Accordance to paragraph (1) of section (14) of Coalition Provisional Authority (Dissolved) Order number (87) of 2004:–

We hereby promulgate the following:

**Regulation No. 1 of 2008**

Of

**Governmental Contracts Implementation**

Article -1- This regulation is issued to 1) clarify the general principles in implementing the governmental contracts (by state agencies and public sector) in the fields of procurement of public works, goods and other services, and consultancy contracts with Iraqi and non-Iraqi entities; 2) to regulate implementation methodologies; 3) designate authorized parties for opening and analyzing bids and awarding contracts; and 4) initiate an appeal to the Administrative Tribunal. The aforementioned objectives take into consideration that all procedures should be conducted in manner of transparency, competition, and integrity.

Article -2- First – The provisions of this regulation apply to the contracts that are concluded by the government contractual entities (the State agencies and the public sector) represented by the ministries, entities not related to a Ministry, provinces not related to a region, and the Regions. These concluded contracts mentioned above are with Iraqi and Non-Iraqi entities to execute state public works or consultancy contracts or providing good or services related to the said projects.

Second – The provisions of this regulation shall not apply to the projects and the public works of the government Contracts financed by International or Regional Organizations, executed according to agreements or special protocols with Iraqi parties. On the other hand, it is possible to take into consideration the given regulation if it is not included in the text of these agreements or protocols, and is consistent with the rules and regulations adopted by these organizations.

Article -3- First – All government contracting entities in ministries, non-ministerial agencies, provinces, and Regions should meet the following requirements prior to the preparation of the tender documents:

a- the Technical and Economic feasibility reports pre-approved by the Ministry of Planning and Development Cooperation (MoPDC) according to Regulation No. (1) of 1984 issued by the dissolved Council of Planning. When negotiating an additional project to be inserted in the investment project plan, the feasibility reports mentioned above must have the attached Project Petition Form (follow-up form for Investment projects
implementation) and should take the specialty of the rehabilitation projects into consideration.

b- the Cost Estimates Study for the project or the contract should be a part of the feasibility study as a measure to analyze the bids and award the contracts, taking into consideration the confidentiality of the task.

c- Availability of national federal budget allocation to implement the contract, or confirmed by the specialized authorities for the requests of the contractual parties’ needs. Any special project classification within the projects plan should be indicated in the bid documentations.

d- Verify that all terms, specifications, bills of quantities, drawings and others necessary for the implementation are to be accurate and completed to avoid any changes or additions in the contract during the implementation, taking the following into consideration:

1. Financial authorities authorized to make decisions on this subject in accordance with the federal budget law and its regulations;

2. Clauses concerning the implementation of the projects on the basis of a complete project (turn-key), mentioned in the investment projects regulation according to the federal budget law;

3. The prohibition of any increase in the quantities and the costs of the procurement contracts and consultancy services, for any given cost, during the contract’s implementation period, observing the given authorities in the federal budget law and regulations; and

4. The special controls and procedures issued by the Ministry of Planning and Development Cooperation to consider the contractors’ requests for compensation due to the increase in prices.

e- To have approvals from the competent entities regarding the location and use of the land, and allocation required for the project or the work when executing public works contracts.

f- To eliminate any existing legal and physical issues, including any land acquisition procedures, at the work site during the implementation of the public works contracts.

g- To have the work site completely prepared for the commencement of the work or at least in part in accordance to the approved time schedule.

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

Second- The value for a set of the bidding documents for the general and the limited tenders, including the two-phase tenders, is based on a relative pricing according to its importance and cost of preparation, to promote serious
participation therein. A bidder who has already participated in a restated
tender is required to include the receipt of its first participation in his renewed
bid. In case the purchasing prices of the restated tender documents are revised,
the bidder therefore bears the difference between the two prices, and must
submit both first and second receipts in his bid.

Third –
a- the advertisement is to be published in at least three daily national
newspapers that are widely distributed, considering one of which to be the
newspaper for advertisement that is issued by the Ministry of Finance; in case
the last said newspaper is out of print for any given reason, the advertisement
will therefore be published in another widely spread newspaper. The awardee
is responsible to bear the costs of publishing and advertising to the last
advertisement of the tender with the exception of the requests for the import
of medicine and food products, observing the provisions in Article – 5 - First
– c - (1) of the this regulation.

b – The advertisement for national public tenders is to be published in the
respective website and the announcement board of the contracting entity;
international public tenders advertisement shall also be published at the
commercial attachés office at the Iraqi embassies outside Iraq and the United
Nations’ business Development website (DGMARKET).

Article – 4 – The contracting entities shall adopt one of the following methods when
implementing the different types of budget projects or public contracts:

First – The public tender: The head of the contracting entity shall designate
the public tender as either national or international, taking into consideration
the nature and cost of the contract. The implementation of this category is
conducted through a public invitation to all who meet the requirements of the
participation and are willing to take part in the implementation of the different
contracts having a value no less than fifty million Dinars (ID 50, 000 000), or
any other value that is limited by the concerned parties taking into
consideration that the procedures should be based on open public access and
competition, fairness, and transparency.

Second – The limited tender: is carried out through a general invitation from
the contracting entity addressed to all who meet the requirements of the
participation and are willing to participate in the implementation of the different
contracts having values that are no less than (50 000 000), fifty
million Dinars or any other value that is limited by the concerned entity. The
said tender is to be made by two phases as follows:

a- Phase one: consists of submitting the special technical and financial
qualification documents of the bidders in accordance with the applicable
laws, for evaluation by a specialized committee at the contracting entities and select the qualified bidders to participate in phase two.

b- Phase two: is carried out through conducting a direct invitation according to the legal conditions for participation, which will be at no additional cost, and is to be addressed to the pre-qualified bidders to participate in the tender and submit their technical and financial documents. The said invitation must be sent to no less than six (6) bidders.

**Third – The two-phase tender:**

a- The head of the contracting entity or any person he authorizes is entitled to apply the method of submitting the bid in two phases in the contract to obtain the best way to achieve his contracting needs. The said method is applicable for contracts with intricate technical specifications; or for goods, works, and services contracts whereby the details of the technical specifications for the products or the works are not available at the beginning of the project.

b- Submitting of the bids in two phases may be preceded by procedures for pre-qualifications that are referred to in item (Second) of this article. The following must be considered for the purpose of implementing this method:

1. Phase one: To invite the bidders to submit their technical bids based on the preliminary design and the description of the activities. The head of the contracting entity has the right, if necessary, to revise the cost estimate;

2. Phase two: To invite the pre-qualified bidders whose technical bids were approved on basis of the standards of qualifications in phase one, to submit their financial bids based on the tenders’ revised documents as per the applicable conditions by the contracting entity.

