

**A
BILL**

*further to amend the Khyber Pakhtunkhwa
Public Procurement Regulatory Authority Act, 2012.*

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No. XI of 2012), for the purposes hereinafter appearing;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Public Procurement Regulatory Authority (Amendment) Act, 2021.

(2) It shall come into force at once.

2. Amendment of section 2 of the Khyber Pakhtunkhwa Act No. XI of 2012.--- In the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No. XI of 2012), hereinafter referred to as the said Act, in section 2, in sub-section (1),-

(a) for clause (c), the following shall be substituted, namely:

“(c) “best evaluated bid” means, in case of procurement of-

(i) goods and consulting services, the highest-ranking fair bid where quality and cost are primary and secondary consideration respectively and for which the weightage for technical and financial bid shall be defined in evaluation criteria, as set forth in the bid solicitation documents and in no case technical weightage be less than financial weightage;

(ii) complex professional engineering works, including but not limited to tunnels, bridges, high altitudes tough terrain roads, dams, canals etc., or any other such works of any civil, electrical, mechanical, hydraulic, communication, power engineering, geological or mining character etc., determined to be of large scale and complex nature by a technical committee to be constituted at Planning and Development Department of Government in the manner prescribed, where quality and cost are the primary and secondary consideration respectively, the highest ranking fair bid; provided that all such cases be referred to the said technical committee by the administrative head of the department concerned; and

(iii) works, other than mentioned in sub-clause (ii) above, and the non-consulting services, the lowest responsive financial bid amongst technically responsive bids;"

(b) after clause (h), the following new clause (h-i) shall be inserted, namely:

"(h-i) "competent authority" means the concerned officer of a procuring entity, empowered under the delegation of financial powers rules of Government, for the time being in force, or, as the case may be, other financial laws and rules, duly approved by the competent forum, as the case may be, to exercise the financial powers and approve the award of contract for procurement of goods, works or services;"

(c) after clause (i), the following new clause shall be inserted, namely:

"(i-i) "consulting services" mean and include service of predominantly an intellectual, technical or advisory nature, and it includes services offered by individual consultants, consulting firms and other specialists in their respective fields;"

(d) in clause (o), after the word "rules", the words "or regulations" shall be inserted;

(e) after clause (r), the following new clause shall be inserted, namely:

"(r-i) "public assets" mean any movable and immovable property, tangible and intangible assets, including land, buildings, animals, inventory, livestock, natural resources wildlife, goods and other assets, and also includes but not limited to shares, stocks, bonds etc., intellectual rights, goodwill, actionable claims and any other kind of proprietary rights that are vested in the state, irrespective whether such assets are serviceable or otherwise;"

(f) for clause (s), the following shall be substituted, namely:

"(s) "public procurement" means acquisition of goods, services or construction of any works or any combination thereof, financed wholly or partly out of the public fund and includes disposal of public assets and commercial transactions between procuring entity and private party, in terms of which the private party is allowed to-

(i) perform a procuring entity's assigned functions, including operations and management, on its behalf;

- (ii) assume the use of public assets; or
- (iii) receive a benefit either from budget or revenue of the Government or from fees or charges to be collected by the private party for performing the procuring entity's function or any combination thereof; and

(g) for clause (t), the following shall be substituted, namely:

“(t) “responsive” in respect of a bid, means qualified for consideration, on the basis of declared evaluation criteria, as specified in the bid solicitation documents or in the request for proposal.”.

3. Amendment of section 10 of the Khyber Pakhtunkhwa Act No. XI of 2012.--- In the said Act, in section 10, after sub-section (2), the following new sub-section shall be added, namely:

“(3) The Authority may, from time to time, and with the approval of the Board, accept grants from entities both domestic and international, including multilateral agencies for meeting any of its obligations or performing any of its functions.”.

4. Insertion of new section 22A to the Khyber Pakhtunkhwa Act No. XI of 2012.--- In the said Act, after section 22, the following new section shall be inserted, namely:

“**22A. Disposal of public assets.**---For the purpose of disposal of public assets under this Act, the principles, methods and procedures, relating to procurement process, shall apply mutatis mutandis to disposal of assets in such a manner to maximize revenue to Government, in lieu of the accumulated assets being disposed of.

Explanation: The expression disposal, mentioned in this section, shall mean the divestiture of any public asset and other rights of a procuring entity, wholly or partly, by any means, including sale, rental, lease, franchise, outsourcing, transfer of title or any combination thereof.”.

5. Amendment of section 28 of the Khyber Pakhtunkhwa Act No. XI of 2012.---In the said Act, in section 28, for clause (e), the following shall be substituted, namely:

“(e) contract shall be awarded to the bidder, whose bid is responsive and is determined as the best evaluated bid; and”.

6. Substitution of section 30 of the Khyber Pakhtunkhwa Act No. XI of 2012.--- In the said Act, for section 30, the following shall be substituted, namely:

“**30.Rejection of bids.**---A procuring entity may reject any or all bids, by communicating the reasons for rejection, in writing, to the Authority, prior to the acceptance of a bid or proposal. The procuring entity shall also communicate the same to the participating bidders upon request.”.

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7. **Insertion of new section 31A to the Khyber Pakhtunkhwa Act No. XI of 2012.**--- In the said Act, after section 31, the following new section shall be inserted, namely:

“31A. Contract administration, performance monitoring and management.---The procuring entity shall ensure existence of effective contract administration, performance monitoring and management system with adherence to principles of public procurement, quality assurance and implementation mechanism.

Explanation:The expression contract administration, performance monitoring and management, mentioned in this section, shall mean managing the terms of procurement contract or disposal of public assets for the purpose of assuring compliance with obligations of contracting parties, which includes, inter alia, planning, monitoring, performance, change management, inspection, acceptance, payment, dispute resolution, force majeure, liquidated damages, contract termination and contract closure.”.

8. **Amendment of section 33 of the Khyber Pakhtunkhwa Act No. XI of 2012.**--- In the said Act, in section 33, in sub-section (2),-

- (a) before the words “the concerned procuring entity prior to commencement of any procurement proceedings, the words “competent authority of” shall be inserted; and
- (b) in clause (b), after the full stop appearing at the end, the following shall be added, namely:

“Procurement from multilateral and bilateral organization shall be conducted in such manner as may be prescribed by rules.”.

9. **Amendment of section 34 of the Khyber Pakhtunkhwa Act No. XI of 2012.**--- In the said Act, in section 34, for the word “may”, the word “shall” shall be substituted.

11. **Insertion of new section 36A to the Khyber Pakhtunkhwa Act No. XI of 2012.**--- In the said Act, after section 36, the following new section shall be inserted, namely:

“36A. Overriding effect.--- Notwithstanding anything to the contrary contained in any other law, concerning public procurements, the provisions of this Act shall have an overriding effect.”.

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STATEMENT OF OBJECTS AND REASONS

It is desirable to amend the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act. No. XI of 2012), in order to ensure that the public procurement system is working effectively, efficiently and based on simplified procedure. The proposed amendments in the Act ibid is one of the major components of a whole set of reform initiatives, under taken by the Finance Department of Government after due consultation with all the key stakeholders. The proposed amendments are primarily an effort to address the gaps identified, missing links to be added to the procurement regime, improving procurement processes, simplifying the procedure to ensure ease of doing procurement and to achieve a comprehensive legal framework as approved in the reforms road map for the Authority.



MINISTER-IN-CHARGE.

Peshawar,
dated the
, 2021.

Deputy Legislation Officer
Government of Khyber Pakhtunkhwa
Law Department