a. quality and cost (QCBS), in the cases referred to in article 54;
- b. least cost and acceptable quality (LCS), in the cases referred to in article 55-;
- c. consultant firm's qualifications (CQS), in the cases referred to in article 56;
- d. individual consultant (IC), in the cases referred to in article 57;
- e. single or sole-source selection, in the cases referred to in article 58;

Third - The instructions issued under these Regulations may impose prior authorization requirement for the use of procurement methods other than open tendering, in the case of procurement of goods, works and non-consultancy services, and other than request for proposals in the case of procurement of consultancy services, when the estimated value of the procurement exceeds the threshold specified in the regulations.

Section Two: Procedures for the public tendering method

1. Solicitation of bids

Article -21- The public tender

The contracting authority, or whoever it authorizes, announces the public invitation to bid (national or international) to all those who meet the participation requirements and are willing to take part in the implementation of the contracts, provided that the procedures are based on the principles of open public access, competition, fairness, transparency, and publicity.

Article -22- Publication of Advertisement

First --The advertising of public contract tenders should include:

- The title, number, and address of the tender, and the classification listed in the budget.
- A brief and clear description of the project or the contract to be implemented, identifying the required products and services.
- Indication of the date and place set for the submission of bids, the required bid validity, and how interested bidders may obtain the bidding documents, and the non-refundable fee charged set in accordance with Annex C, subject to Clause 14-Third-b.
- Indication of the type, amount, and validity of bid bonds or bid securing declaration required from the bidders.
- Indication of the bid submission deadline date.

- Indication of the bidding documents' non-refundable purchase price, and how the bidding documents may be obtained.
- Notice that bidders are permitted to view the bidding documents prior to purchasing them, and, if the time period for obtaining the bidding documents is limited to any particular period of time.
- Indication that purchasing of the bidding documents shall be closed two days prior to the deadline for submission of bids.
- Indication of the contracting authority's website with the telephone and email address of the administrative section responsible for tenders initiated therein.

Second--

- a – The advertisement or the invitation for prequalification for the national public tender is to be published at least once in two daily national newspapers that are widely distributed in the Region as well as on the official single-portal website established pursuant to article 70-Tenth and Eleventh.
- b – The advertisement for international public tenders shall be published on the United Nations Development Business website (UNDB Online), or on the “dgMarket” portal (dgmarket.com) and at the commercial offices at the Iraqi embassies and consulates outside Iraq when feasible.

Third--The time duration for the advertising shall be in accordance with Annex A as of the date of publishing; to be determined in line with the importance of the contract.

Fourth-- The advertisement shall be published to be clearly read.

Fifth--The award winning bidder shall bear the cost of the advertisement and publishing of the last advertisement for the tender.

Article -23-Tenderingpreceded by Pre-Qualification

First --The contracting authority shall prepare the necessary Pre-Qualification documents and sufficient copies (the use of electronic application forms shall be permitted) to be issued to applicants in the Pre-Qualification process.

Second --The notice announcing the Pre-Qualification proceedings and soliciting applications for prequalification shall be published in accordance with article 22-Second.

Third --The Pre-Qualification notice shall include the following:

- a. Name, number and identification of the tender as mentioned in the Annual Budget.
- b. A brief and clear description of the relevant project or contract, while listing the required goods and services.
- c. The location and date for purchasing and receiving qualification documents and forms and then on-refundable fee for purchasing qualification documents, if any is charged, in accordance with Annex c.

- d. The location and last deadline date for submission of applications to prequalify, which shall be in accordance with the minimum duration in Annex A.
- e. The name, website, contact information, including email address, of the contracting authority for the purposes of obtaining additional information.

Fourth --Pre-Qualification documents shall include:

- a- The information referred to in subparagraphs a, b, d and e of paragraph Third, above;
- b- The information referred to in Article 10-First, concerning applications submitted by joint ventures;
- c- The eligibility and qualification requirements and the information and documentation to be submitted by bidders in order to show conformity with those requirements;
- d- Instructions for the preparation and submission of applications for pre-qualification in accordance with the standard forms issued by the Directorate for Public Contracts at the Ministry of Planning;
- e- Information about the procedure for obtaining clarification of the prequalification documents.
- f- Information about applying a domestic preference, if one is to be applied in the procurement proceeding.

Fifth -- The contracting authority may introduce any amendments to the Pre-Qualification documents by issuing addenda at any time prior to the deadline for submitting applications. These addenda on amendments shall be deemed part of the Pre-Qualification application form.

Sixth -- For the purpose of giving applicants reasonable time to take an addendum into account in preparing their applications, the contracting authority may extend the notice period (as needed) by issuing an addendum to the notice, directly notify all bidder to whom it provided the prequalification documents, and publishing it in the same newspapers where the notice was first published, as well as on the official single-portal website established pursuant to article 70-Tenth and Eleventh.

Seventh --Pre-Qualification applicants shall fill in and complete application forms and submit the required supporting documents mentioned in the qualification documents. Applications shall be submitted in a sealed envelope at the time and place specified in the advertisement. Should the applicant fail to provide the information and documentation required by the Pre-Qualification document, the application shall be rejected.

Eighth --The contracting authority shall form an ad hoc expert committee to open and evaluate applications. The committee shall review, examine and evaluate all submitted applications in accordance with the requirements set forth in the Pre-Qualification documents to select qualified applicants. The contracting authority shall notify all applicants of the names of those

applicants who have been prequalified, and shall prepare minutes of the prequalification proceedings.

Ninth --Direct invitation (free) shall be sent to the Pre-Qualified applicants who passed the pre-qualification stage, shall be three at least, to participate in the tender and submit their bids.

Tenth – If the number of Pre-Qualified applicants is less than three, the contracting authority shall convert the proceeding to post-qualification and invite the prequalified bidders to participate or re-start the procedures of the Pre-Qualification with review of the preceding processes.

Article -24-Bidding documents

The contracting authority shall include the following in the bidding documents:

First--A description of the object of the procurement, including any necessary technical descriptions, required outputs and performance levels and other specifications.

Second--Identification of the contracting authority and name and detailed address, including e-mail address, of the official assigned to follow up on bid-related inquiries

Third--The eligibility and qualification requirements that bidders must meet in order to be awarded the procurement contract, unless prequalification proceedings have been conducted; a description of the information and documentation that bidders must provide in order to demonstrate their conformity with those requirements, including

- a. Similar projects, if available, that have been implemented or are under implementation, and which should be approved by the related clients and employers.
- b. Qualifications of their technical personnel as well as full-time and part-time specialists who will be working for them during the implementation of the various contracting projects or consultation contracts.
- c. The information to be provided by joint ventures, in accordance with article 10.

Fourth-- The language or languages in which bids are to be prepared;

Fifth-- An indication of the date, time and place for the public opening of bids, and that bidders, or their representatives, may attend the bid opening session.

Sixth-- The required validity period of bids, and an indication that bidders may withdraw or modify their bids without forfeiture of the bid security only prior to the deadline for submission of bids.

Seventh-- A statement as to the prohibition of fraudulent, corrupt, coercive, collusive and obstructive practices;

Eighth-- an indication whether alternative bids (i.e., bid presenting technical or contractual alternatives to the specifications in the bidding documents) are permitted or solicited and, if so,

any requirements related to the submission of such bids and the manner in which they will be evaluated;

Ninth-- An indication of the date agreed for holding a special conference of bidders to answer the inquiries of the participants in the tender (if such a meeting is planned), and an indication of how questions may be submitted. The said conference should take place at least halfway through the timeframe given for the tender closing date announcement, and taking into account the opportunity for bidders to conduct site visits, if applicable. A statement that the minutes of the conference shall be sent to all bidders to whom the contracting authority provided the bidding documents.

Tenth--

- a. A statement indicating the classification and level required for contractors of public works contracting projects, if such a requirement is imposed, or the requirement to submit the contracting company's incorporation certificate, and the practice license for officially licensed engineering firms.
- b. As for foreign companies, the incorporation certificates, articles of association, bylaws, and letters of authorized signatories are accepted after being duly ratified. Other information could be required based on the terms of the tender and the relevant applicable regulations.
- c. The international bidder, when participating in a local bidding process, should submit the relevant documentation that substantiates its compliance to the prevailing regulations of contractors' classification. It would be preferable to apply the domestic preference to such participation.

Eleventh-- A specification of the bid submission currency or currencies; an indication that, in respect of local bids, the price shall be expressed in Iraqi Dinars, and in any convertible currency for international bids, and the currency and the source and date of the related exchange rate to be used for comparison of bids priced in different currencies;

Twelfth-- A statement clarifying that the contracting authority is not bound to accept the lowest bid to the detriment of the technical specifications, and the qualification conditions and requirements.

Thirteenth-- A statement clarifying that the government contracting authority may cancel the tender prior to the issuance of the award letter, based on justified reasons and without any compensation to the bidders, except for the purchase price of the bidding documents which shall be reimbursed.

Fourteenth-- A statement clarifying that the bidders may not write off or make any change to any of the terms of the bidding documents.

Fifteenth-- A statement that the contracting authority reserves the right to amend the bidding documents at any time prior to the deadline for submission of bids by issuing addenda detailing the amendments. These addenda shall be communicated in writing to all those to whom the

contracting authority provided the bidding documents. These addenda shall also form a part of the bidding documents.

Sixteenth-- All the criteria and the methodology that will be applied in the evaluation and comparison of bids, including:

- a. whether criteria other than price, such as life-cycle costing analysis (factors such as energy consumption, maintenance and repair costs, and residual value at the end of service life) and environmental performance, will be applied;
- b. the manner in which price and any non-price criteria will be evaluated;
- c. that non-price criteria will be quantified in monetary terms if feasible, or, if not, a statement of which non-price criteria will be applied on a pass/fail basis, which, if any, would be rated on the basis of merit points, and where applicable, how rated and cost type criteria quantified in monetary terms will be combined and weighted in determining the best value for money bid in accordance with subparagraph c;
- d. when the best value bid is determined on the basis of price and non-price criteria that are not quantifiable in monetary terms, the formula to be applied in assigning weighting to the different types of applicable bid evaluation criteria.

Seventeenth-- The main terms of the contract and the method projected for settling financial dues such as the unit price, lump sum, percentage or other pricing methods set forth and validated in the terms of the tender, and the hierarchy of documents that constitute the procurement contract.

Eighteenth-- A request to determine the price of import contracts according to the place of delivery and other shipping terms as specified in the bidding documents and other international commercial terms (such as the currently in effect edition of the INCOTERMS).

Nineteenth-- A statement that the contracting authority may increase or reduce the materials or services to be procured, when necessary, and in accordance with Article 4- Second- e and f.

Twentieth-- an indication that the contracting authority may partition the materials or services to be procured into lots, provided that such partition is mentioned in the terms of the tender; If bidders are permitted to submit bids for only a portion of the items to be procured, any grouping of goods or works into lots, a description of the lot or lots for which bids may be submitted and the manner of evaluation of the lots;

Twenty First-- An indication of the shipping schedule, method, means, and specifications, and the nature of packaging and wrapping, and any special marking that may be required.

Twenty Second-- An indication of the required supply or execution period.

Twenty Third-- A specification of the bid guarantees and performance guarantees pursuant to the provisions of regulations, if any such bonds are required, including the type and required amount and forms to be used in furnishing the guarantees; if a bid securing declaration is required to be signed by bidders instead of requiring a bid security, the form for the bid securing declaration;

Twenty Fourth-- In the event where the procured materials require the importation of spare parts or equipment, the contracting authority may require the supplier (contractor) to ensure the supply of the said parts and equipment for a specific timeframe and at mutually agreed competitive prices.

Twenty Fifth-- notice of the right to submit and obtain review of complaints in accordance with article 63 of these Regulations;

Twenty Sixth-- Information about applying a domestic preference, if one is to be applied in the procurement proceeding;

Twenty Seventh-- Any other instructions to the bidders, or documents or data required by the nature of the work to be executed, the materials to be procured, or the services to be provided.

Article -25-Clarification of bidding documents

First --The bidding documents shall recommend, when appropriate, for bidders to visit and examine the project site and surrounding area to obtain, on their own responsibility, any necessary information for preparing the bid. Bidders shall bear any costs arising from any such visits.

Second --The contracting authority shall respond promptly to any request by a bidder for clarification of the bidding documents, submitted to the contracting authority within a reasonable time, as specified, in the bidding documents, prior to the deadline for the submission of bids, and shall promptly circulate the response to all bidders without revealing the source of the request.

Third --The minutes of the conference including all inquiries (but without identifying their sources) and response thereto shall be sent to all solicited bidders. Should the employer deem it necessary to amend the solicitation documents in light of an inquiry presented at the conference, it shall do so in an addendum issued and added to the bidding documents and disseminated to all bidders, not only through the conference minutes.

Fourth --The failure of any bidder to attend the pre-bidding conference shall not constitute a reason to consider the bidder disqualified.

2- Submission of bids

Article -26- Time period for submission of bids

First – Subject to article 12, deadlines for submission of bids, including submission of bids in the two phases of two-phase tendering, and following the prequalification stage in a tendering proceeding that commences with prequalification, shall be set in accordance with the parameters set in Annex A.

Second –The contracting authority may extend the bid submission period when necessary subject to:

a- Obtaining the prior consent of the head of the contracting authority or any authorized representative thereof.

b- Issuing beforehand an addendum to the advertisement and publishing it in the same newspapers where the advertisement was initially posted, and on the single-portal website established pursuant to article 70-Tenth and Eleventh, with a copy thereof sent to all the participants in the tender ahead of the closing date of the bids submission.

Article -27- Bid security

First–Subject to paragraph Third, the bidding documents shall require bidders to provide a bid security in a lump sum amount equivalent to (1 to 3%) of the estimated cost of the procurement, with due consideration of the nature and importance of the contract.

- a- the bid security must be valid for (28) days following the expiration date of the original bid or the extended Bid expiration date, and list the beneficiary and the name of the project or procurement as specified in the bidding documents.
- b- a bid security which may be submitted in the form of a bank guarantee or certified check, must be issued or guaranteed by an authorized bank in Kurdistan Region; they shall also be unconditional, irrevocable, and in the amount and currency stated in the bidding documents. In international tenders, bid bonds are acceptable in the form of bank guarantees issued by foreign banks (not operating in Iraq) accredited by the Central Bank of the region.
- c- bid securities for Joint Ventures shall bear the name of the bidding Joint Venture or the authorized partner thereof. In the cases where, at the time of the bid submission, the Joint Venture has not yet been legally registered, the letter of guarantee shall bear the name of all future partners.