**Fourth – Direct invitation:**

a- To have a direct invitation issued by the contracting entities and addressed to no less than five (5) contractors and / or companies and / or consistent institutions with technical and financial capabilities for the implementation of various public contracts, and in case of any of the following justified reasons:

1. If the contract is of a special characteristic / or requiring secrecy in all the contracting and implementing procedures in the interest of national security reasons;

2. If the objective is to achieve speed and efficiency in implementation especially in cases of emergency, natural disasters, supplying of medicaments, and life-saving necessities.
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3. The lack of interest from the bidders to participate in the re-issued stated public tenders for a second time.

b- To provide the bid documentation free of charge to the suppliers, contractors, and consultants.

c- To exempt the bidders who obtain direct invitation from the bid bond requirement.

d- To take into consideration the financial authorities for the purposes of awarding and contracting when applying this method.

Fifth – **The single source method (a sole source)**: This method is to be conducted through the issuance of an invitation free of charge from the contracting entities and addressed to one bidder, concerning contracts with monopolized characteristics for goods, implementation of works, consultancy services, or manufacturing, which are deemed necessary and justified, taking into consideration the following procedures:

a- The special contracting entities at the ministries and governmental non-ministerial agencies, provinces, and regions shall inform the Central Contracting Committee at the General Secretariat of the Council of Ministers (CCC) when implementing the contract in the said method, demonstrating justifications for this choice.

b- To consider the financial Authorities of the contracting entities for the implementation of the public contracts. The approval from the CCC should be obtained on the recommendations of the committees responsible for analyzing the bids for contracts that are beyond the head of contracting authority’s approval authority.

c- the CCC shall have implicitly approved the request if it has not taken a decision on the contracting entities’ request within a given time of fourteen(14) working days starting from the date of registering the request at the said committee. After this time, contracting entities are to proceed with the award process and its implementation.

d- Invited parties are to be exempted from submitting the bid bond, using this method.

Sixth – **The purchasing committees**: - This method is applied to provide the governmental offices with goods and services of a value that is less than fifty million Dinars (ID 50 000 000) or any other value determined in the current budget taking into consideration the controls that are issued by the directorate of the public contracts at the Ministry of Planning and Development Cooperation in coordination with the competent entities related to the subject.
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Article – 5 – First – The following should be considered for the advertising of the public contract tenders:

a- The tender’s name (title), number, address and the classification listed in the budget.

b- A brief and clear description of the project or the contract to be implemented, demonstrating the required products and services.

c- The time duration for the tender or the direct invitation’s advertising to be decided as follows:
   1. Time duration of (15 – 60) days for procurement and consultancy services contracts, to be determined according to the importance of the contract, starting with the date of the last advertisement; contracts for supplying wheat, rice and medicine are exempted as per the assessment of the concerned minister;
   2. Time duration of (21 – 60) days for public works contracts to be determined as per the importance of the contract starting with the date of the last advertisement.

d- Indication of the date and the place for the submission of the bids and the tender’s required time validity in addition to the date and the place for selling the tender’s documents.

e- Indication of the required bid bond amount to be obtained from the bidders.

f- Indication of the tender’s closing date.

g- Indication of the tender’s non-refundable purchase price.

h- Indication of the contracting entity’s website with the email address of the administrative section responsible of its respective tenders.

Second – The contracting entities shall include the following in the instruction to bidders within the tender’s documentations for (public works, goods and consultancy services):

a- The main terms of the contract to be concluded and the payment methods for fees or amounts that will be agreed upon later such as the percentage or the deducted amount or the compensated expenditures and other acknowledged methods, in accordance with the respective provisions listed in the federal budget law.
b- A statement revealing that the ownership of the designs, drawings and specifications prepared by the party who obtained direct invitation upon the conclusion of the contract, revert to the employer as per the consent of the contracting entity's head and except for some particular cases. The said entities have to avoid publishing any information related to the nature of the contract before obtaining the respective authorization from the competent entity.

c- A request addressed to the bidders to include, if available, similar projects in their bids, which should be approved by the related contracting parties.

d- An indication of the time and the place for the opening of the tenders in public.

e- A request addressed to the concerned entities to clarify its technical qualifications and the full-time and part-time specialists who will be working in the entity during the implementation of the various contracting or the consultation contracts.

f- A request addressed to the concerned parties to submit the required work plan.

g- A notice determining the date for a special conference to answer the inquiries of the participants in the tender, scheduled to take place at least seven (7) days before the tender’s closing date, with the exception of tenders for supplying foodstuffs.

h- A statement indicating the required contractor’s classification and level for the Iraqis; in addition, general works contracts require the bidder’s certificate of establishment and the work practice license from the bidder’s legally authorized bureaus.

i- A request to determine the cost for supply contracts with respect to the place of delivery (CIP, CFR, CIF, and FOB) and others (INCOTERMS).

j- A statement determining the method for calculating the demurrages as per the conditions of the contract (freight demurrage, delivery demurrage).

k- A statement clarifying that the contracting entity is not obliged to accept the lowest bid.

l- A statement clarifying that the government contracting entity may cancel the tender paying no compensation to the bidders with the exception of the tender’s documentation purchasing price only.
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m- Any other instruction, document, or data that the bidders may need to provide.

n- A statement requesting to write down the bid’s prices in ink or in print, in digital numbers and in writing.

o- A statement clarifying that the bidders have no right to write off any of the terms given in the tender’s documentation, or introduce changes of any kind therein.

p- A statement clarifying that the bid documentation is to be inclusive of the applied method for measuring the evaluation ratios for the awarding purposes when analyzing the bids.

q- A statement clarifying that the government and public sector employees are not allowed to participate in tenders either directly or indirectly.

r- A request addressed to the bidders to indicate in their bids their website and the email address, in addition to the name and address of the person responsible to follow the inquiries concerning the bid.

