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PROVINCIAL ASSEMBLY SECRETARIAT,
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 20th September, 2012.

No. PA/Khyber Pakhtunkhwa/Bills/2012/6059.—The Khyber Pakhtunkhwa Public Procurement Regulatory Authority Bill, 2012 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 3rd September, 2012 and assented to by the Governor of the Khyber Pakhtunkhwa on 16th September, 2012 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA PUBLIC PROCUREMENT REGULATORY AUTHORITY ACT, 2012.
(KHYBER PAKHTUNKHWA ACT NO. XI OF 2012).

*(first published after having received the assent of the Governor of the Khyber
Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa (Extraordinary),
dated the 20th September, 2012)*

AN
ACT

*to provide for the legal and regulatory framework
for public procurement.*

WHEREAS it is expedient to provide for the legal and regulatory framework for public procurement, and other matters connected therewith or incidental thereto, for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012.
- (2) It extends to the whole of the Khyber Pakhtunkhwa.
- (3) It shall come into force at once.

2. **Definitions.**---(1) In this Act, unless there is anything repugnant in the subject or context,-

- (a) "Authority" means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority established under section 4;
- (b) "bidder" means a contractor, supplier, vendor or consultant who offers his services for procurement of goods works, or services in response to bid solicitation by a procuring entity;
- (c) "best evaluated bid" means,-
 - (i) in case for procurement of goods and services, the highest ranking fair bid in accordance with the evaluation criteria set forth in the bid solicitation documents;
 - (ii) in case of procurement of works, the lowest responsive evaluated bid will be the "best evaluated bid";
- (d) "bidding" means the formal procurement procedure under which sealed bids are invited, received, examined and evaluated for the purpose of awarding a contract;
- (e) "bidding documents" means the data, information and representations submitted by the bidder on the bid solicitation documents advertised and made available by the procuring entity;
- (f) "bid solicitation documents" means the documents prepared by the procuring entity on the format of standard bidding documents for solicitation of bids;
- (g) "Board" means the Board of Directors of the Authority;
- (h) "Chairperson" means the Chairperson of the Board;
- (i) "consultant" means a person, a firm, a company or an organization undertaking supply of services;
- (j) "contract" means a contract as defined in the Contract Act, 1872;
- (k) "goods" means articles and objects of every kind and description including raw materials, intermediate inputs, finished goods, products, equipments, computers, machinery, spare-parts and commodities in solid, liquid or gaseous form, electrical, mechanical as well as incidental services such as installation, transport or vehicles, maintenance and similar obligations related to the supply of goods, if the value of these services does not exceed the value of such goods;
- (l) "Government" means the Government of the Khyber Pakhtunkhwa;
- (m) "Managing Director" means the Managing Director of the Authority;

- (n) "mis-procurement" means public procurement in contravention of any of the provision of this Act or any other law in respect of or relating to public procurement, including any rules, regulations, orders or instructions made in this behalf and for the time being in force;
- (o) "prescribed" means prescribed by rules made under this Act;
- (p) "procurement object" means goods, works or services to be procured by a procuring entity through public procurement process;
- (q) "procuring entity" means-
 - (i) a Department or any Office of Government including a project unit; or
 - (ii) any Board, Commission, Council or other bodies established by or under a provincial law; or
 - (iii) semi-autonomous or autonomous bodies which are owned or controlled by Government;
- (r) "province" means the Khyber Pakhtunkhwa;
- (s) "public procurement" means acquisition, temporary or permanent or on lease, of goods or services, or undertaking of works by contractual means, financed wholly or partly out of Fund by any procuring entity;
- (t) "responsive" means conformity of a bid/technical proposal submitted by the prospective bidders to the statement of requirements in terms of section 24 of this Act;
- (u) "rules" means the rules made under this Act;
- (v) "services" means any object of procurement which does not constitute procurement of works or goods and includes consulting services;
- (w) "standard bidding documents" means the format/forms approved and notified by the Authority for submission of proposals and bids by the bidders in a public procurement process; and
- (x) "works" means any constructional work consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, such as site preparation, excavation, installation of equipment or materials and decoration, finishing and includes allied services such as mapping, satellite photography, seismic investigations and similar activities, if the value of the services does not exceed that of the works themselves.

(2) Words, expressions and terms not specifically defined in this Act and the rules shall have the same meanings as attributed to them in the relevant trade and industry practices.

3. **General principles of public procurement.**---All public procurement shall be conducted in such a manner as provided in this Act, rules and regulations made under this Act and shall promote the principles of transparency, economy, value for money, accountability and swift grievance handling.