Second --Bid securities shall be forfeited only in the following cases:

- a- Withdrawal or modification of the bid after the deadline for submission of bid;
- b- Refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid, subject to the Article 32-Third
- c- Failure to sign the procurement contract required in the bidding documents or failure to submit performance guarantee.

Third --Where the use of bid guarantees would otherwise be deemed appropriate for small contracts as specified in Annex A, contracting authorities shall replace such requirement by the bid securing declaration of the form and procedures set out by Ministry of Planning, according to which a bidder agrees, by signing the declaration and submitting it with the bid, to the automatic application of a debarment penalty for a specified period of time (1 to 2 years) in the event that one of the circumstances referred to in paragraph Second occurs, provided that the

applicability of the bid securing declaration procedure is indicated in the bidding documents and applied to all bidders.

Article -28-Submission of bids

First --A bid shall be submitted in writing, duly signed and, subject to paragraph Fifth, in a single sealed envelope at the address specified in the bidding documents. Bids may be submitted by hand, by registered mail, by courier, or by electronic means if so authorized by the bidding documents in accordance with these Regulations. The contracting authority shall be prepared to receive bids from the time of distribution of the bidding documents until the expiry of the deadline for submission of bids. Bids received after the deadline for submission of bids shall not be received and shall be returned unopened to its sender.

Second -- The contracting authority shall ensure that the bids that have been submitted are maintained in a secure and confidential manner and that they are not opened prior to the deadline for bid submission and the bid opening session.

Third --The bids are to be kept in a special box of the concerned department backed by a receipt prepared in two copies. One receipt copy is given to the bidder or his authorized representative while the second copy is to be kept with concerned department. In addition, the following information shall be recorded in a special register:

- a- Title and number of the tender as mentioned in its documents.
- b- Name of the bidder or his official representative, with his full address inside or outside Kurdistan, and the documents proving these details.
- c- Name, address, and signature of the officially authorized bearer of the bid.
- d- Time and date of bid submission.
- e- Additional attachments submitted with the bid, if any.

Fourth --During the period prior to the opening of bids, it shall not be permissible to disclose any information regarding the names and addresses of the bidders or their representatives, to maintain the confidentiality of procedures.

Fifth --Exceptionally, in a single-stage proceeding for the procurement of complex goods,works, and turnkey contracts:

- a- a two-envelop procedure may be used, if so disclosed in the bidding documents,
- b- In the two-envelop procedure, separate sealed envelopes containing the technical and financial proposals are submitted simultaneously, but opened and evaluated separately.
- c- The bidding documents shall provide to bidders the necessary information about the steps in the two-envelop procedure. Bidders shall be informed of any minimum technical requirements that the technical proposals must meet in order for the corresponding financial proposals to be opened, and the scoring criteria and procedures, and shall be invited to attend the separate opening of the technical and of the financial proposals.
- d- The envelopes containing the technical proposals shall be opened immediately after the expiry of the deadline for submission of bids, in front of those bidders that chose to

attend. Only the financial proposals of the bidders whose technical proposals attained the required technical score shall be opened, in the presence of those bidders that chose to attend.

3. Opening and evaluation of bids

Article -29- Bid opening session

First --The head of Bids Opening Committee shall:

- a. Verify that all committee members are present before opening the bids. If some of the members are absent, employees of similar specializations shall replace them appointed by the head of the contracting authority or an authorized representative thereof.
- b. Verify that all the requirements needed for opening the bids are available before the closing date of the tender.

Second --Bids shall be opened at the time and place specified in the bidding document or any amendment thereto. The Bids Opening Committee shall commence the bid-opening session immediately upon the expiry of the deadline for submission of bids or follow immediately thereafter allowing minimum time interval for logistic reasons, upon the consent of the head of the contracting authority or an authorized representative thereof, when necessary, in order to start the public bid-opening in the presence of the bidders that wish to attend or their authorized representatives. Bidders shall not be obligated to attend, or to designate representatives to attend, the bid opening session.

Third --The contracting authority shall reject any bid received after the bid submission deadline and shall be returned unopened to its sender.

Fourth --The name and address of the bidder, any withdrawals or modifications received prior to the deadline for submission of bids, the total amount of each bid, any discounts, the prices of any alternatives offered, and the presence or absence of any bid security, if required, and the amount, and the absence of any required documents, shall be read out loud and recorded in the minutes referred to in paragraph Fifth A copy of the report shall be made available to any bidder on request as well as publishing on the bulletin board of the procuring authority. No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.

Fifth --a- The following shall be annotated in the committee's minutes:

- The information read out in accordance with paragraph Fourth;
- The presence of stamps or confidential wax seals on the bid envelopes.
- Bids that are not accompanied by the bid bond amounts required in the bidding documents.
- Bids that are based on the reduction of a certain percentage rate or a fixed amount out of the value of other bids submitted for this tender.

- The technically and/or financially revised bids substituting the original bids required by the terms of the tender, when these terms allow such substitution. However, no substitute bids shall be submitted unless enclosed with the original required bids.
 - The number of the pages that each bid is composed of.
 - Put a clear mark around each mark, erasure, addition or correction in the priced bill of quantity schedule, with the signature and stamp of the head and members of the Committee.
 - Put a horizontal line beside each paragraph that is not priced within the priced bill of quantity schedule, with the signature and stamp of the head and members of the Committee.
 - Verify that the authorized person has a delegation letter to sign on behalf of the bidder all the pages of the priced bill of quantity schedule and attached documents.
- b- The Committee's report shall mention the remarks or reservations indicated in the bid and attached documents.
- c- Mark all samples, mock-ups, and designs submitted with the bid and specifying their general descriptions and distinctive features.
- d- Mark all pages of the bid with the Committee's stamp and the bid letter and the summary page of the priced bill of quantity schedule with the signature and stamp of the head of the Committee, and seal the bids in such a manner as to secure against any undetectable replacement of pages.
- e- Clearly point out any information or details that are not provided with the bid, and that shall be provided as per the bidders' instructions set forth in the bidding documents, including the receipt of the bidding documents purchase.
- f- After opening all bids as specified in this Regulation, the head of the Bid Opening Committee shall carry out the following:
1. Post the bidders' prices, technical specifications and implementation periods as fixed in their bids, on the notice board, emphasizing that these prices and specifications are subject to auditing and evaluation.
 2. The head, members and secretary of the Bid Opening Committee shall prepare and sign the report, and mention any observation concerning the work of the committee, if any. The report of the Bid Opening Committee shall, if practicable, also be signed by the bidders or their representatives present.
- g- Bids and their attachments are referred to the head of the contracting authority or his delegated representative in order to be submitted to the Bid Analysis and Evaluation Committee by virtue of a special report.

Article -30-Confidentiality, integrity and efficiency in evaluation of bids

First --Following opening of the bids, and until notice has been given to the successful bidder of the selection of its bid for award, no bidder shall make any unsolicited communication to the

contracting authority or try in any way to influence the contracting authority's examination and evaluation of the bids.

Second --a. Information related to the examination, clarification, evaluation and comparison of bids as well as recommendations on awarding the tender shall not be disclosed to bidders or to any other party that is not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted, except as may be otherwise provided by law or ordered by a competent court, until the contract award to the winning bidder is advertised and all bidders are notified.

b. Any attempt by bidders to influence the contracting authority in its examination of the bids or its decision to award the tender shall result in the rejection of their bids.

Third --The bids shall not be sent outside the Region to be analyzed. Consultants who are located outside the Region shall send their representatives to Iraq to carry out the analysis, unless the nature of the work requires otherwise, and the head of the procuring authority approves such a procedure in accordance with the applicable relevant authorities. The original bid documents shall be kept with the contracting authority.

Fourth -- The Bid Analysis and Evaluation Committee, established pursuant to Article 69, shall perform its tasks of examining and analyzing bids, and submitting recommendations of referral while taking into account that the referral letter shall be endorsed and issued before the expiry of the bid validity set forth in the bidding documents, or the expiry of any extension thereof.

Article -31- Initial examination of bids

First --Following the opening of bids, the Bid Analysis and Evaluation Committee shall first examine the bids in order to determine:

- a- whether the bids are formally complete in accordance with the instructions to bidders set forth in the bidding documents and duly signed;
- b- whether required documents to establish legal validity and required security have been furnished;
- c- whether they are substantially responsive to the technical requirements and contractual conditions in the bidding documents.

Second -- a. The substantial responsiveness of a bid shall be determined by the Bid Analysis and Evaluation Committee based on the content of the bid itself.

b. A substantially responsive bid meets the requirements of the bidding documents without any major deviations.

c. Major deviations are any divergences from the requirements in the bidding documents which, if accepted, will:

1. essentially affect the quality and performance of the works set forth in the contract.
 2. essentially define the employer's rights or the bidder's obligations in the proposed contract.
 3. in case they were amended or overlooked, unjustly affect the competitive level of remaining bidders who have submitted substantially responsive bids.
- d- The contracting authority shall reject and exclude from further evaluation any bid which is not substantially responsive to the requirements of the bidding documents. Said bid shall not be made responsive at a later stage through the amendment of major deviations, reservations or omissions.

Third -- In accordance with paragraph Second, the Committee shall exclude bids that:

- a- are substantially incomplete,
- b- not signed,
- c- not accompanied by the bid security, if required, in the amount and terms required in the bidding documents.
- d- based on the reduction of a certain percentage or fixed amount out of any other submitted bids in this tender, and to refuse any reservation or reduction in the price submitted after the closing date of the tender;
- e- contain major deviations, those that are substantially non-responsive to the technical specifications or contract conditions or other critical requirements in the bidding documents, including the inability of the bidder to meet the dates of completion and final delivery in a range acceptable to the contracting authority as indicated in the bidding or prequalification documents, if prequalification is conducted;
- f- have a validity shorter than the period prescribed in the bidding documents;
- g- are from a bidder that was not prequalified, if prequalification proceedings took place;
- h- are from a bidder that has been pre-qualified and submitted, or participated in, another bid for the procurement in question, in which case both bids shall be rejected unless that other bid has been properly withdrawn prior to the deadline for submission of bids or the bidder, in accordance with the bidding documents has submitted an alternative bid.

Article -32-Arithmetical errors and un-priced items in bids

First --Prices of all bids shall be calculated on a uniform basis which shall be stipulated in the bidding documents.

Second --If there is an arithmetical error such an error shall be corrected and the bidder notified. Arithmetical corrections shall be carried out as follows:

- a. In the event of a discrepancy between the unit price and the total price, the unit price shall prevail and the total price shall be corrected accordingly, unless there is an evident misplacement of a decimal point.

- b. In the event of an error in a total in the Bill of Quantities corresponding to additions and subtractions of subtotals, the subtotals shall prevail and the total shall be corrected.
- c. In the event of a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to sub-paragraphs (a) and (b) above.

Third --If the bidder that submitted the first-ranked bid does not accept the correction of errors, its bid shall be rejected and its bid security is subject to confiscation or its bid-securing declaration is enforced.

Fourth --If an item is not priced in the submitted bid, its cost, as per the indicated quantities, will nonetheless be considered as included in the total cost of the bid.

Article -33-Clarification of bids

First --In order to facilitate the bid examination, evaluation and comparison process, the contracting authority may send a written request to any bidder to clarify the bid and include the price unit details therein.

Second --Any clarification from the bidder that is not requested by the contracting authority will not be taken into account.

Third --The request for clarification and the response thereto must be submitted in writing without resulting in, suggesting or allowing any changes in the price or nature of the submitted bid unless within the framework of correcting miscalculations discovered by the contracting authority during the bid evaluation.

Fourth --Should the bidder refrain from responding to any essential inquiry about the bid within the deadline set forth by the contracting authority, and should the bid therefore be considered unclear and/or incomparable with other bids, said bid shall be rejected.

Article -34- Evaluation and comparison of bids

First --The analysis and evaluation of the technical and financial offers submitted in bids for the procurement of public works or the supply of goods and services shall apply the methodology set forth in the instructions for bidders, in order to select the best bid (the bid that is responsive to the terms of the bidding documents and is the lowest evaluated bid).

Second—

- a- To identify the best value for money bid, to which the contract shall be awarded, the bids shall be evaluated and ranked according to the price, non-price criteria related to the costs other than bid price (cost criteria, such as life-cycle costing, that are in or can be converted to monetary terms), and any other non-price criteria, including mandatory criteria evaluated on a pass/fail basis and rated criteria evaluated on the basis of merit points.

- b- Only the evaluation criteria and the methodology of applying those criteria disclosed in the bidding documents shall be applied. Any non-price criteria shall be converted to monetary terms, whenever possible.
- c- Rated type criteria, evaluated on the basis of merit points, may be used to assess bids with respect to non-price criteria that cannot be assessed in monetary terms, as may be the case in complex procurement transactions such as acquisition of Information and communication technology, or when assessing performance of bids in respect of sustainability requirements imposed pursuant to article 7
- d- If rated types of criteria are used, the scores of the rated and the cost-type criteria shall be combined and weighted appropriately, in accordance with the formula disclosed in the bidding documents, to determine the most advantageous bid. Otherwise, the best value bid shall be the one that delivers the lowest evaluated cost.

Third --In conducting the bid evaluation, or following the award of the procurement contract, it is not permissible to negotiate the price or substance of a bid with the nominated bidders, subject to article 38-First-c.

Fourth -- In carrying out the evaluation, if there are deviations in any bid which did not merit rejection of the bid at the earlier stage (minor deviations), such minor deviations shall be quantified in monetary terms if possible (i.e., by way of adjustments to the bid price for the purposes of evaluation and comparison of bids only and not for the purposes of affecting the actual bid price should that bid be the winning bid).

Fifth --If the original bid includes certain discounts of specified percentages for the same bid, they shall be taken into consideration in the analysis and evaluation process.

Sixth --Any reserve amounts of money indicated in the priced bill of quantities submitted by the bidder and not required in the bidding documents shall be excluded in the comparison and analysis process.

Seventh -- When bid prices are expressed in two or more currencies, the bid prices of all bids shall be converted to the same currency, according to the rate specified in the bidding documents pursuant to the provisions of article 24-Eleventh of these Regulations, for the purpose of evaluating and comparing bids.

Eighth --If alternative bids, offering alternatives to the specifications set forth in the bidding documents, are permitted or solicited by the bidding documents, the Committee shall analyze the alternative bids attached to the initial bids, but only when the terms of the tender allow such a procedure, and when the said alternative bids aim at reducing the cost and/or duration and/or a transfer of knowledge or the use of a new technology to implement the project and/or provide better technical specifications in keeping with the cost estimates of the project.