Third – The contracting entity may extend the tender’s advertisement duration in cases of extreme necessity and only once, taking the following into consideration:

a- It must obtain the consent of the head of the contracting entity or any person he authorizes with due consideration as to the financial Authorities for contracting purposes.

b- It must issue and publish in the same advertisement newspapers a respective appendix, and send copies to all tender participants time before the closing date due for the bid's submission.

Fourth - The head of the contracting entity or any person he authorizes may accept bids not to exceed fifteen(15%) percent of the estimated cost for contracting purposes, provided that there is availability of the required financial allocations in the general federal budget and it is within the total cost of the project; the Ministry of Planning and Development Cooperation must also be informed of the said action.

Fifth – The re-announcement of the tenders are concluded in one of the following cases:

a- If no bids are submitted within the tender advertisement time, or in case there is the submission of one bid which was financially and technically
acceptable during this time, then it will therefore be approved and proceedings are to follow for analyzing and awarding the bids.

b- If the amount of the best offer submitted by the bidders exceeds the determined percentage in item (Fourth) of this article when analyzing the estimated cost for contracting purposes to implement the projects or the works listed in the budget.

c- The head of the contracting entity or any person he authorizes may accept and analyze the bid if it exceeds the estimated cost for implementing purposes by no more than (30%) thirty percent, provided that there is availability of the necessary financial allocations within the total project’s cost; and once it addresses the CCC by presenting respective justifications for the purpose of obtaining the approval to award. The said committee has to take a proper decision whereas the award is considered, within a period of time equivalent to fourteen (14) days starting from the date of registering the request in the contracting entity. The award is considered approved in case the authorities stated in paragraph (Fourth) of the this article do not respond after the time period mentioned above.

Sixth- The following procedures must be followed for re-announcement:

a- The head of the contracting entity or any person he authorizes must approve, and inform the Ministry of Planning and Development Cooperation of the said action, determining the time duration of the announcement in accordance with Article (5) - First, item c, of the this regulation.

b- The bidders who participated in the previous tender must be informed of the said action.

c- Adopt the previous serial number for the re-announced tender, giving respective indication in the new advertisement if occurring at the same year.

d- Inform the concerned entities about the re-announcement.

e- Investigate the reasons for not participating when the tender was first advertised and take the necessary procedures to correct them in this respect.

f- adopt the sole source method in case of re-announcement, taking the following into consideration:

1. must have the bid cost amount within the estimated cost, considering paragraph (Fourth) and item (c) of clause (Fifth) of the this article
for contracting purposes, concerning the project’s required financial allocations.

2. must have the bid made in accordance to the technical specifications and the required conditions in the tender advertisement.

3. must notify the Ministry of Planning and Development Cooperation whenever the amount of the best bid obtained at the second advertisement is higher than the cost estimates stipulated in paragraph (Fourth) and item (c) of paragraph (Fifth) of Article – 5 – and must observe one of the following to implement the project or the required work:

   a. postpone the project’s implementation until the coming year;

   b. make use of the allocated amount for the implementation of other projects if postponement takes place; or

   c. increase the estimated cost for contracting purposes within the project’s financial allocations in the plan.

4. Must consider a third (last) re-announcement or take the necessary procedures to change the contract implementation method with respect to the adopted methodologies. The head of the contracting entity may conclude the afore-mentioned in case no acceptable bid is submitted in the second advertisement.

Seventh- The aforementioned clauses stipulated in paragraphs (First), (Second), (Third), (Fourth), (Fifth) and (Sixth) of the this article are applicable to civil engineering (construction), mechanical and electrical works, in addition to goods and consultancy services contracts.

Article – 6 – Establishing the bid opening committees and their tasks:

First- One or more central bid-opening committees are to be established in every ministry or non-ministerial government entity. The said committee is to be made of experts and specialists headed by an employee in a position no lower than Director or Chief Engineer, along with members representing the Financing and Law Directorates, a specialized technical employee, and a secretary having a job title that is no less than Observer.

Second- Establishing an opening-bid committee at the ministerial and non-ministerial entities is allowable, provided that the said committee is formed in accordance with the statement in paragraph (First) of this article.
Third - A central committee is to be established at every contracting entity in the region and at the provinces, and shall be headed by the head of the contracting entity or any person he authorizes, along with members specialized in law, financing and technology, representatives of the beneficiary party and the provincial council, with a secretary having a title that is no less than Observer who is responsible to open the bids that are announced in the region or the province that is non related to a region.

Fourth - Opening-bid Committees may be established at the regional or provincial entities. Each of the said committees is to be established according to the specified committee in paragraph (Third) of this article.

Fifth - The following procedures are to be observed by the secretary of the bid opening committee while performing his tasks:

a- Insert the bids in a special box that is kept with the concerned entity and issue a receipt in two copies, one of which is to hand over to the bidder or any authorized person while keeping the other with the concerned entity, and to writing down the following information in a special dossier:

1. The tender name and number as shown in its documentation.

2. The bidders’ names or their official agents’ names, with fully documented address inside or outside Iraq.

3. The name of the officially authorized bid holder with his signature and address.

4. The bid’s submission time and date.

5. The attached bid documentation (if available).

6. It is allowable to send the bids by express or registered mail; they must arrive to the competent entity prior to the bid closing date and must be recorded by the Secretary as soon as delivered.

7. It is prohibited to reveal any information, such as names and addresses of the bidders or their agents, to unauthorized entities during the announcement period in order to maintain the secrecy of the procedures.

b- The head of the bid opening committee has to observe the presence of the committee members. If some of them did not attend the meeting, the head of the contracting entity should assign other employees having similar specializations to replace them.
c- For the purpose of proceeding with the public opening of the bids and in presence of the bidders or their agents willing to attend, the bid opening committee directly holds a meeting once the tender closing time is over, or at the beginning of the following working day after taking the approval of the head of the contracting entity or any person he authorizes and as deemed necessary. The meeting is to be held in a previously assigned place whereby the tender’s special dossier will be closed and the following will be annotated in the committee’s minutes of meeting:

1. Verification of the stamps and seals on the bid’s envelopes.

2. The bids with no bid bonds, as required in the tender documents.

3. The bids based on a deducted amount or a percentage of reduction, among the remaining bids that are submitted for the same tender.