4. **Establishment of the Authority.**---(1) Soon after the commencement of this Act, Government shall by notification in the official Gazette establish an Authority to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority with its headquarters at Peshawar.

(2) The Authority shall as soon as possible establish its own secretariat and may set up its regional offices in such place or places in the Khyber Pakhtunkhwa, as it may deem appropriate.

(3) The Authority shall be a body corporate, having perpetual succession and a common seal, with power to acquire and hold property and to enter into contracts, and may by the said name sue and be sued, and shall exercise all powers necessary for the purposes under this Act.

5. **Powers and Functions of the Authority.**---The Authority shall perform functions and exercise powers as follows:

- (a) hear and dispose of appeals against the orders of procuring entity;
- (b) formulate standard bidding documents, separately for procurement of Goods, Works and services, for all procuring entities to emulate as the format for bid solicitation documents for submission of proposals and bids by the bidders in a public procurement process;
- (c) shall assist the major procuring entities to engineer/re-engineer their business procedures and design their Procurement Manuals in compliance with this Act;
- (d) ensure that all the procuring entities organize and maintain a system for the publication of or posting on departmental official website of data on Public Procurement opportunities, awards and any other relevant information;
- (e) ensure that all procuring entities organize and manage database and web site which shall warehouse information and publications on public procurement;
- (f) conduct performance review based on pre determined -indicators and benchmarks through third party validation by State Bank of Pakistan certified category 'A' chartered accountant firm;
- (g) organize and manage capacity-building of procurement personnel in all the procuring entities in the Province;
- (h) conduct research and take measures to further principles of public procurement enunciated in this Act;
- (i) recommend to the Government, measures necessary to improve the quality of public procurement in the Province;

- (j) recommend to the Government, measures necessary to enhance transparency and ensure accountability in the public procurement process in the Province;
- (k) advise Government on all matters pertaining to public procurement; and
- (l) perform such other functions and exercise such powers as may be necessary to further objectives of this Act and perform such other functions as assigned by the Government from time to time.

6. **Management**---The general directions and administration of the Authority and its affairs shall vest in the Board, which shall exercise all powers and do all acts, which may be exercised or done by the Authority, in accordance with the provisions of this Act.

7. **Board of Directors**---(1) Government shall constitute a Board of Directors for the management and administration of the Authority consisting of,-

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|-----|--------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| (a) | Secretary to the Government,
Finance Department; | Chairperson. |
| (b) | Secretary to the Government,
Planning & Development Department
or his nominee not below the rank of an
Additional Secretary; | Member. |
| (c) | Secretary to the Government,
Works and Services Department or his
nominee not below the rank of an
Additional Secretary; | Member. |
| (d) | Secretary to the Government,
Irrigation Department
or his nominee not below the rank
of an Additional Secretary; | Member. |
| (e) | Secretary to the Government of Public
Health Engineering Department or
his nominee not below the rank of an
Additional Secretary; | Member. |
| (f) | Secretary to the Government,
Health Department or his nominee
not below the rank of an
Additional Secretary; | Member. |
| (g) | three persons from the private sector
i.e. from trade and industry,
academia, civil society and
professional associates; | Members. |
| (h) | Managing Director of the Authority; | Member/Secretary. |

(2) Government shall notify the terms and conditions for appointment of non-official members of the Board.

(3) The non-official members shall be appointed by Government for a period of three years.

(4) Six members shall constitute the quorum for convening meeting of the Board.

(5) The meeting of the Board shall be presided over by the Chairperson and in his absence by one of the ex-officio Members to be nominated by the Chairperson in this behalf.

(6) All decisions in the meeting shall be taken by majority of votes. Each member, including the Chairman, shall have one vote, but in the event of tie of votes, the Chairman shall have a second or casting vote.

8. **Managing Director.**---(1) Government shall appoint the Managing Director of the Authority for a period of three years on such terms and conditions as it may determine and may extend his appointment for a second term:

Provided that the entire period of appointment shall not exceed six years.

(2) The Managing Director shall be a senior civil servant of BS-20 or a reputed professional with fifteen years post-qualification experience, preferably in public procurement. However, no such person shall be appointed as Managing Director who has been:

- (a) convicted by a court of law; or
- (b) removed from any service on a charge of misconduct.

(3) The Managing Director shall be the Chief Executive and the Principal Accounting Officer of the Authority.