Ninth --A margin of preference for domestic bidders shall not apply unless otherwise provided for in the bidding documents and according to the margin ratio set forth. Where a margin of preference exists, the following procedure shall apply to responsive bids and bids in compliance with the terms and conditions of the tender:

- a- Increasing the lowest price of foreign bids according to the ratio set for domestic price margin of preference set forth in the bidding documents, solely for comparison purposes.
- b- Comparing the increased foreign bid price (sub-paragraph (a) above) with the lowest price offered by domestic bidders.
- c- If (as a result of sub-paragraphs (a) and (b) above) the lowest price offered by domestic bidders falls below the increased foreign bid price, the tender shall, therefore, be awarded to the domestic bidder with the lowest price. Contrarily, the tender shall be awarded to the foreign bidder with the lowest price (prior to the increase).

Article -35-Confirmation of winning bidder's qualifications

First -- If prequalification proceedings have taken place, the contracting authority is entitled to ask the Pre-Qualified bidder offering the first-ranked bid to confirm its qualifications yet again pursuant to the criterion adopted in the qualification stage, prior to the contract award or conclusion.

Second --If prequalification proceedings were not conducted, the contracting authority shall carry out post-qualification, in which the contracting authority verifies the qualifications of the bidder selected for award against the criteria stated in the bidding documents.

Article -36- Evaluation report and recommendations

First --At the end of the analysis process, a table shall be drafted, comprising all bids with their related details and shortcomings (if any) to compare and evaluate their technical, legal and financial aspects. The table shall be included in the bid evaluation report that shall be prepared by the Committee. The final report shall be presented to the head of the procuring authority within the period determined by it, taking into account the validity of the bids.

Second --The final report shall include a special field where the recommendation of the Bid Analysis and Evaluation Committee is indicated, stating the name of the bidder nominated for the referral, his nationality according to the attached schedule, the amount of the bid and its currency, the period of implementation or supply (in days), and the principles referred to by the Committee in making this recommendation. The recommendation shall also mention that the amount of the bid is within the acceptable limits of the estimated cost. The report shall be stamped and dated following its signature by the head and members of the Committee.

Third --If a disagreement occurs among the members of the Bid Analysis and Evaluation Committee, their difference in opinions shall be mentioned in the final report and the matter shall be decided by the head of the contracting authority.

Fourth --The contract shall be awarded to the bidder that submitted the substantially compliant bid that offers the best value for money (including, if stated as the evaluation criterion, the lowest evaluated bid) and that meets the qualification criteria specified in the prequalification or bidding documents, subject to any margin of preference applied pursuant to article34-Ninth of these Regulations.

Article -37-Contract award

First -- The Bid Analysis and Evaluation Committee shall submit its recommendation of the referral to the head of the contracting authority for finalization according to the authorities given to him for the purposes of contracting.

Second --Notification of the award decision shall be made promptly to the successful bidder, before the expiry of the bid validity period, as well as, at the same time, directly to all the other bidders, informing them of the name, address, and bid price of the proposed awardee. That notification does not constitute a letter of acceptance of the bid. No action to sign the contract shall be taken until after passage of a standstill period of seven days following the date of the notice, at which time a letter of acceptance shall be dispatched, and notice provided to all bidders. The successful bidder shall sign the procurement contract in accordance with the bidding documents and his bid within the time period specified in the notice of award and shall furnish a performance security in the amount specified in the bidding documents within the time period specified in the notice.

Third – a- If the winning bidder refuses to sign the contract according to the prices resulting from the contracting authority’s correction of calculation errors encountered in the bid, or fails to provide any required security for the performance of the contract, the contracting authority shall take the necessary measures to confiscate the bid security pursuant to the provisions of article 27- Second or to enforce the bid securing declaration pursuant to article 27-Third, considering him in default, thus charging him the difference between the two bids and award the contract to the second-ranked bidder, unless all other bids have been rejected.

b- If the second contractor also refrains from signing the contract and/ or submitting the performance security, it shall be deemed in default, thus charging it the difference between the two bids and the contracting authority may award the tender to a third bidder, unless all other bids have been rejected. And if the third awardee also acts in default, it shall be deemed in default, thus charging him the difference between the two bids and the tender is re-advertised.

c- Upon re-advertising for bidding as set out in sub-paragraphs(a and b), the said bidders shall be deemed acting in default and shall be charged the difference between their bids’ values.

Fourth --Referral decisions shall be effective from the date of notification of the winning bidder of the referral letter by the procuring authority. The procuring authority shall inform the other bidders of the referral decision.

Fifth --The winning bidder shall submit the performance security and sign the contract within a maximum of 28 days after his notification of the referral decision; otherwise, he shall be considered in default without warning and the procedures of article 27-Second shall apply.

Sixth: --in accordance with article 9/second – (d) 4, subject to the qualification requirement in article 9 and prior to contract award, the procuring authority shall verify the successful bidder’s

capacity to perform the procurement contract, taking into account the bidder's current and future contractual commitments.

Article -38- Re-advertisement of tenders

First – Tenders are re-advertised in any of the following cases:

- a- When no bids are submitted all through the advertisement duration, or when the submitted bids are found non-responsive to the tender terms or if one bid was submitted.
- b- Subject to paragraph c, when the amount of the best offer submitted by the bidders for the execution of projects at the first advertisement exceeds the funds allocated for the procurement but is within the contingency percentage, the contracting authority may proceed with the procuring process and request re-allocation of funds.
- c- When the price of the best bid exceeds the estimated cost of the project and the contingency for the procurement by not more than 2 percent, the contracting authority may, when it is in the public interest to do so, negotiate with the concerned bidder for a reduction of price in the amount that the bid price exceeded the estimated cost of the project and the contingency for the procurement; any negotiation may only be conducted in writing.

Second – When re-advertising a tender, the following procedures must be followed:

- a- The lack of participation in the initial tender shall be investigated to take the necessary remedial procedures, including revision and updating of the cost estimate study of the procurement, if need be.
- b- The re-advertising shall be approved by the head of the contracting authority or any authorized representative thereof, and notified to the Ministry of Planning along with the specification of the bid submission period in accordance with article 26.
- c- The bidders who participated in the initial tender shall be informed of its re-advertisement.
- d- The re-advertised tender shall follow the same old sequence of the initial tender, and shall indicate the number of re-advertisements if occurring at the same year.
- e- The concerned entities shall be notified of the re-advertisement.
- f- When the amount of the best bid obtained at the second advertisement exceeds the available budget, the Ministry of Planning shall be informed thereof to take one of the following measures:
 - 1. Postpone the project implementation until the next year,
 - 2. Re-allocate funds in accordance with the Regional Annual Budget Implementation Regulations in order to re-instate the required cost.
 - 3. Obtain the consent of the Council of Ministers' Presidency to allocate the necessary additional budgetary resources.
- g- If no bid was accepted in the second advertisement, and the steps referred to in paragraph Second-f-1 to 3 are not taken, the head of the contracting authority shall

either advertise the tender for the third (and last) time or take the necessary measures to change the contract implementation method in keeping with the adopted methodologies.

h- Opening of only one bid shall be accepted when the bid had been re-advertised.

Section Three: Other procurement methods

Article -39-Use of the limited tender method

The limited tender method may be utilized:

First – when the goods, works or non-consultancy services because of their extraordinary difficulty or specific nature are available only from a limited number of suppliers (contractors), who are known to the contracting authority;

Second – when a contract for defense or security purposes requires secrecy in every part of the contracting and implementing procedures and/or when such secrecy is required for security reasons.

Third – in cases of emergency, natural disasters, supplying of medicaments, and lifesaving necessities

Fourth – if time and costs required to review and assess numerous bids is not proportional with value of procured goods (works and services);

Fifth – when bidders refrain from participating in re-stated public tenders, or when non-responsive bids are received, with due consideration to article 38-Second-g.

Article -40- Procedures for the limited tendering method

First --In case of a limited tender pursuant to article 39-First, bids shall be solicited from all the suppliers / contractors of the item being procured that are known to the contracting authority.

Second --In case of a limited tender pursuant to article 39-Second to Fifth, bids shall be solicited from a minimum number of three bidders.

Third --a- Except in the cases referred to in article 39-Second and Third, notice of a limited tender, shall be published in accordance with Article 70-Tenth and Eleventh prior to the period specified in Annex A, and state the reasons for the limited tender. The notice shall also state a deadline for and means by which other bidders may request to participate in the procurement proceedings.

b- When the contracting authority utilizes limited tendering on the grounds referred to in article 39 third, the time period for submission of bids may be reduced as specified in Annex A.

Fourth-Apart from the solicitation procedures referred to in this article, the provisions applicable to open bidding apply when the limited tender method is utilized.

Article -41- Use of two-phase tender

The head of the contracting authority, or whoever he authorizes, is entitled to apply this method of submitting the bid in two phases to best achieve the contracting needs of the concerned authority. The said method is applicable.

First --to contracts with intricate technical specifications where the contracting authority wishes to consider various technical or contractual solutions, and to discuss with bidders about the relative merits of those variants before deciding on the final technical specifications and contractual conditions, or

Second --when the details of the technical specifications or characteristics of the goods, works, or services to be procured are not accurately available at the beginning of the project and it is therefore is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids.

Article -42- Procedures for the two-phase tendering method

First --Submission of the bids in two phases may be preceded by procedures for pre-qualifications mentioned in item (Second) of this article. When implementing this method, the following must be taken into consideration:

Phase one:

- a- In the first phase, at least two bidders must be participating, and the bidding documents shall outline the purpose, expected performance, broad specifications and other broad features and specifications of the equipment or works to be procured, and qualifications required to perform the contract, and call upon bidders to submit technical bids without a bid price, as well as comments on the proposed contract conditions. The head of the contracting authority may revise the cost estimate, if necessary;
- b- The contracting authority may engage in discussions in phase one with any or all bidders with a view to understanding proposals or to indicate changes required to make them acceptable and seek the bidder's willingness to make such changes.
- c- At the end of the first phase, the contracting authority shall:
 - 1. reject those bids which do not, and cannot be changed to, meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non responsive; and
 - 2. modify the technical specifications, evaluation criteria, and contract conditions in order to maximise competition and articulate appropriate evaluation methodology in order to consider various options put forth by the bidders.

Phase two:

To invite all the bidders whose technical bids were not rejected in the first phase to submit their final, priced bids based on the revised bidding documents as per the applicable conditions set forth by the contracting authority in those documents. The invitation shall be

sent to all bidders whose technical proposals were not rejected in the first phase. In order for phase two to proceed, at least two bidders must remain whose bids have not been rejected in accordance with subparagraph c above, although the proceeding shall not be invalidated in the event that only one of those bidders surviving the first phase submits bid in the second phase.

Second -- The procedures for bidding proceedings set forth in Phase Two apply to two-stage tendering proceedings, except to the extent they are modified by this article.

Article-43- Use of Request for quotations (Shopping) method

The request for quotations method is applied to provide the governmental offices with goods and services taking into consideration and not exceeding the values and controls set forth in the Region's Public Budget Implementation Regulation. The request for quotations method is a simple, less formal method for small-value procurement that may only be used for the procurement of:

First – readily available commercially standard goods not specially manufactured to the particular specifications of the contracting authority, when the estimated value of the procurement does not exceed the amount set in Annex A and in the Region's annual Public Budget Implementation Regulation;

Second – small works, when the estimated value of the procurement does not exceed the amount set in Annex A and in the Region's Annual Budget Implementation Regulation;

Third – non-consultancy services, when the estimated value of the procurement does not exceed the amount set in Annex A and in the Region's Annual Budget Implementation Regulation.

Article -44- Procedures for the request for quotations (Shopping) method

When, in accordance with article 43, the procuring authority utilizes the request for quotations method, the following procedures shall be applied:

First – Quotations shall be requested in writing from as many bidders as practicable, but from at least three bidders unless the item in question is not available from three suppliers (contractors). A lower number of quotations may be sought only when, taking into account the location of the contracting authority, the number of available suppliers (contractors), the size and value of the procurement, the cost and time required for delivery, it is not practical or feasible to seek three quotations.

Second – The request shall contain a clear statement of the requirements of the contracting authority as to quality, quantity, terms and time of delivery, the deadline for submission of quotations, as well as any other special requirements, as specified in instructions issued under these Regulations. Bidders shall be given adequate time to prepare and submit their quotations. Each bidder is permitted one quotation, which may not be altered or negotiated.

Third – A purchase order shall be placed with the bidder that provided the lowest-priced quotation meeting the delivery and other stated requirements of the contracting authority.

Article -45- Use of single or sole source method

Public procurement may be conducted by means of the single or sole source method only in the following cases:

First – when only one bidder has the technical capability or capacity to fulfill the procurement requirement, or only one bidder has the exclusive right to realize manufacture of the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available;

Second – within limits defined in Annex A, for additional deliveries of goods by the original supplier which are intended either as part replacement for existing goods, non-consultancy services, or installations, or as the extension of existing goods, non-consultancy services, or installations where a change of supplier would compel the contracting authority to procure equipment or services not meeting requirements of interchangeability with already existing equipment or services;

Third – within limits defined in Annex A, when additional public works, goods or non-consultancy services, which were not included in the initial contract have, through unforeseeable circumstances, become necessary, or for reasons of standardization with existing goods, equipment, technology or services, since the separation of the additional public works, goods or services from the initial contract would be difficult for technical or economic reasons, taking into account the effectiveness of the original procurement in meeting the needs of the contracting authority, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods, works or services in question;

Fourth – in cases of extreme urgency, provided the special circumstances which gave rise to the urgency were neither foreseeable by the contracting authority nor the result of dilatory conduct on its part or within its control;

Fifth – owing to a catastrophic event, there is an urgent need for the goods, works or non-consultancy services, making it impractical to use other method of procurement because of the time involved in using those methods.

Article -46- Procedures for the single or sole source method

First -- The invitation to bid approved by the head of the contracting authority is addressed (free of charge) to the bidder that monopolizes the goods or services of contracts that are monopolized in nature, or contracts for the maintenance of previously imported materials and procurement of spare parts thereof. In this method of tender, the invited bidder is exempt from bid bonds.

Second -- When the contracting authority engages in the single source method on the grounds referred to in paragraphs First through Fifth of article 45 it shall prepare a written description of

its needs and any special requirements as to quality, quantity, terms and time of delivery, request submission of a bid/proposal in writing and shall be free to negotiate with the sole bidder. Public procurement carried out on a direct basis shall, as in the case of other procurement methods, be embodied in a written contract or purchase order.

Third--In conducting single-source procurement, the contracting authority shall ensure that the technical aspects of what is procured meet the contracting authority's requirements.

Fourth--The contracting authority shall ensure that the prices of procurement contracts concluded utilizing the single-source procurement method is fair and reasonable in relation to the prices prevailing in the market.