4. The alternative (revised) bids substituting previous financial and technical bidder information, and rejecting their previous bids that are relevant to the same tender if submitted during the tender’s advertisement valid period, and returning them to the submitters.

5. The number of pages comprised in each bid.

6. Encircling marks on every scratching, erasing, addition or corrections that are shown in the priced bills of quantities, with signatures of the committee’s head and members.

7. Adding a horizontal line next to any non priced item in the priced bills of quantities, with signatures of the committee’s head and members.

8. Verifying the bidder’s signature on the tender submission form and on every page of the priced bills of quantities and any attached annex (es).

d- The committee must clearly record in the meeting notes any comments or reservations stated in the bid and appended documents to give clear indication of samples, mock-ups and drawings that are submitted with the bid, writing down their general description and any relevant distinctive characteristics.

e- The committee must stamp all pages of the bid with the committee’s stamp and to have members’ signatures on all pages of the bid priced bills of quantities.
The committee must clearly indicate any missing information or data needed in the bid according to the bidding instructions within the tender documentation, including the tender document purchasing receipt.

According to the said instructions, the committee’s head has to undertake the following actions after opening the bids:

1. He must declare the bidders’ prices, technical specifications and implementation periods, writing these on the advertisement board and as fixed in the said bids, emphasizing that these are subject to auditing and evaluation.

2. He must prepare and sign the meeting minutes jointly with the committee members, the bidders or their attending agents, annotating any relevant notes corresponding to the committee’s work.

Bids and their attachments shall be forwarded to the Verification and Analysis Committee with a special memorandum informing the contracting entity with the said action.

Article – 7 – Establishing bid evaluation and analysis committees and their tasks:

One or more evaluation and analysis committees are to be established at every contracting entity to review the bid's legal, technical, and financial terms. The committee is to be headed by a specialized and expert employee having a rank not less than Director or Chief Engineer, along with a number of specialized technicians, including one legal and financial official, and the committee’s secretary. The said committee is to fulfill its tasks according to the schedule determined in the establishing decree and may seek assistance from specialized entities with expertise of to the nature of the tender. The recommendations of the committee are subject to the approval of the head of the contracting entity or any person he authorizes as per the applied contractual financing rights. The committee has to consider the following procedures:

First- It must reject the bids with no bid bonds, as required in the tender's documentation.

Second- It must reject the bids based on a deducted amount or a percentage of reduction from any other bids submitted to the tender, and to refuse any reservation or reduced in pricing post tender's closing date.

Third- It must analyze the bids in confidentiality and issue a final report addressed to the authorized entity for the award. These procedures are to take place within the period determined by the head of the contracting entity within the period of the bids' validity.
Fourth- It is prohibited to send the bids outside Iraq for analysis, the consultants outside Iraq have therefore to send their representatives to Iraq for the purpose of proceeding with the required analysis unless the nature of the work necessitates require otherwise; In that case, it is required the approval of the concerned minister or head of the non-ministerial contracting entities is required, or the CCC and as per the applied rights in this respect, provided keeping the original copy in the contracting entity.

Fifth- It must accept the reductions in percentages or in deducted amounts if given in the original bid, when proceeding with the analysis and the evaluation.

Sixth- It must eliminate the reserved amounts given in the priced bills of quantities submitted with the bid, that are not required in the tender documents, for comparison and analysis objectives.

Seventh- It must consider all bids’ prices on unified basis, as per given statement in the instructions to bidders within the tender’s documents.

Eighth- It must consider the written price in words if inconsistent with the price written in numbers. As such, to consider the unit price if inconsistent with the total price of a given item.

Ninth- It must consider the total price of the bid inclusive of the price of any item or items that is not priced in the bid, as per the given quantities for the said items.

Tenth- It must apply the following procedures and controls for the purpose of naming the best bid:

a. Reject the non-compliant bid with the required technical specifications even if was the lowest in price.

b. Reject the inefficient contractor based on the Government’s previous experience with the contractor in executing previous contracts. This principles also applies to vendors and consultants.

c. Consider the financial capability through submitting the previous year’s financial statement audited by a legal accountant, if required in the tender documents.

d. Consider the amount of contractor, vendor or consultant’s, annual financial obligations.

e. Consider the capacity to conform to the given dates for both delivery and execution.
f. Consider a satisfactory record of previous projects achievements.

g. Consider the availability of the technical capacities and skills for the implementation of the contract (engineering and technical cadre with specialized equipments).

h. Consider obtaining confirmation regarding the execution of similar projects, issued from the government contracting entity.

Eleventh- It must determine and assess the weighing percentages for the financial and technical proposal in accordance with given texts in the bidding instructions to compare the technical and financial specification, in order to select the highest scoring bids in the financial and technical evaluations, which should be considered for awarding objectives.

Twelfth- It must annotate in the final report, the details of any disagreement in opinion occurring among the members of the bid evaluation committee subject to be resolved by the head of the contracting entity.

Thirteen- It must prepare a table with a list of all bids obtained, giving full relevant details and list the missing documents (if any), proceeding with the comparison and evaluation of the legal, technical and financial terms, after the completion of the analyzing procedure.

Fourteen- It must include, in the final meeting minutes a special field showing the recommendation of the bid evaluation and analysis committee, stating the name of the selected bidder for award and his identification, as per a respective appended table, showing the bid price, currency, period of implementation or supplying in days, the basis applied by the said committee, and stating that the bid's price lies within the acceptable limits of the estimated cost. The said meeting minutes are to be stamped and dated after being signed by both the head of the committee and its members.

Fifteenth- It is prohibited to negotiate the prices with the bidders except the single source method.

Sixteenth- It is authorized to complete the required technical data submitted by the bidders and correct the mistakes, if any, but it is prohibited to add or complete any data affecting the presented prices.

Seventeenth- It is authorized for the contracting entity to release the bid bond as per request of the bidder who, prior to the end of bidding, is not expected to be awarded the contract, and after raising the committee’s recommendations, and post-approval of the head of the contracting entity. However, in all cases,
the bid bond of the three first bidders nominated for the award is not to be released.

**Eighteenth-** The concerned entity should check the validity of the basic data within the documents, given in the tender prior to the award, including the Bank Guarantee letter for the bid bond.

**Nineteenth-** The bid evaluation committee should submit its recommendations concerning the nomination and the award to the head of the contracting entity to decide the awarding, in accordance with his contracting rights.