(4) In the performance of his functions, the Managing Director shall work within the framework of the general policy and guidelines laid down by the Board.

9. **Establishment of the Authority Fund.**---(1) There shall be a Fund to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority Fund, hereinafter referred to as Authority Fund, which shall vest in the Authority and shall be utilized by the Authority to meet charges and expenses in connection with the affairs of the Authority under this Act including salaries and other remunerations of the non-official members and employees of the Board.

(2) The Authority Fund shall consist of all the money received by the Authority.

10. **Custody and investment of the Authority Fund.**---(1) The Board may keep the Authority Fund in any Scheduled Bank, as may be approved by it.

(2) Nothing in sub-section (1) shall be deemed to preclude the Board from investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Trust Act, 1882 (Act No. II of 1882), or placing them in fixed deposit with a Bank approved by the Board or in such other manner as may be approved by it.

11. **Maintenance of accounts.**---The Board shall maintain complete and accurate books of accounts of its actual expenses and receipts in such form as the Government, in consultation with the Local Audit Department determined.

12. **Audit.**--- The Authority shall cause to carry out the audit of its accounts by Auditor General of Pakistan provided that provision shall be made for an internal audit of the finances of the Authority.

13. **Appointment of officers, advisors etc.**---The Authority may, from time to time and subject to resources, appoint such officers, servants, advisers, consultants, referees and experts as it may consider necessary for performance of its functions. The Authority shall notify the procedure for appointments and fixation of terms and conditions after approval of the Board of Directors.

14. **Responsibility of procuring entity.**---(1) Each Procuring Entity shall be responsible for carrying out public procurement subject to the provisions of this Act, and the rules, the administrative instructions and the standard bidding documents made there-under:

Provided that-

- (i) Government on a specific request of the procuring entity or in public interest may exempt a procuring entity from some or all of the provisions of this Act for which reasons shall be recorded in writing. Government may seek comments of the Authority, if so required;
- (ii) for District Governments, the procuring entity may route a justifiable case for exemption to the Government by the District Coordination Officer, through Secretary Local Government Department;
- (iii) Government may exempt the procurement of an object or a class of objects, in national/public interest, from some or all provisions of this Act, for which reasons shall be recorded in writing; and

(2) Government shall notify the exemption and publish the same for public consumption in the printed media.

14A. **Transparency, accountability and fairness.**--- All procurement shall be conducted in a manner which promotes transparency, accountability and fairness.

14B. **Competition.**--- Except as otherwise provided for in this Act and the rules, all procurement shall be conducted so as to maximize competition and to achieve value for money:

Provided that the exception shall be made only for acquisition of services for reasons to be recorded in writing by the procuring entity.

15. **Confidentiality.**---(1) A procuring entity shall not, except when required to do so by an order of a Court, disclose any information if the disclosure would:

- (a) cause a breach of this law or any other law; or

- (b) impede law enforcement; or
- (c) prejudice legitimate commercial interests of the parties; or
- (d) inhibit fair competition; or
- (e) not be in public interest.

(2) A procuring entity shall not disclose any information relating to the contents of offers, pre-qualification submissions and actual content of bids, proposals or quotations other than in a summary form setting out the evaluation and comparison of tenders, proposals or quotations received before award of the contract. The format/forms for announcement of bids evaluation and determination of the best evaluated bid shall be prescribed.

16. **Ethics.**---(1) All procurements shall be carried out in accordance with such Code of Ethics as may be prescribed.

(2) Public officials as well as experts, engaged to deliver specific services in public procurement proceedings including evaluation of bids, shall be required to sign a Code of Ethical Conduct as may be prescribed.

(3) All vendor of goods, works or services shall be required to sign a declaration of compliance with such Code of Conduct as may be prescribed.

17. **International Obligations.**---Notwithstanding anything contained in this Act, the international obligations of Government arising out of bilateral or multilateral Agreements including Treaties, financing agreements, or agreements by Government shall continue to remain and be valid, binding and operative.

18. **Preference and reservation.**---(1) If an agreement in terms of section 17 provides for preference to national vendors, the procuring entity shall ensure that such preference is unambiguously stated in the standard bidding documents and announcements for the procurement including advertisement and terms of reference and tender documents.

(2) Each procuring entity shall permit prospective bidders to participate in procurement proceedings without regard to nationality, except where a procuring entity decides to limit such participation to national providers or participation of any nationality is forbidden by any law or by any instruction/policy of the Federal Government or other Provincial Government.