Fifth--Procurement conducted utilizing the single-source method shall be on the basis of written procurement contracts or purchase orders in accordance with article 20.

Article -47- Use of direct implementation method

First --Direct implementation: A method that may, in accordance with paragraph Second, be utilized by Government Departments to execute works by relying on their human resources, availability of expertise, equipment and materials.

Second – a- The direct implementation method may be utilized in the following circumstances

1. Natural disasters that require immediate action;
 2. Potential risks at the execution site, including unavoidable work interruptions, are better borne by the Entity than by a contractor.
 3. The required works are of small value, scattered or located in a remote area, a situation that makes qualified companies unwilling to submit reasonably-priced quotations.
 4. Unforeseen repair or maintenance works which require expedient execution without delay.
 5. Works that are not feasible for potential contractors to assess or quantify in advance thus implicating high risks.
 6. Technical works related to the survey and exploration for antiquities, heritage and archeological ruins or the execution of repair and preservation works on such sites.
 7. When works are withdrawn from the defaulting contractor and a little work remaining to be done may be finished by the contracting authority.
 8. Lack of participation in the second tender, with due consideration to Article 38-Second-g.
 9. When the projects is initially listed for direct implementation in the annual plan.
- b. Subject to sub-paragraph a- 1 through 8, the procuring authority may use the direct implementation method to execute their projects if they meet the expertise and executive capacity requirements, and upon notifying the Ministries of Planning and Finance and Economy.

Third --The procedures specific to the planning and execution of procurement using the direct implementation method are set forth in article 48, and in Annex D.

Article -48- Procedures for the direct implementation method

First --The procedures for use of the direct implementation method include cost estimation and planning, planning, approval, implementation, supervision, delivery, reporting and accountability for works, in accordance with this article and Annex D.

Second --Overall supervision of the direct implementation procurement shall be exercised by the beneficiary and/or implementing entity.

Third --Planning of procurement using direct implementation includes:

- a- Preparation of a budget document for the procurement;
- b- Identifying the objectives and necessary activities of the direct implementation procurement.
- c- preparing an implementation plan and schedule, considering the need for sufficient time for each implementation step.
- d- Identifying, quantifying and scheduling, in detailed work plans, the allocation of the necessary human resources and material resources, including equipment.
- e- Preparing detailed estimates of the costs involved, broken down on a weekly and/or monthly basis, within the parameters of the budget document in the form of weekly and/or monthly cost plans.
- f- Designation of on-site supervisor.

Fourth --Project studies, designs and bills of quantities must be prepared by either the Government Department or the private sector (consultancy firms or companies) in order to reduce time and cost. A percentage of no more than (30%) of the estimated value of the works may be transferred to a contractor (local or foreigner), provided that they meet the expertise and competence requirements necessary for the project.

Fifth --Execution of the works on the direct implementation basis shall be documented as follows:

- a- The utilization of labor, materials and equipment shall be monitored onsite and recorded on a daily basis in a daily report;
- b- Progress achieved shall be monitored onsite and recorded on a daily basis, and evaluated on a weekly basis taking into account the labor, material and monetary costs and expenditures incurred.
- c- Physical progress and financial expenditure reports shall be submitted periodically to the beneficiary and/or supervising entity.

Sixth --Procurement carried out by direct implementation shall be subject to internal financial controls and external audit.

Section four: Procurement of consultancy services

1. Solicitation of proposals

Article -49- Use of request for consultancy proposals method

For the procurement of consultancy services, unless use of another procurement method is indicated in accordance with these Regulations, the contracting authority shall utilize the request for proposals method, applying the procedures defined in articles 50 to 58.

Article -50- Solicitation of proposals for consultancy services

First --The contracting authority shall first establish a short list of at least three consultants to ensure effective competition. That short list shall be comprised of consultants that have capacity to perform the required services

Second --When the estimated value of the procurement exceeds the threshold defined in Annex A, the contracting authority shall, in order to establish the short list, seek expressions of interest by publishing a notice in a national newspaper of wide circulation and on the official, single-portal website established pursuant to article 70-Tenth and Eleventh. Additionally, the contracting authority may publish the notice in a relevant trade publication or technical or professional journal. The notice shall indicate the deadline for submission of expressions of interest, which shall be set in accordance with article 12. Key personnel shall not be evaluated at this stage.

Third --The contracting authority shall issue the request for proposals to the short listed consultants. The request for proposals shall include the information necessary to enable them to participate in the public procurement proceedings and timely to submit proposals that are responsive to the needs of the contracting authority, including the information referred to in article 51.

Article -51- Contents of request for consultancy proposals

First --The request for consultancy proposals documentation shall include at a minimum the following:

- a- name and address of contracting authority;
- b- language or languages, which proposals shall be produced in;
- c- method, place and deadline for submission of proposals in accordance with Article 12;
- d- if the contracting authority reserves the right to reject all proposals prior to issuance of the award letter;
- e- The Terms of Reference (TOR) for the assignment, including the description and necessary features of the services to be procured to the extent known, the place where services shall be provided, and the desired or required time when the services are to be provided;
- f- The requirement that technical and financial proposals are to be submitted in separate, sealed envelopes in the required number of copies.
- g- Forms for the preparation of technical and financial proposals.

- h- The currency or currencies, in which price of proposal shall be calculated or expressed in;
- i- The manner in which the financial proposal shall be formulated including a statement as to whether a lump-sum priced contract is applicable, covering the cost of the services and all of the consultant's expenses associated with delivering the services, or a time-based contract, with payment based on the actual amount of time expended and reimbursable costs incurred by the consultant, except cases when price criteria is not taken into account in ranking the consultants;
- j- The criteria to be used for evaluating the technical proposals submitted by the consultants, and the relative weight of the criteria, and the minimum score that technical proposals must achieve;
- k- The procedure for opening of the financial proposals of the consultants whose technical proposals achieved the required score, which consultants or their representatives shall be invited to attend; an indication that the financial proposals of those consultants whose technical proposals did not achieve the required score will be returned unopened;
- l- The manner of scoring and weight attributed to the scoring of consultants' financial proposals;
- m- The selection method to be applied pursuant to article 20-Second;
- n- currency to be used to assess and compare proposals, exchange rate to be used for transfer into currency of proposals' price or statement of use of exchange rate published by certain financial organization on certain date;
- o- last names, positions and addresses of several officials or employees of the contracting authority, who are authorized to maintain direct communication with service providers without interference of mediators and provide to them information about procurement procedures;
- p- statement about method of obtaining by consultants of clarification of the request for consultancy proposals documentation and the intention of the contracting authority, if applicable, to meet with service providers at this stage, and whether site visits can be arranged;
- q- The terms of the procurement contract known to contracting authority and form of contract to be entered into by the parties;
- r- notice of the right to obtain submit of complaints in accordance with article 63 of these Regulations;
- s- any requirements for the entry into effect of the contract;
- t- any other requirements on preparation and submission of proposals as well as other aspects of procurement procedures set by contracting authority in accordance with these regulations.

Second --In order to ensure fairness and transparency in the selection process, and that consultants competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to the assignment in question, the contracting authority shall make available to all the short-listed consultants, along with the request for proposals, all information that would in that respect give any consultant a competitive

advantage.

Article -52- Terms of reference (TOR)

First -- The contracting authority shall prepare the terms of reference for the required consultation services to be included in the request for consultancy proposals.

Second -- The basic components of the terms of reference include:

- a- A general description of the nature of the task, the need for it and its relevance to the contracting authority;
- b- The purpose and objectives of the consultancy services;
- c- The scope of the consultancy services and the tasks that the consultant must perform;
- d- The outputs that must be submitted (reports, data, maps, surveys and others);
- e- The available reports, studies and main data related to the required consultancy services;
- f- Description of any transfer of information or experience, including any required training and details pertaining to personnel who require training;
- g- Tasks and qualifications of the required basic employees who will offer the consultancy services and an estimate of the extent of their participation in the task;
- h- The location where the services are to be delivered;
- i- The timetable for delivering the required outputs and the date at which the winning consultant shall commence his services;
- j- The inputs that the contracting authority shall provide to the consultant while performing his duties (such as studies, services, personnel, facilitation measures and equipment and others);
- k- Procedures and conditions of submission of the reports to be submitted by the consultant;
- l- Any other matters that the contracting authority deems applicable to be added.

Third -- The terms of reference must be flexible and not excessively detailed so that the competing consultants can propose their own methodology and basic teams of workers.

2. Submission and evaluation of proposals

Article -53- Submission, Evaluation and selection procedures

First --The technical and financial proposals shall be submitted simultaneously, in two separate sealed envelopes, in one envelope. No amendments to the technical or financial proposals shall be accepted after the deadline for submission of proposals.

Second--The selection of the successful proposal shall be based on an evaluation of the technical and financial proposals, in accordance with the criteria and their relative weight as disclosed in the request for proposals [including Quality and Cost Based Selection (QCBS), or selection of the lowest cost (LCS)] financial proposal whose corresponding technical proposal has achieved a passing technical score). The evaluation of the proposals shall be carried out in two stages, first the evaluation of the technical proposals, and second, the evaluation of the financial proposals.

Article -54-Quality and Cost-Based Selection (QCBS)

First --The QCBS method involves the selection of a consultant based on the best combined scores for the technical and the financial proposals, from among the consultants whose technical proposals attained the required minimum score, in accordance with the scoring criteria and weighting disclosed in the request for proposals. The QCBS method may be used when:

- a- The scope of work of the assignment can be precisely defined and the TOR are clear and well specified; and
- b- The contracting authority and the consultants can estimate with reasonable precision the staff time, the assignment duration, and the other inputs and costs required of the consultants.

Second --Selection shall be on the basis of a separate evaluation of technical and financial proposals, and a ranking of the consultants on the basis of a formula, pursuant to paragraph First, disclosed in the request for proposals.

Third --a- The technical proposals of all participating consultants shall be opened, evaluated and scored before any financial proposals are opened.

b- The contracting authority shall conduct the opening of the technical proposals at the time and place specified in the request for proposals, in the presence of the consultants that submitted proposals and wish to attend. The contracting authority shall read aloud the names of the consultants that submitted proposals, the presence or absence of sealed financial proposals, and any information deemed appropriate. The contracting authority shall prepare the minutes of the opening and provide them to the consultants that submitted proposals.

c-The evaluation of technical proposal shall be done applying the criteria and corresponding weighting indicated in the request for proposals. The criteria for evaluating technical proposals normally include: consultants' specific experience, work plan and methodology, key experts and, if applicable, transfer of knowledge and participation of experts from the Region. The relative weight shall be based on

the nature of the assignment; however, greater weight shall be given to methodology and key experts.

Fourth –a- The financial proposals of all consultants whose technical proposals attained the required minimum score shall, following completion of the evaluation of technical proposals, be opened in front of consultants who wish to attend. The contracting authority shall prepare the minutes of the opening and a copy of this record shall be promptly sent to all consultants who submitted proposals. The financial proposals of consultants whose technical proposals did not attain the minimum technical score shall be returned to them unopened.

b- Evaluation of price shall be based on a proportional system that awards the highest score to the lowest priced financial proposal.

c- When the consultants are ranked on the basis of a combined scoring of the technical and financial proposals, the relative weights of the technical and financial scores depends on the nature and complexity of the assignment;

Fifth -- The consultant ranked first, in accordance with the criteria and selection method set forth in the request for proposals, shall be selected for award, subject to satisfactory conclusion of negotiations.

Sixth -- The contract may be negotiated with the selected consultant. The negotiations shall cover the terms of reference and scope of the proposed services, deliverables, progress reports, facilities to be provided by the contracting authority, as well as the financial proposal. However, the negotiations shall not substantially alter the original scope of services under the TOR and, since price has been a factor in the ranking of proposals, the price (fee for services) shall not be subject to negotiation.

Seventh – a- The contracting authority shall publish the intention to award on the single-portal website established in accordance with article 70-Tenth and Eleventh.

b- In the absence of a challenge by any other consultant within 7 days of the date of dispatch of the notice, the contract shall be awarded to the successful consultant indicated.

c- The final contract award information shall be published on the single-portal website established in accordance with article 70-Tenth and Eleventh.

Article -55- Least cost selection (LCS)

First --Least cost selection LCS is generally appropriate for selecting consultants for assignments of a standard or routine nature (audits, engineering design of non-complex works, etc.) for which well-established practices and standards exist.

Second –When LCS is applied as the selection method, opening and evaluation of technical and financial proposals shall be conducted in accordance with article 54. The successful consultant shall be the consultant who submitted the lowest priced financial proposal, from among those consultants whose technical proposals attained the minimum required technical score disclosed in the request for proposals.

3. Other methods

Article -56- Selection on the basis of consultant’s qualifications (CQS)

First --Consultancy services may be procured in accordance with a consultant’s qualifications,

- a- if the volume of required services is small and not exceeding the level set in Annex A;
- b- the nature of services does not require preparation and consideration of competitive proposals,
- c- in emergency situations for which the need for issuing a request for proposals , and preparing and evaluating competitive proposals is not justified.

Second --Upon procurement of consultancy services on the basis of a consultant’s qualifications, the following shall be followed:

- a- The procuring authority may publish an invitation for expression of interest, as it shall include a request from consultants to state their capabilities and experiences related to the required services, aiming to reach the short list.
- b- The procuring authority, and after preparation of the short list, shall select the best consultants whose names are included therein, related to qualifications and experiences to provide technical services.
- c- The procuring authority shall request the selected consultant to submit a joint technical and financial proposal and then shall be invited for negotiation concerning procurement contract.

Article -57- Engagement of individual consultant (IC)

First -- Consultancy services may be procured from individual consultants in the following cases:

- a- If the works do not require a team of consultants.
- b- If the works do not require additional professional support;
- c- The experience and qualifications of the individual are the paramount requirement; and
- d- If there is a need for an individual consultant for a specific assignment for a limited period of time.

Second -- If the services basically depend on the qualifications and experiences available to the individual consultant for assignments to be performed by individual consultants, the

contracting authority may seek expressions of interest (by publication of a notice or by direct solicitation), with a view to comparing the qualifications of at least three qualified consultants, and award the contract to the interested consultant with the best qualifications, subject to successful negotiation of the contract.

Article -58-Single or sole source procurement of consultancy services (SSS)

Procurement of consultancy services on a single or sole source basis may be justifiable in the following cases:

First- An existing contract for consultant services, originally awarded on a competitive basis, may be extended for additional consulting services of a similar nature, if no advantage may be obtained by competition and the prices are reasonable.