**Twentieth-**

a. It must observe the financial authorities on contract awarding; when the contracting decision exceeds the threshold of the head of the contracting entity, he therefore has to address the CCC to obtain the approvals for award. If the CCC does not reply within a period of fourteen (14) days starting with the date of referring the issue to it, then the request is implicitly considered to be approved.

b. The award decision is considered valid starting from the date of notifying the awardee to sign the contract, which must be signed within fourteen (14) days from the said date, it must also be approved by the head of the contracting entity, and all other bidders must be notified.

c. If the winning awardee refrains from signing the contract within the given time in item (b) in this article, then a warning letter must be addressed to him to sign the contract within fifteen (15) days. In case of refusing to sign, the contracting entity has therefore to apply the legal procedures stated in paragraph (First) of Article – 16- of this regulation.

**Article- 8- Preparing a Contract:**

**First-** The draft contracts are prepared by the contracting entities at the ministries, non-ministerial entities, regions, and, in coordination with the financial, technical directorates and the beneficiary entity. The contracts are to include the given items in the tender’s conditions or the invitation with any additional conditions that both parties agree upon assuring the quality of the execution according to contract samples issued by the OGPCP/MoPDC.

**Second-** The draft public contract should include a text for collecting the government debts according to law no. 65/1977 (Collecting government debts).
Third- The draft contract should include the names and addresses of both parties who authorized to sign the contract and the document of authorization as per the applied procedures, providing that it should be valid at the time of contracting and issued prior to the date of signing the contract by a period of time not to exceed three (3) months.

Fourth- The contractor may award parts of the contract to subcontractors after taking the approval of the contracting entity. The main contractor remains responsible on the execution of the contract. It is prohibited to transfer the whole contract to another contractor or subcontractor.

Fifth- Ministerial, non-ministerial, regional, and provincial contracting entities should inform MoPDC, Ministry of Work and Public Affairs, the Central Bank of Iraq, Central Agency for Statistics Companies' registration office and the General Authority for taxes with the contractor’s name, address and nationality, in addition to the contract price and period as soon as the contract is signed.

Sixth- If the contract stipulates paying an advanced payment to the contractor after signing the contract, then the contracting entity has to request the contractors to submit a Bank Guarantee issued from an authorized bank in Iraq taking into consideration the effective procedures as per the law of the general federal budget.

Seventh-

a - The contract is to be written in Arabic, Kurdish and English languages, if possible.

b - The tender documents should list the prevailing language in case of interpretation disputes.

Article – 9 – Letters of credit:
The following procedures are to be considered when opening letters of credit to cover the international procurement contracts (importing goods, execution projects and purchasing of services) when contracting with Arab and foreign companies:

First- The competent ministry (or non-ministerial entity, region, or province) has to undertake the necessary procedures for opening a (irrevocable and unconfirmed) letter of credit after issuing the award, official signing of the contract, and obtaining the performance bond.

Second- The opening of the letter of credit should be in accordance with the international standards and practices and issued by an authorized governmental bank in Iraq as per the bank special forms (a request form and a contract form for the opening of a letter of credit). These forms are to be inclusive of the financial conditions for the import process in addition to other
conditions conforming to the contractual terms between both contracting parties (the seller and buyer).

Third- The procedures for opening of letters of credit consist of the following:

a- Specify the name of the beneficiary for opening the letter of credit (the seller) with his full address.

b- Specify the required goods, stating the purchasing contract’s number and date.

c- Specify the required credit amount in numbers and in writing.

d- Refer to the type of commercial sale as per the international commercial terms (INCOTERMS) such as (FOB/CIF/CFR/CIP) or others as per the conditions of the contract.

e- Indicate the means of shipping (land, sea, air or others) and the final destination.

f- Specify if partial shipment is accepted resulting as such to accept the delivery of the goods in a number of shipments, or in one shipment only, taking into consideration that the payments are in balance with the acquired shipments.

g- Specify if more than one means of transportation (Transshipment) is acceptable or not.

h- Indicate the period and the validity of the letter of credit, as per the contract conditions.

i- Specify the delivery time according to the contract.

j- In case there is an existing need to extend the period of the letter of credit, the equal extension of the bank guaranties validity time or the warranties must also be considered accordingly.

k- Modifications and variations on the irrevocable letter of credit are prohibited without the consent of both contracting parties.

l- It is prohibited to terminate the irrevocable and unconfirmed letter of credit unless getting a written approval of the opener (buyer) and the consent of the beneficiary (seller) or a request from the corresponding bank according to the seller’s request and the written consent of the buyer.
m- In case of an advanced payment (certain ratio of the letter of credit amount), it is required to obtain a bank guarantee in the same currency as the L/C on condition to be made through an authorized bank in Iraq.

n- If the seller insists on opening an irrevocable and confirmed letter of credit, then he is responsible for paying the confirmation charges.

o- 1. The buyer (opener of the L/C) pay the charges due for the procedures of opening the letter of credit inside Iraq.

2. The seller (beneficiary) pays the charges and profits due to the charges of opening of the letter of credit outside Iraq.

p- It is preferable that all bank charges (inside and outside Iraq) are on beneficiary’s (seller) account.

q- The insurance should cover all the risks, and is to be stated in the credit statement whether the insurance was actually covered by the seller or the purchaser provided that it covers the value of the goods based on (CIP or CIF).

r- The payment conditions and the method applied to release them must be indicated in accordance with the conditions stipulated in the contract between both parties (the buyer and the seller). The payment method should be clear as well the type of the necessary documents to be submitted by the seller to get the said payments.

Fourth- The required documents for the letters of credit, their certification as well as to determine their circulation must be done in accordance with the applied international practices and conventions (600 Ucp).

Fifth- An import license must be submitted for the goods or the equipment required a license of importation, according to the law.

Sixth- The competent ministry, non-ministerial entity, region or province shall monitor the shipping and the delivery of goods and get the seller’s receipts on the details of the shipments, taking the following into consideration:

a- It must finalize the procedures for the customs clearance of the delivered goods and equipment and facilitate the delivery to the warehouses.

b- It must finalize the procedures for loading and clearance, as soon as possible and within the determined allowances, to avoid paying extra charges caused by late receiving of the goods delivered to the airport or to customs.
c- It must finalize the procedures of ship unloading, as soon as possible and within the determined allowances, to avoid paying demurrages due to the delay of unloading the cargo.