(3) If participation is restricted on the basis of nationality, the procuring entity shall record in the procurement proceedings a statement of grounds and circumstances relied upon.

19. **Public Accessibility.**---This Act, the rules made thereunder, guidelines, forms, bidding documents and/or decisions of Government or procuring entity relating to procurement shall be placed on a web-site of the Authority in addition to the website of the procuring entity or the Government, as the case may be, and which will also provide copies of these documents to the public at a fee not exceeding the cost of printing/reproduction of the documents.

20. Records.---(1) The procuring entity shall:

- (a) maintain detailed records of all procurement proceedings in the manner as prescribed; and
- (b) preserve, maintain and safeguard all relevant documents issued and received as shall be set out in the rules.

(2) The records of the procurement process of the procuring entity shall be open to internal and external audit or to procurement post-review in the prescribed manner or for scrutiny or inspection by Government or in accordance with any law.

21. Communication.---(1) All communications between a procuring entity and the bidder or vendor of procurement object shall be in writing.

(2) Forms of communication as well as the name of the focal person shall be specified in solicitation documents.

22. Procurement planning.---(1) Each procuring entity shall plan its procurements with due consideration to transparency, economy, efficiency and timelines, and shall ensure equal opportunities to all prospective bidders.

(2) All procurement requirements must be documented and approved by the procuring entity prior to commencement of procurement proceedings.

(3) In specified circumstances, a procuring entity may proceed with the procurement proceedings except for award of contract when the availability of funding in the full amount over the required period remains to be confirmed/approved by the competent authority:

Provided that the project has been approved or has received anticipatory approval from the competent authority/forum or is otherwise within the competence of the procuring entity and budget provision exists.

23. Bid Solicitation documents.---(1) A procuring entity shall adopt standard bidding documents designed under this Act and insert/add specifications into the standard bidding documents for each procurement.

(2) Bid solicitation documents shall specify in detail the terms and conditions, including a statement of general conditions of contract, which shall apply to the resultant contract.

(3) The general conditions of contract shall not be modified.

(4) Each procuring entity shall solicit bids based on performance or functional specifications and not on restrictive or proprietary specifications of a particular brand.

(5) A procuring entity may introduce special conditions of contract to elaborate and qualify the general conditions of contract, where applicable, furnishing detailed justification and reasons thereof, in the bid solicitation documents.

(6) Bid solicitation documents shall invariably include an unambiguous statement giving an accurate and complete description of the procurement objects to pursue the principles of public procurement enunciated in section 3 of this Act.

(7) Statement of requirements shall be in the form of technical specifications, terms of reference, scope of work, briefs or its equivalent as appropriate.

(8) Bid solicitation documents shall be made available to the bidders from the date of their issuance to the closing date on submission of required fee by the prospective bidder whether in person or, if so requested, through mail.

(9) At any time prior to the deadline for submission of bids, the procuring entity may, on its own initiative or in response to a request for clarification by a bidder, modify the bid solicitation documents by issuing an addendum or corrigendum.

(10) If the procuring entity considers necessary, it may extend the closing date, after recording reasons in writing, to enable bidders to take the addendum or corrigendum, as the case may be, fully into account in preparing their bids.

(11) No change in the substance of bids, including changes in price, shall be sought, offered or permitted after the date and time of bid closing, except as otherwise provided for in the rules.

24. Submission of bids.---(1) A procuring entity shall require the bidders to submit sealed written bids or in such other manner, as may be prescribed.

(2) The method for submission of bids shall be determined by the type, complexity and evaluation method of the procurement in accordance with the rules.

(3) All announcements pertaining to public procurement shall specify the last date for submission of bids as well as the public bid opening which shall be the same.

(4) The bidding period shall be reasonable to allow bidders to prepare and submit their bids and shall not be reduced.

(5) A bidder may withdraw his bid at any time before the deadline for submission of bids, unless otherwise specified.

(6) To avoid delays, the procuring entity may hold a pre-bid conference with the prospective bidders if the procurement is of complex nature and high value.

25. Minimum qualification of bidders.---A procuring entity shall require all bidders to meet minimum qualification criteria to participate in public procurement to affirm/ensure that the bidder,-

- (a) has the legal capacity to enter into the contract;
- (b) has the prescribed technical proficiency, equipments/plant and/ or relevant certified experience;
- (c) is neither insolvent nor bankrupt;

- (d) is not in the process of winding up nor his/her properties are under the control of receiver nor his/her business activities have been suspended nor legal proceedings for any of the foregoing are imminent or have been initiated against him/her; and
- (e) has fulfilled all obligations under law for the time being in force.