Second- There is a justifiable requirement to reengage a consultant that has previously completed a contract with the contracting authority to perform a similar type of consulting services. The justification must show that a new competitive process does not add value for money, the consultant has performed acceptably in the previous contract, and the prices are comparable to the ones in the recently completed contract.

Third- In exceptional cases, for example, in response to natural disasters and emergency situations.

Fourth- When only one firm is qualified or has experience of exceptional worth for the assignment.

Fifth – the procuring authority seeks to enter into a contract for the purpose of research, experiment, study or development, except where the contract includes the production of goods in quantities to establish their commercial viability or to recover research and development costs.

Article -59- Design contests

First – When considered appropriate by the contracting authority, design contests may be used to acquire, in the fields of town and country planning, architecture and engineering, or data processing, a plan or design selected by an impartial, qualified jury that is independent from the contestants after being put out to competition with or without the award of prizes. The jury shall be appointed by the concerned minister prior to the announcement of the contest.

Second – Design contests shall be conducted in accordance with the objectives and principles set forth in Article 2, and the procedures specified in the regulations, with respect to aspects including publicity, impartiality in the composition and work of the jury, documentation to be prepared by the contracting authority and provided to the contestants that gives details of the purpose of and the essential principles and procedures governing the contest, including the criteria to be used for assessing and ranking the proposals, and transparency.

Third – When the subject matter of the contest centers on the laying out of studies or plans for a certain project, then the documentation referred to in paragraph Second shall define:

- a. The prizes or rewards or privileges that will be granted to the winners.
- b. The fate of ownership of the studies or plans whether they are winners or not winners.

Fourth – The prizes and rewards and privileges shall be granted on the basis of a report by the appointed jury. This panel jury may, however, pass a recommendation against the granting of the prizes, rewards or privileges in whole or in part if it sees the presented plans have not attained the required level.

Fifth – The documentation given to contestants may include a clause involving the granting of remunerations for the designs whose bidders have not won even though they comply with the set schedule and reflect an accepted technical level.

Sixth – The jury has the right to summon the contestants in all the cases stated in this Article to discuss with them their projects and offers and recommend some modifications.

Seventh – The panel writes the results of its work in a special report of which a summary may be broadcast through appropriate means at the discretion of the contracting authority and its recommendation shall become operative after they are reviewed and endorsed by the concerned authorities.

Section Five. Framework agreements

Article -60- Use of framework agreements

Procuring authorities may conclude framework agreements:

First - For the recurrent procurement of supplies, services (including for consultancy services), and minor works, including common-use procurement to serve the needs of multiple public sector entities; or

Second - Where the contracting authority anticipates that by virtue of the nature of the goods, construction or services to be procured that the need for them will arise on an urgent basis during the term of the framework agreement.

Article -61- Type of framework agreements

Contracting authorities may establish either open or closed framework agreements:

First - When a closed framework agreement is established, it may have a maximum duration of two years and no supplier / contractor / consultant that is not initially a party to the framework agreement may subsequently become a party;

Second - When an open framework agreement is established, a supplier / contractor / consultant in addition to the initial parties may subsequently become a party by presenting indicative submissions to the contracting authority in compliance with the requirements of the invitation to become a party to the open framework agreement.

Article -62- Establishment and operation of framework agreements

First -- Framework agreements shall be established in accordance with the principles and procedures referred to in these Regulations for all phases up to the award of contracts based on that framework agreement, including the principles of transparency and competition, and the procedures for solicitation of participation by bidders, assessment of bidders' qualifications and procurement methods, as specified in the regulations.

Second -- In solicitations for participation of bidders in procurement proceedings leading to the establishment of a framework agreement, the contracting authority shall disclose the information required to enable bidders to understand the nature of the framework agreement and related procedures, whether the framework agreement will be open or closed, the form, terms and conditions of the framework agreement, whether there will be competition in the awarding of contracts under the framework agreement, the method to be used for dividing the award of contracts among suppliers / contractors / consultant engaged in the framework agreement, and any other information needed to participate effectively in the establishment and operation of the framework agreement, as specified in the regulations.

Third -- In the case of open framework agreements suppliers (contractors, consultants) may apply to become parties to the framework agreement at any time during the period of its operation by presenting indicative submissions.

Fourth -- The contracting authority shall examine all indicative submissions received during the period of operation of the framework agreement within a maximum number of days as specified in the bidding documents, in accordance with the procedures set out in the invitation to become a party to the open framework agreement.

Fifth -- An open framework agreement shall be concluded with all qualified suppliers / contractors /consultants that presented indicative submissions. The contracting authority shall promptly notify the suppliers / contractors / consultants whether they have become parties to the framework agreement and of the reasons for the rejection of their indicative submissions if they have not.

Sixth -- The contracting authority shall, during the entire period of operation of the open framework agreement, republish continuously on the single portal website established pursuant to article 70-Tenth and Eleventh the invitation to become a party to the open framework agreement and shall in addition ensure unrestricted, direct and full access to the terms and conditions of the framework agreement and to any other necessary information relevant to its operation.

Seventh -- Any procurement contract under a framework agreement shall be awarded in accordance with the terms and conditions of the framework agreement and the procedures specified in the regulations and disclosed to bidders in the solicitation documents, and only to a supplier/ contractor / consultant that is a party to the framework agreement.

Eighth -- During the operation of a framework agreement, no change shall be allowed to the description of the subject matter of the procurement. Changes to other terms and conditions of

the procurement, including to the criteria for any second stage competition and the manner of their application, and procedures for the award of the anticipated procurement contract, may occur only to the extent and in the manner expressly permitted in the framework agreement.

Ninth -- a- Suppliers / contractors / consultants engaged in a framework agreement shall be ranked on the basis of criteria disclosed in the solicitation documents, or through a process in the second stage, when orders are placed under the framework agreement.

b- Framework agreement shall, as specified in the framework agreement, generally be based on prices that are either pre-agreed, or determined at the call-off stage through competition or a process allowing their revision without further competition.

c- The types of methods that may be used for allocating the award of contracts under a framework agreement are:

1. Hierarchical – The highest ranked supplier / contractor / consultant is awarded the contracts except when the supplier / contractor / consultant is unable to supply the contracting authority's needs. In this case, the contract is allocated to the next ranked, available member;
2. Equal division of work – This may be implemented through imposition of an upper limit arrangement, whereby the next-ranked supplier / contractor / consultant is chosen once a specified financial limit is reached by the highest-ranked supplier / contractor / consultant, and so on and so forth;
3. Rotational basis – contracts are allocated to each supplier / contractor / consultant engaged in the framework agreement in turn regardless of value or time; and
4. Reliability and expertise – contracts are allocated to the supplier / contractor / consultant engaged in the framework agreement who is, in accordance with criteria specified in the framework agreement, determined to be most suitable and available.

Tenth -- A framework agreement may be established based on a list of bidders drawn up to whom periodic invitations to bid are issued on the following basis:

- a- Bidders may be invited to quote prices linked to the market price at the time of, or prior to, the shipments.
- b- Bid validities shall be as short as possible.
- c- A single currency in which the commodity is usually priced in the market may be used for bidding and payment.
- d- Standard contract conditions and forms consistent with market practices shall be issued by the Directorate for Public Contracts at the Ministry of Planning and used by contracting authorities.

III. REVIEW OF COMPLAINTS OF BIDDERS

Article -63- Right to complain

Any bidder who alleges that he has suffered or may suffer any loss or has incurred any damage due to a decision, action or omission of the contracting authority in violation of the obligations and responsibilities entrusted to it under the provisions of these Regulations may complain on the grounds of the invalidity of such measure or decision, subject to the provisions of these Regulations.

Article -64-Procedures for review of complaints from bidders

First --The complaint, which must state the nature of the alleged violation, shall be submitted in writing and in the first instance to the central committee of the contracting authority pursuant to Article 65/First within (7) days from the date the bidder knew the causes of the complaint, or as from the date that the bidder should have known such causes, and prior to the signing of the procurement contract.

Second --Complaints concerning the terms of advertisement or other forms of solicitation, pre-qualification or short-listing or decisions or actions taken by the contracting authority in pre-qualification or shortlisting proceedings shall be submitted prior to the deadline for submission of bids;

Article -65- Submission of complaints to contracting authorities

For the purposes of considering complaints submitted in the first instance to the contracting authority:

First – A central committee shall be formed in each procuring authority to look into objections and complaints submitted by the bidders against the referral decisions, or against actions, decisions or omissions at earlier stages in the procurement proceedings. The committee shall be under the direction of the concerned minister or head of the non-ministerial entity, or the governor or head of the independent administration, or whoever they duly authorize to represent them. The committee members shall be a group of experts and specialists and the secretary of the committee shall have a job title of not less than a manager.

Second – The committee shall give its recommendation vis-à-vis the objection and its grounds to the concerned minister or head of the non-ministerial entity, within a period not exceeding (7) seven days starting from the date of filing of the objection with their offices. The concerned minister or head of the non-ministerial entity, or the governor or head of the independent administration, or their duly authorized representatives, shall issue, and expeditiously communicate to the complainant, a written, justified decision on the matter within (7) seven days starting from the date of receipt of the said recommendation, failure to do so, the objection shall be considered rejected. If the complaint is upheld in full or partially, the decision shall indicate measures, which have to be taken to remedy the situation.

Article -66- Independent administrative review

First -The independent body competent to look into the objections of bidders shall be the Procurement Complaint Review Board formed under the Council of Ministers in accordance with Article 71.

Second – a- Bidders may submit their complaints / objections to the Review Board referred to in item First of this article in the following cases:

1. If the complainant does not accept the decision issued by the contracting authority on the complaint, provided the complaint is submitted to the Review Board within (7) days of the communication of the contracting authority's decision to the complainant.
 2. If the contracting authority fails to take the decision within the period specified in article 65-Second, provided the complaint is submitted to the Review Board within seven days of the expiry of the time period referred to in article66-Second.
 3. if the contract has already entered into effect, provided that the complaint is submitted within (7)days from the date the complainant knew or should have known about the circumstances that led to submitting the complaint.
- b- The complainant and the Review Board shall promptly notify the contracting authority of the submission of the complaint to the Review Board.
- c- A non-refundable fee of IQD (500,000) five hundred thousand Iraqi Dinars shall be charged to the complainant.
- d- The complainant shall submit to the procuring authority a legally authenticated declaration that he shall pay all delay damages that result of a malicious complain for the timely signature of the contract.

Third –a- The Review Board shall decide promptly, not later than three (3) days after receipt of the complaint, whether the complaint will be entertained or dismissed. The Review Board may dismiss the complaint if it decides that the complaint is manifestly without merit, the complaint was not submitted within the deadlines set out in paragraph Second or the applicant is without standing.

b- The Review Board shall issue its decision regarding the objection within a period not to exceed (30) days starting from the date of notification of the pleading. Decisions of the Review Board shall be in writing and justified, and promptly published on the single-portal website for the procurement system established pursuant to Article 70-Tenth and Eleventh.

Fourth --Unless the complaint is dismissed as unsubstantiated or procedurally defective, the remedies that the Review Board may issue include to:

- a. Declare the legal rules or principles that govern the subject-matter of the complaint;

- b. Prohibit the contracting authority from acting or deciding unlawfully or from following an unlawful procedure;
- c. Require the contracting authority that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision, which may entail redoing certain steps in the procurement proceeding or re-doing the procurement proceeding;
- d. Order the total or partial cancellation of an illegal decision or measure taken by the contracting authority, with the exception of any measure or decision that brings the procurement contract into force;
- e. Propose payment of compensation by the contracting authority for any reasonable expenses incurred by the applicant in participating in the procurement proceeding or prosecuting complaint; or
- f. Recommend the cancellation of the procurement proceeding.

Fifth-The Review Board decision may be appealed before the Region's related Court within (30) days starting from the date of notification of the decision.

Sixth- a- The contracting authority shall not take any step that would bring into force a procurement contract or framework agreement in the procurement proceedings concerned

- 1. Where it receives a complaint within the time limits specified in article 66-Second or
- 2. Where it receives notice of an application for review from the Review Board.

b- The prohibition referred to in this paragraph shall lapse (7) days after the decision of the contracting authority has been communicated to the complainant and to all other participants in the review proceedings, after the expiry of the time period for the issuance of such a decision if no decision was rendered by the contracting authority, or upon the dismissal or other resolution of the complaint by the Review Board.

Seventh- The Directorate for Public Procurement at the Ministry of Planning shall follow the decisions issued by the Review Board in coordination with the concerned entities.

IV. ORGANIZATIONAL ARRANGEMENTS FOR PUBLIC PROCUREMENT

Article -67- Procurement Departments in procuring authorities

First -- With due consideration of the mechanism adopted in the Directorate for Public Contracts at the Ministry of Planning, each contracting authority shall establish, if not already existing, a permanent Procurement Department to carry out on an ongoing basis functions related to procurement, including planning and preparation of procurement proceedings, conducting various stages of the procurement proceedings, and providing secretariat support to the

respective procurement committees. The procurement departments shall be staffed by trained procurement professionals, in accordance with programs and requirements established pursuant to article 70-Sixth.

Second -- The procurement departments provide the respective bid evaluation committees with the necessary secretariat services, including in obtaining the necessary technical expertise when such a need may arise in the evaluation of bids.

Third -- The Directorate for Public Contracts at the Ministry of Planning may issue waivers from the requirement referred to in paragraph (First) to establish a procurement department in case of contracting authorities that do not have the requisite number of qualified staff.

Article -68- Establishing the bid opening committees

First-A Central Bid Opening Committee, or more than one, shall be formed in each procuring authority for the opening of bids. This Committee shall comprise experts and specialists, and shall be headed by an employee whose grade is not less than a director or chief engineer, with members representing the legal or finance directorates, and the contracting offices, and secretary whose job title is not less than superintendent. The said Committee shall be replaced on a periodical basis every (6) months-mandate, with a maximum of one additional continuous extension.

Second- It is permissible to form Bid Opening Committees within the department affiliated to each procuring authority. Each of these committees is formed as stipulated in the paragraph First of this article.

Article -69- Bid analysis and evaluation committees

Formation of Bid Analysis and Evaluation Committees and their Tasks:

First – A Bid Analysis and Evaluation Committee, or more than one, shall be formed in each procuring authority to analyze and evaluate the technical, financial, and legal aspects of bids. The Committee is headed by a specialized and experienced employee whose job title shall be not less than a director or chief engineer. The members of this Committee shall be specialized technicians including legal and financial persons, and a secretary whose job title is not less than superintendent.

Second – The Committee shall perform its functions for the duration set forth in the document ordering its formation issued by the head of the contracting authority. The said Committee shall be replaced on a periodical basis every (6) months-mandate with a maximum of one additional continuous extension.