Seventh- The governmental contracting entity must prepare the necessary tools and equipments at the warehouses to finalize, with no delay, the procedures of unloading and delivery of the arrived goods, taking into consideration to record the condition of the received goods for the purpose of assuring the insurance rights.

Eighth- It must follow up the finalization of the procedures by performing a technical test of the delivered goods and issuing a test and acceptance certificate, dated on the same date of delivery, according to the determined period in the contract.

Ninth- Defects, losses and damages:

a- In case of receiving a delivery showing defects or non conformity to the required technical specifications, the test and approval committee established by the contracting entity, has to issue a certificate of specification mismatch and respectively inform the seller, without delay, for the purpose of replacing the said items.

b- In case of missing items or items with total or partial damage, the test and approval committee has to issue a mismatch report for the said items and to inform the seller with the details of the missing or damaged items for the purpose of compensation when the sale is based on (CIF or CIP) since the insurance is covered by the seller.

c- In case the insurance is covered by the buyer and there is damage or missing items in the arrived delivery, a mismatch report is therefore to be issued and it must inform the National Insurance Company for the purpose of assuring the compensation.

Tenth- All regulations issued by the Council of Ministers for the opening of the letters of credit and the methodology of its implementation must be adopted.

Eleventh- Other instructions:

a- The conditions determined by the buyer, addressed to the opener bank, should be clear, precise and transparent.

b- It is prohibited to open a transferable L/C, except the transfer to the manufacturing entities specified in the contract.
c- It is prohibited to give the seller any advance payment unless receiving an On Demand Bank Guarantee equal to this payment and in the same currency. On Demand means that the amount could be withdrawn without notice or judicial order.

d- It is not preferable to accept, Loaded on Deck, method of sale.

e- The opener Bank should follow up the receipt of special bank notifications for the purpose of being acquainted with the movement of the credits, the expenditures and the respective financial settlements.

f- The contracting entity should monitor its account, in foreign currency, so that the fund should be sufficient to cover the amount of the L/C for the implementation of a certain purchasing contract. It is prohibited to have any contractual obligation with the seller before checking the availability of sufficient funding in foreign currency to cover the contract.

g- L/Cs should be opened to cover the foreign purchasing contracts such as equipment, tools, goods or services. The conditions of the L/C should be according to: The Uniform Customs and Practice of Documentary Credit.

h- A certain percentage of the L/C amount should be kept to cover the installation, the operation or the maintenance for equipment, tools or goods. It must be included in the conditions for payment of the L/C.

i- In case both contracting parties decide to proceed with modifications on the said contract, the bank holding the open letter of credit will be notified to make any necessary adjustments.

Article - 10 The Dispute resolution mechanism prior to contracting:

First – pre-contracting disputes will be solved as follows:

a- A central committee is to be established at every ministry, non-ministerial entity, region, and province to review the contractual complaints and objections; the committee will be connected to the competent minister or the governor or who will be authorized by them; the said committee should consist of experts, specialists, and the committee’s secretary with title no less than observer.

b- The committee is responsible for reviewing the written complaints and objections submitted by the bidders or their official agents who had as such made no request to withdraw the bid bonds as referred to in paragraph (Seventeenth) of Article (7) of the given instructions; and should be addressed to the competent contracting entity within seven (7) work days starting from the date of issuing the letter of notification and
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awarding. A respective recommendation is to be submitted to the competent minister or the head of the non-ministerial entity, region, or province, within a period of fifteen (15) days from the date of registering the complaint at the contracting; the said minister or governor has to decide on the recommendation within seven (7) days; not giving a decision is considered to be a refusal to the objection after termination of the given time.

c- Contracting parties in ministries and non-ministerial entities, regions, and provinces have to wait before signing the contracts, until the issue is solved by the competent minister or the governor taking within the determined time limitations; the legal periods for reviewing complaint as per the law given in paragraph (B), item (First) from the said article must be observed in addition to a condition that the complainer should submit an official commitment to pay the value of the resulting damages caused by the delay in signing the contract due to deliberate or non-justified reasons for the benefit of contracting entity.

Second-

a- A specialized administrative court for reviewing the objections submitted by the bidders is to be established at the Ministry of Planning and Development Cooperation. The court is to be chaired by a judge nominated by the Supreme Judicial Council, with the membership of a representative from the Ministry of Planning and Development Cooperation with a title of no less than Director General and one representative with expertise and specialization from Iraqi Contractors Union and the Union of Chambers of Commerce.

b- The court is to have a secretary with a title no less than Observer.

Third- bidders may object at the administrative court stated above to the referral decisions issued by the ministries, non-ministerial entities, regions, and provinces during a period of seven (7) work days starting from the date of the decision undertaken by the competent entity, which the bidder is complaining about.

Fourth- The court should issue its decision concerning the complaint within a period not exceeding one hundred and twenty (120) days starting from the date of paying the legal court dues.

Fifth- The court’s decision are considered decisive if no appeal is filed at the competent Court of Appeal within thirty (30) days starting the following day after the date of the notification of the decision.
Sixth- The court performs its due tasks as per to order number (87) for the year 2004 which issued by the Coalition Provisional Authority (dissolved), the court will be guided by Civil procedural Code number (83) for the year 1969 for all matters not texting in the regulations or the controls issued by the directorate of public contracts at Ministry of Planning and Development Cooperation.

Seventh- The directorate of public contracts at the Ministry of Planning and Development Cooperation is bound by the decisions issued by the court in coordination with the competent entities.

Article – 11- Dispute resolution mechanism after signing the contract:

First- All disputes occurring after signing the contract will be solved through one of the following methods:

a- Conciliation: - to be concluded through the establishment of a joint committee between both disputing parties represented by the contracting entity (the party with whom the contract was concluded, i.e. contractors, suppliers, or consultants) to study the matter and come to an agreement to treat the said disputes accordingly as per the valid laws and regulations concerning the matter of the dispute.

b- Arbitration:- to be concluded by both disputing parties choosing expert and specialized arbitrators in the matter of the dispute to represent them and a third arbitrator chosen by the earlier two to lead the arbitration committee. In case the choice making for a third arbitrator is unachievable, an authorized court is therefore responsible to nominate the third arbitrator. Thereafter, the arbitration committee studies the matter of the dispute in all its details and issues a final decision to resolve the dispute. The losing party bears the expenses of the arbitration and is bound by the committee’s decision after the respective approval by the authorized court according to the law.

c- Transfer the dispute to specialized courts for the purpose of obtaining their verdict in accordance with applicable laws to solve the said disputes.

d- The contracting entity may chose international arbitration to solve the disputes only if it is included in the contract terms and when one of the contracting parties is foreign, considering the mechanism of the approved procedures in the contract, and selecting one accredited international organizations for arbitration to solve the said dispute.

Second- Both contracting parties are committed to choose the best method to solve the disputes arising from implementation of the contract through one of
the aforementioned methods in item (First) of this article and as per the approved conditions of the contract.

Article - 12 – Function of public contracts formation:
The Function of public contracts formation founded at every ministry, non-ministerial entity, region, and province is determined as per section (2/2/a) of the Coalition Provisional Authority’s order number (87) for the year 2004; this Order is followed up by the implementing procedures from the public contracting offices in coordination with the office of the inspector general and the concerned provincial councils; and in accordance with applied mechanisms at the of the Government Public Contracts Directorate at Ministry of Planning and Development Cooperation.

Article – 13 – Adherence to laws and regulations:
Contracting parties, government directorates, public sector employees and other authorized persons participating in the contracting process are not allowed to disclose any information that is not permitted in the bids to any party having no relation with the contract.

Article – 14 – Contract duration and extension:
Contracting parties are to abide by the following when extending the duration of contracts:

First- The contractor has to implement the clauses of the contract during the contract period to be calculated starting from the date of commencement or the date of the signing of the contract or any other date stipulated within the conditions of the contract, taking the following into consideration when extending the contract time duration:

a- In case of increasing or changing the work related to various contract terms; or changing the required quantities or the quality to be supplied, thus affecting the execution of the approved curriculum, which would disable the fulfillment of the curriculum within the agreed time as per the original contract.

b- If the delay in implementing the contract is due to reasons or procedures related with the contracting or legally authorized entity, or any reason concerned with other contractors employed by the contracting entity (the employer).

c- If after concluding the contract, exceptional circumstances arose that were unexpected and unavoidable and beyond the responsibility of the contractors, thus causing delay in the completion of the required works or the supply of the required goods as per the contract terms.

Second- The contractor must submit a written request addressed to the contracting entity or any authorized person, within fifteen (15) days of the
supply contracts and thirty (30) days for the construction and consultancy contracts, starting from the date of the origin of the cause requiring a request for extension; the contractor must give full and precise details concerning any request for time extension. The contracting entity has to review the request and decide within thirty (30) days for all types of contracts starting from the date of receiving the request. No requests are accepted after issuance of the initial delivery certificate stated in the contract conditions.

**Article – 15 – Work alterations and additional works:**

**First** – Introducing alterations in the contracted works, or adding works, or new quantities are not allowed, except in cases of prime necessity taking into consideration to restrict the alterations as much as possible, if one of the following cases occurs:

a- If avoiding the alterations or additions results in delaying the work or causes damages to the technical or economical aspects.

b- If avoiding the alterations or the additions results in eliminating the usefulness of the contracted work or supplies.

c- If the alterations or the additions result in savings in the project cost or the work.

d- If the alterations or the changes do not cause a basic change in the service or the determined productive capacity for the project or the work.

e- If the alterations cause a reduction in the contract time provided not to cause deterioration with respect to the technical specifications of the work or the project.

**Second**- All correspondence related to alterations and additional work invoices are considered to be urgent correspondence with prime importance when compared to others; the contracting entity has to decide accordingly within the given times stated in item (Second)-Article 14 - of this regulation.

**Third** – Any alteration or additional work should not start until after obtaining a written order (a change order) issued by the authorized entity at the contracting entities and as specified in accordance with the contracting conditions. The said order is to include a brief description of the work, its specifications, quantities, values and the additional time (if existent) necessary to add to the contract time. In case it is not necessary to add a time extension, then it is to be clearly stated in the order.

**Fourth**- The contracting entities must specify the required alterations or additions to implement on the contract at an early stage, so that it does not to affect the progress of the work as per the approved curriculum.
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**Fifth-** Cost evaluation for alterations and additional works is carried out as per the contracting conditions. In case of adding new items with no similar or corresponding reference in the contract, the prevailing market prices are therefore considered as a base for the cost evaluation of the said items with additional profits and administrative costs.

**Sixth-** The amount of the alterations and additional works should not exceed the competent minister or the governor's given authorities, in accordance with the regulations for the implementation of the federal general budget.

**Article – 16 – insurance, demurrage and administrative expenses:**

**First-** Legal insurance:

a- Bid bonds are not acceptable unless in the form of letters of credit, certified checks, bank guarantees, or loan bonds issued by the Iraqi Government.

b- Bidders are to submit the bid bonds to guarantee serious participation in the tenders for all types of construction and supply contracts, with one percent (1%) of the bid amount. The bid bonds are to be issued by an accredited bank in Iraq as per a bulletin published by the Iraqi Central Bank concerning Banks' financial efficiency.

c- Bid bonds are confiscated from the awardee if he abstains to sign the contract after being duly informed about the award. All other legal procedures stated in this regulation are to be taken against him.

d- The performance bond guarantee for all contracts is determined at a rate of (5%) five percent of the contract amount, and is to be issued by an accredited bank in Iraq. The bid bond is not to be released only until due issuance of the final acceptance certificate and discharge of the 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 to be used.

e- The public sector and the government’s public companies are exempted from submitting the performance bond and bid bonds stated in this article, for a period of three (3) years starting from the date which this regulation takes effect. The Ministry of Planning and Development Cooperation is authorized to review the said exemption after due termination of the given period of time and in coordination with the Council of Ministers / Economic Affairs. Committee.