Third – The Committee may seek assistance from other specialized parties who are experienced in the nature of the bid in question. The recommendations of Bid Analysis and Evaluation Committees shall be approved by the head of the contracting authority or whoever he delegates in accordance with his financial powers, for the purposes of the contracting.

Fourth– It is not permissible to combine chairmanship and membership of Bid Opening Committee and Analysis and Evaluation Committee.

Article -70- Directorate for Public Contracts

The Directorate for Public Contracts at the Ministry of Planning shall undertake the following:

First – Monitor and facilitate the development of the legal framework for public procurement, including at the legislative and sub-legislative levels, and submit proposed normative texts to respective executive authorities for approval

Second – Issue controls to organize the contractual relations between the Region’s agencies and the contractors, and determine the consequences of the contractors’ violation of their own contractual obligations.

Third-Issue and revise the standard bidding documents and general conditions for public works contracts and the conditions for the supply of goods and services, and for such other types of procurement as the Directorate may see fit, and for mandatory use by contracting authorities to the extent determined by Ministry of Planning.

Fourth-Evaluate the tasks and the procedures of the Bid Opening and Analyzing Committees at the Region’s departments and to recommend revising them as necessary.

Fifth-Provide answers to the queries of the Region’s department and other contracted entities on methodological issues that are related to their procurement functions.

Sixth-Train and improve the capacities of the employees working in procurement at the contracting authorities and promote the development of a professionalized procurement workforce, and coordinate with the professional organizations concerned with procurement for the training and capacity building of corporate employees, provided that these organizations fund such activities. All the training programs for public procurement shall be subject to the oversight and follow-up of the Directorate for Public Procurements at the Ministry of Planning.

Seventh-Technically monitor, coordinate, and follow up the work of the newly introduced procurement departments in compliance with these Regulations.

Eighth --Facilitate the introduction of innovative practices in public procurement, including use of electronic means.

Ninth -- Systematically collect information on procurement activities.

Tenth --Establish single internet-portal webpage for publication of notices concerning procurement proceedings and other information in accordance with these Regulations, as well as other information as may be determined by the Directorate for Public Contracts at the Ministry of Planning, and create an online database, which will collect information and be continually updated and interactively searchable by the general public, and include but not be limited to:

- a. the number and total value, for all contracting authorities, of all contracts covered by these Regulations;
- b. the number and total value of all contracts covered by these Regulations awarded by each such contracting authority, broken down by categories of goods and services according to an internationally recognized uniform classification system;
- c. the number and total value of all contracts covered by these Regulations awarded by each such contracting authority broken down by each procurement method;
- d. all procurement contracts; and
- e. the dates of the key steps in each procurement transaction, from the requisition through to the completion of the contract.

Eleventh -- Pending the establishment of the single-portal website pursuant to paragraph Tenth, publication requirements in these Regulations that refer to publication on the single-portal website shall be fulfilled by publication in other media accordance with these Regulations. Where a particular provision in these Regulations refers only to publication on the single-portal website, pending the establishment of that website, publication shall be made on the website of the concerned ministry or other suitable media.

Twelfth—The procuring authorities shall bind their contracting authorities to coordinate their contracting plans with the Directorate for Public Contracts at the Ministry of Planning, and provide it with the required data for the purposes of the follow up and technical monitoring of their work when initiating the execution of their contractual activities.

Article -71- Procurement Complaint Review Board

First -- For the purposes of providing independent administrative review of complaints from bidder pursuant to article 66of these Regulations, the Council of Ministers shall establish the Procurement Complaint Review Board (Review Board). The Review Board shall carry out its duties in an autonomous manner.

Second -- The members of the Review Board shall be appointed for a term of two years, and shall be eligible for one consecutive reappointment.

Third – a- The membership of the Review Board shall consist of:

1. Five (5) members appointed by the Council of Ministers from among persons nominated by:
 - i. Kurdistan Engineers Association / Union
 - ii. Bar Association;
 - iii. Scientific Chartered Accountants Society;
 - iv. Kurdistan Contractors Union;
 - v. Federation of Chambers of Commerce and Industry;
2. Two (2) members appointed by the Council of Ministers from among
 - i. NGO/civic association dealing with good government/ anticorruption issues;
 - ii. NGO/civic association dealing with sustainable development issues;

3. Three (3) other members appointed from among public officials, experienced in procurement, by the Council of Ministers;
 4. A Chairman appointed by the Council of Ministers from among the persons appointed under paragraph (a-3).
- b- Each of the organizations listed in paragraphs (a) 1 and 2 shall provide the CVs of two nominees.
- c- The Director of the Directorate for Public Contracts at the Ministry of Planning shall appoint a Secretary of the Review Board from amongst the staff of the Directorate.

Fourth --The members of the Review Board and its secretary shall be paid such allowances as may be determined by the Council of Ministers.

V. CONTRACT ADMINISTRATION AND IMPLEMENTATION

Article -72- Drafting the contract

First-a- All contracting departments shall organize their contracts in coordination with the legal, technical and financial departments and the beneficiary agencies. The said contracts shall include provisions related to tender conditions or invitation as well as any additional conditions agreed upon by the parties to guarantee the safety of implementation, provided that these additional conditions (if any) do not alter the core of the tender.

- b- Where applicable, general conditions of contract that are issued by the Ministry of Planning shall be utilized. In addition to the general conditions of contract, any particular conditions for the specific goods, works, and non-consulting or consulting services to be procured or provided are included in the contract.

Second- Public contracts should include text to collect government debts according to the Law for Collecting Government Debts No. 56 of 1977 and any amendments thereto.

Third- Contracts shall include names and addresses of parties authorized to sign contracts and delegation documents according to the applicable procedures provided that these procedures are effective at the time of contracting and issued within a maximum period of (6) months prior to the contract signature.

Fourth --The start date of a contract shall be defined in a manner that takes into account the applicable circumstances and conditions, including the timing of contract signatures, the availability of required documents, calculation of working days, the timing of site handover, the establishment of letters of credit and the time involved, the contractor's responsibility to plan and schedule, and the need to permit case-by-case determination of the start date.

Fifth-The contracting authorities shall inform the Ministry of Planning, the Ministry of Labor and Social Affairs, the Central Statistics Department, the Companies' Registration Department, and the Public Tax Authority of the name, address, and nationality of the contractor, as well as the

amount and duration of the contract, immediately after completing the contract signing procedures.

Sixth --The contract shall specify the law governing contracts concluded between the procuring authorities on the one side, and Iraqi and foreign contractors on the other side. The contract shall provide that the laws and regulations in force in the Region should apply and the Region courts and that dispute settlement, the competent Region judicial authorities shall have jurisdiction over related disputes.

Article -73- Subcontracting and assignment

First --The contractor may subcontract part of the contract works to sub-contractors only with the prior written approval of the contracting authority. The subcontracted part shall not exceed 30% of the estimated value of the contracted works, or other percentage set in the bidding documents, provided that the contractual responsibility remains with the principal contractor for the implementation of the contract.

Second --The contractor employed by government agencies may not assign the contract to another contractor unless **in cases of extreme necessity**, and provided that he obtains the prior written approval of the head of the contracting authority, and that the new contractor meets the qualification standards and the legal conditions set forth in the bidding documents and accepts to implement the contract at the same price.

Article -74- Payment

First --Subject to the terms of the procurement contract, payment shall be made on the basis of the submission of a proper invoice. To be considered proper, an invoice shall set forth the information specified in the instructions issued under these regulations and in the applicable contract conditions.

Second --The contracting authority may disburse an advance payment to the contractor in the form of a zero interest loan for the purpose of work preparation in line with its Region Annual Budget Implementation Regulations, in exchange for an unconditional letter of guarantee from the contractor in the same amount and currency, issued by an authorized bank in Kurdistan Region or by a foreign bank together with a letter of guarantee from an authorized bank in Kurdistan Region. The procurement contract shall stipulate a payment schedule for reimbursement of the advance payment.

Third – a- The procurement contract may provide for the making of progress payments. Progress payments may be issued in accordance with the progress of performance of the procurement contract, upon presentation by the contractor and acceptance of such documentation by the contracting authority as required by the procurement contract to evidence the progress in performance.

- b- A ten percent (10%) (Retention money), but not exceed five percent (5%) of the contract value, shall be withheld from the periodic progress payments until performance of the procurement contract is completed. Half of the retention shall be released after initial acceptance and the remaining half after the final

acceptance. Suppliers / contractors may be allowed to replace the last half of the retention money with an equivalent security in the form of a bank security.

- c- Advance payments of the supplied materials and machinery shall conform to the special implementation provisions stated in the applicable general conditions of contract.

Fourth -a- The procurement contract provisions shall rule opening letters of credit to cover foreign purchase contracts for supply of materials and service purchase when contracting.

- b- If the procurement contract provides for payment by way of letter of credit, after awarding the contract, obtaining the performance bond, and duly signing the contract, shall take the necessary procedures to open a letter of credit (irrevocable and unconfirmed) or a revolving letter of credit(irrevocable and unconfirmed) in accordance with the relevant conditions set forth in the procurement contract and in accordance with applicable instructions issued by the Ministry of Finance and Economics concerning use of letters of credit by contracting authorities.

Fifth --Subject to the terms of the procurement contract, the contracting authorities may agree with their contractors, whenever they deem it appropriate, to pay the prices of equipment and tools of imported materials and products in the local currency instead of opening bank credits.

Article -75-Administering delivery, inspection and receipt

First --The contracting authority, or other entity responsible for contract administration, shall promptly inspect and receive all contracted goods, services or works, supplies and verify their conformity with the requirements specified in the procurement contract.

Second -- The procurement contract shall specify the obligations of the contractor as to the inspection and testing of quality, and the rights of the contracting authority (or other entity responsible for contract administration) to inspect, including to observe and receive reports on all aspects of the performance of the contractor.

Third --The contracted shall at its own expense place at the contracting authority's disposal any premises, facilities and personnel needed for normal inspections. The contracted and the contracting authority shall each bear the expenses for the attendance of their respective representatives at the inspection.

Fourth --The contractor shall rectify any deficiencies and omissions at its own expense.

Fifth – The contracting authority shall issue the Order for the substantial completion of works upon supplier / contractor / consultant written request and attested by the resident engineer following verification of completion of the works to the extent that they can be utilized in accordance with the purposes of implementation and ready for accommodation. Such Order implies that:

- a. Cease continued deduction of the penalties, if applicable.
- b. Start of the Defects Liability Period for the completed works.

Sixth – Acceptance / Hand-over Certificates of the completed works:

- a. Initial Acceptance Certificate – The contracting authority shall form the Initial Hand-over Committee within (14) days from date of issuance of the Order of Completion. The said committee shall inspect and test verify the completed works and prepare a report to include for the date of the substantial completion with all contractual implications set out in paragraph Fifth-a and b of this Article.
- b. Final Acceptance Certificate – This certificate should be issued by the contracting authority or any other concerned entity responsible for the contract administration within a short time period after the lapse of the Defects Liability Period and contractor's rectification of all defects, if applicable, and the works are finally handed over.

Article -76- Ensuring quality of contract performance

First --The contracting authority or other entity responsible for contract administration shall monitor, inspect and receive all contracted construction works, goods and services and verify compliance thereof with the technical, legal and financial specifications and conditions specified in the bidding document and the contract.

Second --The contracting authority or other entity responsible for administration of the contract shall form one or more Acceptance and Inspection Committees, taking into account the nature of each purchase. The committees shall conduct inspection and acceptance of contract performance in accordance with the procurement contract. Committees may request the assistance of technicians and experts upon need.

Third – Unless the necessary technical staff are unavailable to the contracting authority, an Acceptance and Inspection Committee shall not comprise members who have participated in drafting technical conditions and specifications and other bidding documents, or analysis, evaluation and supervision procedures. Nonetheless, said persons may; upon approval of the head of the contracting authority, assist the Committee.

Fourth --Minutes of meetings of the Acceptance and Inspection Committee shall be recorded on the prescribed form and signed by all the members. Decisions issued by a committee as to whether the contract was executed correctly or rejection of supplied items shall be deemed final upon approval thereof by the head of the contracting authority (or of the other entity responsible for contract administration). Any reservations by a member of the Committee on what is stated in minutes shall be recorded therein, along with the ground for the reservation, and signed.

Fifth --In the case of defects in the performance, the contractor shall be notified of the defects or shortfalls in the performance and shall rectify any deficiencies and omissions at its own expense within the notice period, otherwise, the contracting authority shall directly rectify such defects at contractor's own account.

Sixth-In the case of procurement of goods, the contracting authority shall follow up the shipping process and receive the seller's notice that accurately indicates the shipment details of the goods, taking into account the following:

- a- Facilitating customs clearance procedures for equipment or received materials in order to facilitate the arrival at warehouses.
- b- Expediting the special procedures for clearance and loading as soon as possible within the specified timeframes to avoid paying fines (demurrage) for the late delivery of goods to the airport or customs.
- c- Expediting the discharge process as soon as possible within the specified timeframes and unload the ships to avoid demurrage.

Seventh-The contracting authority or other entity responsible for contract administration shall prepare the equipment and usage tools in storage units for the purpose of completing the procedures of discharge and initial receipt of received goods without delay taking into account the status of received goods for the purpose of securing insurance rights.

Eighth-The contracting authority or other entity responsible for contract administration shall follow up the engineering inspection procedures for the received items and issuing the inspection and acceptance certificate within the period determined in the contract based on the date of receipt of the materials.

Article -77-Settlement of disputes in contract implementation

First --The procurement contract shall specify the substantive law applicable to the contract and the manner in which disputes that might arise in the implementation of the procurement contract are to be settled. In the absence of an arbitration clause, the procurement contract shall specify the court competent to settle contract disputes.

Second --In prioritizing the amicable settlement of disputes through negotiation, the procurement contract may provide for techniques including a cooling-off period for negotiation prior to any resort to litigation or arbitration. To assist parties in amicable settlement of disputes, the procurement contract may provide for the appointment of third parties to aid in the settlement of disputes, in forms such as conciliation and mediation, and related techniques involving the appointment of dispute-experts or adjudicators, or dispute review boards, and the related appointment procedures for such third-party facilitators.

Third --The parties to the procurement contract may agree in the procurement contract or in separate agreement, to submit disputes arising in contract to arbitration. In such cases, the agreement to arbitrate disputes shall stipulate the institutional setting for the arbitration, the procedural rules to govern the conduct of the arbitration, and the location of the arbitration.

Fourth --If the procurement contract does not include an arbitration clause, and a separate agreement on arbitration is concluded, it shall be in writing and signed by both parties. When an arbitration clause or agreement is invoked, the parties shall continue performance of the contractual obligations thereof.

Fifth --Kurdish or Arabic shall be the language of arbitration, unless otherwise stipulated in the relevant contract document.

Sixth -- The contracting authority may opt for international arbitration to settle the disputes, provided that the contract provides for such a procedure, and when one of the parties to the contract is international, while taking into account the procedural mechanism agreed upon in the contract when using this procedure, and the requirement to select one of the accredited international arbitration associations to settle the dispute.

Article -78- Contract term and extension

The contracting authorities shall abide by the following procedures when extending contracts:

First- The contractor shall implement the contract within the period set forth in the contract starting from the day when the contract was signed, or any other date stated in the contract. When extending contracts the following shall be taken into account:

- a- If, due to circumstances beyond the control of the contractor, any increase or change occurs to the different types of works or to the quality or quantity of the required materials (within the acceptable limits) thus affecting the course of the implementation and rendering its completion within the period agreed upon in the original contract impossible.
- b- If the delay in the implementation of the contract is caused by reasons or procedures related to the contracting authority or any duly authorized entity, or by any reason related to other contractors employed by the contracting authority.
- c- If exceptional circumstances unforeseeable at the time of contracting, and unavoidable, occur.

Second-The procurement contract shall provide that a contractor seeking to invoke circumstances such as those referred to in paragraph First, shall notify the contracting authority (or other entity responsible for contract administration) in writing of the relevant circumstances within a period not exceeding (30) days after the contractor became aware, or should have become aware, of the relevant event or circumstance, providing accurate and complete details regarding the extension. The contracting authority shall look into the application and decide on the matter within a period not exceeding (60) days for all types of contracts, starting from the date of receipt of the application.

Third – Any request for extension after the issuance of the order of substantial completion of the contract works shall be rejected.

Article -79-Price adjustment

First -- The price of a procurement contract shall be considered a fixed price except in the case where, in the case of a contract of a duration longer than (18) months, or in the context of instability in market prices of essential components for contract performance, the contract

provides that price may be adjusted in response to changes in economic or commercial conditions and provided this is stated in the bidding documents and in the contract.

Second –If, with the prior approval of the Council of Ministers, the procurement contract provides for the possibility of price adjustment, in accordance with paragraph First, a price adjustment clause of the contract shall specify the timing for determining any price adjustments, the conditions which will justify the price adjustment, such as increases or decreases in the cost of materials, labor, and energy, the formulas and indices that will determine the amount of any price adjustment, and other procedures to be followed.

Article -80- Procurement contract modifications and variation orders

First -- The following apply generally to amendment modification of procurement contracts:

- a- Any modifications other than those referred to in paragraph d require a bilaterally agreed modification of the contract signed by both parties.
- b- Contract modifications, including variation orders, shall not result in an alteration of the basic nature or scope of the contract, and shall be in written form.
- c- An increase in value which raises the contract value by more than (25) percent requires either a new procurement proceeding or justification, if appropriate, as a single source procurement in accordance with article 45.
- d- For the purpose of dealing with unforeseen circumstances that arise in the implementation of the procurement contract, and as an exception to the rule in paragraph (a) that modification of the contract is subject to the agreement of both parties, the contract may permit the representative of the contracting authority or other official designated in the procurement contract to issue a variation order requiring the contractor to implement technical changes, or changes in the quantity, or delivery time of, the goods, works or services to be supplied, for which the contractor should comply.
- e- Contract modifications and issuance of variation orders shall be subject to the stipulations of the Region Annual Budget Implementation Regulations, and only when the use of such modifications and variation orders is more economical than engaging in fresh tendering proceedings.
- f- Contract modifications and variation orders shall not be issued without ensuring prior approval by the competent authority for financial implications and the commitment of funds to cover the cost of the contract modification or variation order, taking into account the authorities granted the applicable allocation and prevailing delegated authorities.
- g- Additional and modified works, and other types of contract modifications and variation orders, shall only be implemented by virtue of a written agreement signed by both parties or a variation order issued by the contracting authority or its representative according to the contract terms, and including a brief description of the work, its quantities, prices, and the required extension (if any) of the contract duration. In cases where such extension is not needed, it shall be explicitly stated in the contract modification or variation order, provided that this does not conflict with the terms of the tender.

- h- Any modifications and variation orders shall be documented and those documents shall be included in the record and procurement file referred to in article 18.
- i- The possibility to make modifications to the quantities and costs of public works and goods contracts, consultancy services and non-consultancy services contracts within the prevailing annual budget, whenever deemed necessary, without exceeding the assigned ceiling in the contract during the duration of contract implementation at the same prices of the bills of quantities, providing availability of fund allocations in the Region Annual Budget and in accordance with contract and bidding documents terms.

Second- All communications related to the orders of work modification or addition shall be expedited and prioritized. The contracting authority shall decide on these orders within the timeframe stated in article 78- Second.

Third --In the case of works contracts, it shall not be permissible to modify the works agreed upon or to order additional works, or new quantities, unless in cases of justified necessity, and in keeping with the provisions of paragraph First - i, and provided that the modification occurs within the most limited scope possible and pursuant to the general conditions of works contracts, the contract terms, and the prevailing, and when one of the following occurs:

- a- When the timely completion of the work is threatened or a huge technical and financial damage is likely to occur unless some works are modified or added.
- b- When the contractual work or supply will be ineffective or of no use after its completion unless some works are modified or added.
- c- When the modification or addition does not entail substantive change to the service or to the production potential of the project or work.
- d- When the modification shortens the duration of the contract, provided that it does not undermine the technical specifications of the works or project.

Fourth- The contracting authorities shall determine the modifications or additional works needed in the contract as early as possible and in a manner that does not affect the work progress according to the agreed timetable.

Fifth- Additional works and modifications shall be priced according to the general conditions of works contracts. If the new items to be added have no equivalent or matching items in the contract, their pricing shall then be based on the common market prices, with the administrative expenses and profits added thereto with due consideration to the Region Annual Budget Implementation Regulation.

Article -81- Performance security

First -- The bidding documents, as confirmed in the procurement contract, shall require the winning bidder to provide a security for the performance of the contract, listing the beneficiary and the name of the project or procurement as specified in the bidding documents.

Second --The amount of the security varies depending on the magnitude of the works. The performance security for all contracts is determined at a rate of (5%) five percent of the contract amount, except in the case of supply and installation contracts, where the amount

should not exceed (10%) ten percent, with due consideration to the provision of Clause 11-Fifth, upon the issuance of the award letter yet prior to the winning bidders' signing of the contract. Performance securities are issued by an accredited bank in the Region or a foreign bank accredited by the Central Bank of the Region. Performance securities may only be released after the due issuance of the final acceptance certificate and the clearance of final accounts. Releasing partial amounts of the total performance bond amount is allowable after final receipt of the said parts and the respective issuance of the final acceptance certificate, thus confirming that the said parts are qualified for use.

Third --The contracting authority may request the supplier / contractor to increase or decrease the amount of the performance bond in accordance with the variances in contract value.

Article -82-Delay penalties

First -- The procurement contract shall provide for the payment of penalties at a stipulated rate for delay in performance of the procurement contract. The contracting authority sets the ceiling for delay penalties at a percentage not exceeding 10% of the contract value and the rate of the penalty per day of delay, and the ceiling of penalty payments that may become due, shall be confirmed in the contractual terms, the bidding documents, and the instructions to the bidders. The delay penalty shall not absolve the contractor for liability for full performance of the contract.

Second -- The total amount of delay penalties potentially due charges may be reduced according to the percentage of completion of contracted works determined in the contract timetable. The performed work, supplied good, or required service shall be implemented in line with the specifications and terms of the contract, and shall be qualified for use.

Third --Mechanism for assessing the daily delay penalty: Unless otherwise specified in standard bidding documents or instructions issued by the Directorate for Public Contracts at the Ministry of Planning pursuant to art. 70-Third, the daily delay penalty shall be assigned as a lump sum amount and shall be included in the bidding documents and contract.

Article -83- Termination of contract in the public interest

First --The procurement contract may provide that the contracting authority may terminate the contract in the public interest. In this case, the contracting authority shall pay for the value of work that has been completed, the material that has been ordered, the goods or services that were procured, and the reasonable cost of works to remove equipment and return foreign workers brought from abroad specially to work on the project, and the costs that the contracted incurred for the purpose of insuring works or goods, wherever it applies, deducted from this the advance payments that the contracted received up to the date of informing him of the termination of the contract. No money shall be paid for profits that were not realized. The contracting authority shall not terminate the contract pursuant to this paragraph in order to implement the contract by itself or arrange to implement by other party.

Second -- Despite the terms stated in paragraph First, the contracting authority must accept and receive the completed ready-for-shipment goods within seven days from the date that the

contractor receives the notice of termination of the contract in the public interest; the contracting authority must accept the goods at the price and terms stated in the contract.

Article -84-Breach of contract by the supplier / contractor / consultant

If the supplier / contractor / consultant breaches any of the terms of the contract, the contracting authority has the right to exercise remedies including:

First -- Rejection of defective contract performance;

Second --Prompt removal and replacement of defective goods or other defective performance;

Third --Delay penalties

Fourth --Withdrawal of the contract works and completion of the contract at the defaulting contractor's own expense.

Article -85-Withdrawal of contract works and termination of contract

First -- The procurement contract shall refer to grounds on which the procurement contract, in accordance with its provisions, may be withdrawn or terminated. The grounds for termination shall include:

- a. Termination by the contracting authority for convenience (public interest), in accordance with article 83;
- b. Termination pursuant to the *force majeure* clause in the contract.

Second --The grounds for withdrawal of the contract works shall include

- a. Withdrawal of the contract works by the contracting authority on the grounds of default of the supplier / contractor / consultant in the performance of the contract;
- b. Withdrawal of the contract works on the grounds of insolvency of the supplier / contractor / consultant;

Third -- Without prejudice to article 84, a contract shall not be withdrawn or terminated unless all possible alternatives to resolve the relevant conflict are exhausted, except in the case when withdrawal or termination of the contract is the proper action in accordance with the contract.

Fourth -- The decision to terminate the contract, or withdraw and implement the contract by replacement performance at the expense of the supplier (contractor), shall be issued by the competent official at the contracting authority; the decision shall be notified to the contractor by a letter to be sent to the supplier's / contractor's / consultant's address as shown in the contract. The completion of the contract shall take place using one of the procurement methods in accordance with these Regulations.

Fifth-- The procurement contract shall describe the financial settlement and compensation that may have to be made in the event of termination, including payment by the contracting authority for any work, deliveries or services satisfactorily performed.

Article -86- Performance Security Forfeiture

In case of implementing the contract at the expense of the contractor, the contracting party has the right to confiscate the value of the performance security, in accordance with the terms of the procurement contract and the performance security.

Article -87- Compliance with laws and regulations

First-All effective and relevant public contracts laws, instructions, and regulations should apply.

Second- Compliance with the effective regulations when preparing the final account documents of projects.

Third- The contracting authorities shall not include in the contracts a stipulation exempting the contractor, whether national or foreigner, from financial charges, taxes, and custom duties.

Fourth- A discharge and waiver certificate shall be obtained from the contracted parties approved by the competent officer in financial departments and the head of the contracting authority when settling their accounts for projects that they have implemented. The said certificate shall confirm that the concerned contracted party has received all its financial and legal rights related to the implementation of the project, and thus, is not entitled for any compensation in the present or future.

Article -88- Region Annual Budget Implementation Regulations

The procuring authorities should comply with the Region's Annual Budget Implementation Regulations on the procurement of the Region's departments and public sector, as well as the authorities granted to the concerned entities when implementing the projects listed in the budget.

VI. ETHICS AND CONDUCT STANDARDS IN PUBLIC PROCUREMENT

Article -89-Professional and ethical obligations of public officials

First --A public official involved in requisitioning, planning, preparing and conducting public procurement proceedings and administering the implementation of procurement contracts, shall:

- a- Discharge his or her duties impartially so as to assure fair competitive access to public procurement by bidders and proper implementation of procurement contracts;
- b- Always act in the public interest and in good faith, and in accordance with the objectives and procedures set out in these Regulations;
- c- At all times avoid corrupt, fraudulent, coercive or obstructive practices, conflicts of interest, and the appearance of conflicts of interest, in carrying out his or her duties and conducting himself or herself, including declaring and recusing themselves promptly when any indication of a possible conflict of interest arises;

- d- Together with any other authorized persons participating in the contracting process, keep confidential the information that comes into his or her possession relating to public procurement proceedings and to bids, including bidders' proprietary information;
- e- Not take up a position of authority in any private concern with which he or she had official dealings for a period of two years after leaving the public service.

Second --Procurement-related activities of public officials on behalf of the contracting authority that are subject to the conflict of interest restrictions referred to in paragraph First include in particular the following:

- a- Procurement planning, including preparation, review or approval of the bidding documents, specifications or a statement of work for a particular procurement;
- b- Assessment of requirements to be fulfilled by a procurement action;
- c- Preparation of procurement documents, including for solicitation of participation in procurement proceedings;
- d- Evaluation and comparison of bids, proposals, offers or sealed quotations, including membership in Procurement Committees and Bid Evaluation Committees;
- e- Conduct of technical discussions or negotiations;
- f- Selection or approval of selection of bidder; and,
- g- Administration of the procurement contracts, including payments, and settlement of claims and disputes.

Article -90-Declaration and disclosure of conflicts of interest

First -- Public officials at any level, including members of various procurement committees, shall disclose any and all actual or potential conflicts of interest and shall recuse themselves from any participation in a procurement proceeding affected by any such conflict of interest. Any such report and request for recusal shall be made a part of the record of the procurement proceedings.

Second -- All members of the procurement committee, and other concerned officials, prior to commencing evaluation and comparison of bids, or exercising any approval, endorsement or other function related to a procurement, shall sign a declaration to the effect that they have no relationship with contractors of the following types:

- a- a marital or direct birth relationship, or other close family relationship, with a contractor participating in the procurement proceedings, with its legal counsel or with its officers;

- b- during last three years has been employee or officer of a bidder participating in the procurement proceedings, or has held a financial interest in, or has a business relationship with, a bidder;
- c- is negotiating or has an arrangement concerning prospective employment in a bidder involved in the procurement proceedings.

Third --Any procurement committee member or other public officials responsible for any procurement-related activities who becomes aware that it has a relationship with a bidder referred to in paragraph Second shall immediately report that to the head of the procurement committee or his direct supervisor, who shall in turn inform the Secretary General, and shall request to be recused from participation in the procurement proceeding.