**Second –** demurrage:
The maximum limit for the demurrage determined by the contracting entity is specified not to exceed the rate of ten (10%) percent of the contract’s amount. The implementing entity has to confirm the aforementioned ratio in the conditions of contract, the tender documents and the instructions addressed to the bidders. The contracting entity has, before reaching this limit and after accretion of the delay period to twenty-five (25%) percent of (the contract period of time plus any additional granted time allowances), to take the necessary procedures to guarantee the expediting of the contract implementation, inclusive of establishing an accelerating committee formed by experts with a representative of the contracting party to pay out for the remaining works or to withdraw the work in accordance with the contract conditions taking into consideration to apply the following equation to calculate the demurrage:

\[
\text{Contract value} \times (10\%) = \text{the charges for one day}
\]

\[
\frac{\text{Contract value}}{\text{Contract period}} \times (10\%) = \text{the charges for one day}
\]

Third- The demurrage should be reduced in accordance with the determined percentage of execution for the contracting obligations, as per the contract’s execution plan, provided that the executed work or the supplied services or goods are ready to be used in accordance with the contract conditions.

Fourth- The contracting entity should, due to justified reason, impose or stop the demurrage upon withdrawal of the work from the contractor.

Fifth- Administrative charges:
The administrative charges are determined when the contracting entity executes, on its own, through any other person, rather than the contractor, any of the contractor’s obligations. It should not exceed twenty (20%) percent of the actual contract value for the execution of the said obligation. The contracting entity should specify the aforementioned charges within the tender’s documents and the contract conditions.

Article – 17 – Legal consequences from contractors’ violation of their contractual obligations:

First- Legal consequences resulting from violations prior to the signing of the contract:
In case the awarded contractor refrains from signing the contract, after official warning to sign the contract within fifteen (15) days from the date of notice, the following procedures are undertaken:

a- Confiscate the bid bond of the abstained bidder.
b- Award the bid to the second nominee whereas the abstained bidder shall pay the difference between the two bid prices for the execution of the contract.

c- In case both first and second nominees abstain from signing the contract and / or submit the performance bond, the contracting entity should award the bid to the third nominee whereas the first and second abstained bidders pay the difference in values as joint liability, and according to the ratio of their proposals, seizing as well the bid bonds for both.

d- The procedures stated in items (a), (b) and (c) of this article are applied on abstained bidders in case the abstinence takes place during the validity period of their bids.

Second- Legal consequences resulting from violations post contract signature:

a- Confiscate the performance bond.

b- Execute the contract on behalf of the contractor through an accelerating committee with representative of the default contractor. In case of contractor refusal, a court order shall be issued from an authorized court to execute the work on the contractor’s behalf, after confiscating all the contractor’s equipments and materials, for the purpose of settling the accounts, plus adding the demurrage and the administrative charges amount of twenty percent (20%). After a settlement of the final accounts, if the contractor is a debtor, he gets nothing, and if he is creditor, he must get compensation.

c- It is allowable for the contracting entity to award the remaining work to other contractors if the main contractor has defaulted; the defaulting contractor should pay the difference between his price and the new contractor price, plus the contracting entity shall confiscate the performance bond and follow other required procedures.

Article – 18 – Prohibition of contracting:

Contracting entities at ministries, non-ministerial entities, regions, and provinces should black-list the contractors violating their contractual obligations, taking the following into consideration:

First – Must undertake the procedures for black-listing Iraqi contractors as per the methodology stated in the regulation for the classification and registration of Iraqi contractors issued by the Ministry of Planning and Development Cooperation number (1) for the year 2005.
Second- Must undertake the procedures of listing non Iraqi contractors, Iraqi and non Iraqi vendors and Iraqi and non Iraqi consultants, as per the methodology stated in the respective issued controls.

Article – 19 – Operational or initial payment and progress payments for the work:-

First: - Initial payment should be granted to construction, supply and consultancy contractors according to Federal Budget Law, taking into consideration the submission of the respective special bonds prior to their approval.

Second: - Progress payment should be paid to the contractor in a period not less than thirty (30) days as per progress of the work, according to the regulations of the general conditions of contracts and the contracting conditions stated in the tender documentations.

Article – 20 – Ministries, non-ministerial entities, regions and provinces are to observe the following:-

First: - The public construction contracts should include provisions to apply the conditions of civil engineering works and the conditions for mechanical, electrical and chemical engineering works issued by the Ministry of Planning and Development Cooperation, and must consider the aforementioned regulations as an integral part of the contract. It should be applied for all matters not stated in the contract.

Second: - All effective relevant public contracts laws, the Instructions of OGPCP/MoPDC and the Instructions of the higher authorities should also be applied.

Article – 21 – First: - Ministries and non-ministerial entities should oblige the contracting entity therein to coordinate their contracting plans with OGPCP/MoPDC, and send the required data for the purposes of the follow up and technical supervision of its work when commencing to execute its contractual activities.

Second: - Ministries and non-ministerial entities should comply with the investment budget regulation issued by the Ministry of Planning and Development Cooperation and any regulations issued by the Ministry of Finance relevant to financial authorities related to the procurement of state agencies as well as the authorities granted to the concerned entities when implementing the projects listed in the budget.

Article – 22 – OGPCP/MoPDC undertakes the following:
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First: - To practice the authorities granted as per the law of public contracts, CPA order no. 87/2004.

Second: - To issue controls to organize the contractual relations between the state agencies and the contractors, and on the consequences related to violations of contractors’ contractual obligations.

Third: - To issue and revise the general conditions for contracts and the conditions for the supply of goods and services.

Fourth: - To evaluate the tasks and the procedures of the committees for opening and analyzing bids at the state agencies and to revise the aforementioned as necessary.

Fifth: - To provide answers to the state agencies and other entities who conclude contracts on issues that are related with their tasks.

Sixth: - To train and improve the capacities of the employees working at the contracting entities in Ministries, non-ministerial entities, regions and the provinces.

Seventh: - To technically supervise the work of the newly introduced procurement agencies at Ministries, non-ministerial entities, regions and the provinces.

Article – 23 – It is allowable to award contracts to state companies within the Ministry of Industry and Minerals for manufacturing equipments and goods for the operation and production of other ministries in case of availability of capacities at the said companies.

Article – 24 – The general contracts are subject to the Iraqi laws and the jurisdiction of Iraq courts as per the adopted methodologies.

Article – 25 – The governmental contracts Regulation no.1/2007 is abolished.

Article – 26 – This regulation should be effective starting from the date of the publishing in the official Gazette.

Ali Ghaleb Baban

Minister of Planning and Development Cooperation