Fourth --Contractors (including their experts and other personnel, sub-consultants and sub-contractors) that have a relationship of the type referred to in paragraph Second with a professional staff member of the contracting authority (or of the client or project implementing entity or of a recipient of a part of the project financing) who is directly or indirectly involved in any part of the activities referred to in article 89-Second shall not be awarded the procurement contract.

Article -91-Employment restrictions

First -- Public officials of any grade or level who work in the field of public procurement must not accept, either directly or indirectly, any form of work or post with bidders or with any party to the procurement contract with the contracting authority with which the official is related.

Second -- Individuals who served as procurement employees or who exercised some other authority referred to in these Regulations with respect to procurement shall not:

- a- participate in any manner, as an employee, agent or representative of a supplier(contractor), in any negotiations or technical discussions leading to the award, modification, or extension of a contract for such procurement;
- b- participate personally or substantially on behalf of a supplier (contractor) in the performance of such a contract.

Third -- The restriction referred to in paragraph Second shall remain in effect for the duration of the procurement proceeding and contract, if any, and for a period of two years after retirement from the public post, whichever occurs later.

Article -92- Professional and ethical obligations of suppliers / contractors / consultants

First --Suppliers / contractors / consultants shall at all times abide by their obligations under these Regulations, procurement contracts, and other instruments applicable to their conduct and activities related to procurement.

Second --Suppliers / contractors / consultants shall not engage in or abet any practices in violation of the provisions of these Regulations issued pursuant thereto, including corrupt or fraudulent practices, coercive practices, collusion and obstructive practices, and shall avoid

conflicts of interest.

Third -- For the purpose of paragraph second, conflict of interest shall mean the following:

- a- If any main partner has participated in more than one application.
- b- If more than one applicant has the same legal representative for the purpose of bidding or Pre-Qualification.
- c- If the bidder has participated in more than one bid, all the proposals in which the bidder has participated shall be disqualified. A bidder, acting in the capacity of a subcontractor, may participate in more than one bid, but only in that capacity.
- d- If the applicant has participated as a consultant in the preparation of the design or technical specifications of the works or goods that are the subject of bidding or Pre-Qualification.

Fourth --A contracting authority shall reject a bid if the bidder commits any of the practices referred to in paragraph Second of this article, and shall promptly notify the rejection to the bidder concerned, undertake the necessary actions against him and inform the relevant entities of such rejection including the Directorate of Public Contracts at the Ministry of Planning.

Fifth --The bidding documents and the procurement contract shall refer to the prohibition of corrupt, fraudulent, collusive, coercive and obstructive practices. Activities prohibited pursuant to the provisions of these regulations shall include the payment to any person, including former government officials, of any amount or thing of personal or financial value in any manner for the purposes of illegitimately influencing the procurement proceedings.

Sixth --The bidding documents shall require bidders to disclose any contingent fee arrangements entered into for the purposes of securing the procurement contract.

Seventh --Bidders and contracted who engage in fraudulent and corrupt practices, collusion, or obstructive practices in connection with procurement are subject to prosecution pursuant to the applicable laws.

Article -93- Avoidance of conflicts of interest in consultancy services

First -- Consultants shall provide professional, objective and impartial advice and at all times hold the client's interests paramount, without any consideration for future work and strictly avoid conflicts with other assignments or their own corporate interests.

Second -- Consultants (including their personnel, sub-consultants, or sub-contractors), nor any legal entity or individual that directly or indirectly controls, is controlled by, or is under common control with those legal entities or individuals, shall not be hired for any assignment that would, by its nature, be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the contracting authority. For example, consultants hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project; consultants assisting a client in the privatization of public assets shall not purchase or advise purchasers of such assets.

Third -- Without limitation on the generality of the rule referred to in paragraphs First and Second, consultants shall not be hired under the circumstances set forth below:

- a- A firm which has been engaged by the contracting authority to provide supplies or works for a project, or any of its affiliates, shall be disqualified from providing consulting services for the same project;
- b- Conversely, a firm hired to provide consulting services for the preparation or implementation of a project, or any of its affiliates, shall be disqualified from subsequently providing supplies or works or services related to the initial assignment. This provision does not apply to the various consultants, contractors, or suppliers that together are performing the supplier's (contractor's) obligations under a turnkey or design and build contract.

Article -94- Debarment

A contractor may be debarred from participation in public procurement in accordance with the procedures and only on the grounds specified in the effective Region Bylaw for Contractors Classification.

Article -95- Cancellation of existing texts

Upon entry into effect of these Regulations, the following instruments are cancelled:

- a- Regulation for the Implementation of Public Contracts No. (1) of 2011.
- b- Instruction No. (2) of 2011 on Pre-Qualification.
- c- Regulations No (1) of 2013 for Executing Projects through Direct implementation.
- d- Any regulations or other stipulations that contradict with the provisions of these regulations.

Article-96. Annexes; Issuance of instructions and explanatory notes

First – a- The annexes to this Regulation form an integral part of the Regulation.

b- The Minister of Planning shall issue procedures for procurement of Public-Private Partnerships, which shall be annexed to and form an integral part of this Regulation.

Second --The Minister of Planning may issue instructions and explanatory notes related to the implementation of these Regulations.

Article-97. Entry into effect

These Regulations shall be published in the Official Gazette of the Region, and shall enter into effect 150 days following the date of publication.

Dr. Ali Sindi

Minister of Planning

Annex A: Specification of Monetary Thresholds, Time Periods and other numerical values

Art.	Subject	Numerical value
12, 26-First, 23-Third-d	Minimum time period for submission of bids	14 days
50-Second,	Minimum time period for submission of expression of interest	14 days
	Minimum time period for submission of application to prequalify	Local: 21 days International: 28 days
17-First,	Time period for submission of debriefing request	7 days
17-Second,	Time period of response from contracting authority	7 days
27-Third	Value limits for the use of single source procurement for small contracts	Not exceeding IQD 1,000 million
34-Ninth	The percentages of domestic price preference	Goods: 7% Works: 5%
40-Third-a-	Duration of interval of prior notification of limited tendering	14 days
40-Third-b-	Minimum time period for submission of bids in limited tendering on the grounds referred to in art. 39-Third b-	7 days
43	Monetary ceiling on use of the request for quotations method	In accordance with the Region Annual Budget Implementation Regulations
45-Second and Third	Limits for additional deliveries	25%
50-Second	Threshold Estimated value of consultancy services for required publication of notice seeking expressions of interest	IQD 50 million

51—first - c	Minimum time period for submission of proposals	Local: 14 days International: 28 days
56--First	Ceiling for selection on the basis of consultant's qualifications	IQD 100 million

Annex B: Contents of record of procurement proceedings in accordance with article 18-Third

First – a brief description of the items to be procured, or of the procurement need;

Second – a reference to the specific relevant provision in the annual procurement plan pursuant to which the procurement is conducted;

Third – date and duration of publication of the invitation to bid, or, if applicable, the notice seeking applications for prequalification or expressions of interest in inclusion in short-list of consultants;

Fourth – the names and titles of the members of the applicable committees and the officers in the Procurement Department that conducted the procurement;

Fifth – grounds and circumstances for selecting procurement methods other than open tendering when procuring supplies, works or non-consultancy services;

Sixth – grounds and circumstances for selecting procurement methods other than request of proposals when procuring consultancy services;

Seventh – in the case of a framework agreement procedure, a statement of the reasons and circumstances upon which it relied to justify the use of a framework agreement procedure and the type of framework agreement selected;

Eighth - the price, or the basis for determining the price, and a summary of the other principal terms and conditions of each procurement transaction;

Ninth – identification of any bidders refused participation and the grounds therefor;

Tenth – Information relative to the qualifications, or lack thereof, of bidders that submitted prequalification applications, if prequalification proceedings were conducted;

Eleventh – the names and addresses of bidders that submitted bids and the name and address of the bidder with whom the procurement contract is entered into and the contract price and duration;

Twelfth – a statement of financial receipts paid by the bidders in return of obtaining bidding documents and, if applicable, prequalification documents;

Thirteenth – information on reporting of conflicts of interest and the requests of procurement committee members or other officials to be recused from participating in the procurement proceedings;

Fourteenth – a summary of any requests for clarification of the pre-qualification or bidding documents, the responses thereto, as well as a summary of any modification of those documents, and a summary of the questions and clarifications at the pre-bid conference with the bidders, if one was held;

Fifteenth – the date and time of arrival of each late bid;

Sixteenth – a summary of the evaluation and comparison of bids including the application of any margin of preference pursuant to article 34-Ninth of these Regulations;

Seventeenth – If any sustainable procurement policies were considered in the procurement proceedings, details of such policies and the manner in which they were applied;

Eighteenth – If no standstill period was applied, a statement of the reasons and circumstances relied upon by the contracting authority in deciding not to apply a standstill period;

Nineteenth – ground for rejecting any bids;

Twentieth – reasons for cancelling and re-conducting the procurement proceeding;

Twenty First – if a successful bidder in tendering proceedings fails to enter into a procurement contract, a statement of the circumstances involved;

Twenty Second – In the case of a complaint under article 63, a summary of the subject matter of the complaint, the key procedural steps in the processing of the complaint, and of any decisions issued and remedies applied at any stage of the complaint review process; if a complaint is withdrawn or settled at any stage of the review process, a statement of the reasons for the withdrawal and the terms of any settlement;

Twenty Third – any information required to be registered pursuant to the provisions of these Regulations issued pursuant thereto.

Annex C: Schedule of permissible fees for bidding Documents

Approved Budget for the Contract (in Iraqi Dinar/million)	Maximum Cost of Bidding Documents (in Iraqi Dinar/thousands)
Less than 100	50
More than 100 and up to 500	100
More than 500 up to 1,000	200
More than 1,000 and up to 3,000	250
More than 3,000 and up to 5,000	500
More than 5,000 and up to 10,000	1,000
More than 10,000 and up to 25,000	2,000
More than 25,000 and up to 50,000	4,000
More than 50,000 and up to 100,000	5,000
More than 100,000	From 5,000 to 10,000

Annex D: Additional procedures for the direct implementation method

Article (1): Definitions used in this Annex are as follows:

- 1. Implementing Party:** The party that inserted the project in the annual budget (notwithstanding what was stated in paragraph First-c of article 2 of this Annex).
- 2. Beneficiary:** The party that will benefit from the project upon completion and be responsible for executing part of the activities as stated in these Regulations.
- 3. Project Execution Committee:** The committee that was formed by Procuring Authorities to execute the project through direct implementation based on these Regulations.

Article (2)

First: Project Insertion Conditions:

- a. The Implementing Party must insert the project in the annual plan and the annual investment budget and send the same to the Ministry of Planning, along with the technical report that displays the project components and the material and human capacities of the Implementing Party for the purpose of reducing project cost and execution period, while guaranteeing the quality of the work required.
- b. The Implementing Party may suggest the execution of some of its projects through direct implementation to the Ministry of Planning, with the required proof enclosed. The Ministry of Planning makes its decision upon ascertaining the availability of the requirements of project execution through the direct implementation method at the Implementing Party in accordance with these Regulations.
- c. The President of the Implementing Party may, in accordance with the Regulations to execute the KRG budget, use this method to execute projects (renewal, maintenance, expansion, some works and emergency items) funded by the current budget, while notifying the Ministry of Finance, Economy and Ministry of Planning of the same.
- d. The contracting party may use the direct implementation method after ascertaining the unfeasibility of executing the project through the tendering method (after implementing the tendering procedures), project execution through (the subcontracting party which shall execute the project in all fairness), or upon the withdrawal of the contract from the contractor, provided that the necessary material and human capacities are met in addition to the compliance with what was stated in the (Third Paragraph/2) of these Regulations, and while notifying the Ministries of Planning, Finance and Economy of the same.

- e. Approval may be obtained from the Presidency of the Council of Ministers for the execution of some projects pertaining to security or of a confidential nature, to be executed by Government Institutions.

Second: Administrative and Organizational Aspect:

- a. The Direct implementation Committee shall be formed based on a ministerial order or administrative order, in accordance with the regulations of the Ministry of Finance and Economy.
- b. The beneficiary shall supervise and follow up on project execution in accordance with what was stated in the contracting conditions and specifications.
- c. An agreement shall be concluded between the Project Implementing Party or its authorized representative and the Project Execution Committee for the purpose of executing the project, encompassing all project information in addition to the specifications, designs, drawings, bills of quantities, conditions, project execution period and cost by virtue of the draft agreement commonly prepared by the Implementing Party.
- d. Project Execution Procedures shall be similar to any other project executed by way of hiring a contractor, as well as in terms of achievement, receipt, executed works, maintenance period, etc.

Third: Project Cost and Period:

- a. Project cost shall be incorporated in the investment budget, except for conditional projects and activities included in the First Paragraph-c of this Article.
- b. The cost of projects executed through direct implementation shall not exceed (350,000,000) three hundred and fifty million Iraqi Dinars for all procuring authorities, except for the Ministries of (Construction and Housing, Municipalities and Tourism, and Electricity), Governorates and Independent Administrations, whereby the cost of the project executed for these three ministries shall not exceed (1,000,000,000) one billion Iraqi Dinars, except for projects executed according to the (First Paragraph-c of this Article).
- c. All procuring authorities, except for the three ministries (Construction and Housing, Municipalities and Tourism, and Electricity) can request that one of these three ministries, each within their competence, execute the project while transferring project cost thereto for the purpose of execution for projects which the estimated cost surpasses (350 million Iraqi Dinars) three hundred and fifty million Iraqi Dinars

and does not exceed one billion Iraqi Dinars to be executed through direct implementation by virtue of these Regulations,.

- d. The Implementing Party may use cost savings as a result of project execution through direct implementation, as it can execute other projects and activities through the same method and in the same financial year while notifying the Ministries of Finance, Economy and Planning of the same; whereas for the following financial year, the approval of the Ministry of Finance must be obtained, while notifying the Ministry of Planning of the same.
- e. The reserve percentage shall be in accordance with the Region Annual Budget Implementation Regulation and should not be exceeded unless approval is granted by the Ministry of Finance and Commerce.
- f. The supervision and control percentage shall be (3%) of the estimated cost amount and shall be spend by virtue of the KRG Annual Budget Implementation Regulations.
- g. (20%) of the estimated cost amount shall be spent as an advance payment to the Project Execution Committee.
- h. The Project Execution Period shall not exceed (180 days) one hundred and eighty days for projects with a cost of approximately (350,000,000 Iraqi Dinars) three hundred and fifty million Iraqi Dinars, and (300 days) three hundred days for projects with a cost exceeding (350,000,000 Iraqi Dinars) three hundred and fifty million Iraqi Dinars. The extension of the additional period shall not exceed (25%) of the project's main period, unless otherwise agreed with the beneficiary Ministry.