26. Enlistment and Pre-Registration.---For the enlistment and pre-registration, the following conditions should be adopted, namely:

- (a) enlistment and pre-registration shall be carried in a manner as may be prescribed;
- (b) provincial enlistment and pre-registration shall be undertaken by a committee which shall be chaired, steered, represented and coordinated by Works and Services Department, with representation from Irrigation Department and Local Government, Elections and Rural Development Department.

27. Best practices and industry standards.---Procuring entities shall at all times use industry standards defined and codified by internationally recognized trade associations and professional bodies in the appropriate fields in international bidding where available and local bidding where laid down.

28. Procurement process and evaluation.---For the procurement process and evaluation,-

- (a) the procurement system would allow a single stage single envelope, a single stage, two envelopes, a two stage single envelope and two stage two envelopes procedures depending on the nature of the procurement or as laid down in procurement rules made under this Act;
- (b) the rules shall prescribe the threshold and method for single source single quotation, request for quotations and open competitive procurement;
- (c) the methodology of evaluation shall be determined by the type, value and complexity of the procurement as may be prescribed by the Authority;
- (d) all bid solicitation documents shall fully and comprehensively detail the evaluation methodology and criteria relevant to the particular procurement;
- (e) contract shall be awarded to the bidder whose bid is responsive and is determined as the best evaluated bid ascertained on the basis of methodology and criteria mentioned in clause (d) above and in the definition; and
- (f) no evaluation criteria other than those stipulated in the solicitation documents shall be taken into account.

29. Disqualification and debarment of bidders.--- (1) The procuring entity shall disqualify a bidder if it finds at any time that the information submitted concerning qualifications of the bidder was false, or materially inaccurate or incomplete.

(2) A procuring entity may debar a bidder from taking any further part in a procurement proceeding or in future procurement proceedings if the bidder-

- (a) forms part of a cartel/ring with a view to discourage fair competition in the bidding process; or
- (b) has failed to complete his earlier contract, within a period of three years of the initiation of procurement proceeding, on ground that his approved bid was or has become unprofitable or would result in his suffering of loss; or
- (c) offers or attempts to offer inducement of any sort; such barring actions will be duly publicized and communicated to the Authority.

30. Rejection of bids.---A Procuring Entity may reject any or all bids communicating the reasons for rejection in writing to the Authority at any time prior to the award of a contract.

31. Award of Contract.---The procuring entity shall award contract on the following conditions, namely:

- (a) the contract shall be awarded on the basis of the best evaluated bid;
- (b) the best evaluated bid shall be determined on the basis of total conformity to the evaluation criteria which may include quality or cost or both;
- (c) the procedure to determine the best evaluated bid under different methods of procurement and consequent award of contract shall be prescribed by the rules made under this Act;
- (d) the award of contract shall be made as per timeframe prescribed in the rules made under this Act;
- (e) a procuring entity shall complete evaluation of bids and award of contract within the initial period of bid validity to avoid the necessity of extensions;
- (f) an extension of bid validity, where inevitable, shall be requested only in exceptional circumstances as may be prescribed and shall always be sought in writing from all bidders before the expiration date; and
- (g) all contracts shall be confirmed through a written agreement signed by the successful bidder and the procuring entity, except as otherwise provided for in the rules.

32. Changes in bidders circumstances.---Any changes in the circumstances of the bidder during the procurement proceedings that could materially affect the capacity to execute the contract shall be immediately brought to the attention of the procuring entity by the bidder, other bidders or any other stakeholder.

33. **Methods of procurement**---(1) The procuring entities shall resort to open competitive bidding as the preferred method of procurement.

(2) The selection of the procurement procedure shall be made in accordance with the rules, and shall be approved by the concerned procuring entity prior to commencement of any procurement proceedings:

Provided that the procuring entities may exceptionally use other methods, including negotiations, in the following eventualities in accordance with the rules to cater for:

- (a) procurements of small value through petty purchase or through request for quotations; and
- (b) procurements through direct contracting in an emergency caused by nature or governments, for urgent requirements caused by unforeseeable events, single repeat order not exceeding fifteen percent of the original procurement, for considerations of intellectual property, if price is fixed by a Government in the country or procurement from another procuring entity/public sector organization within Pakistan.

34. **Procurement Committees**---Procuring entities may constitute procuring Committees for procurement of goods, works and services.

35. **Grievance Redressal Mechanism**---(1) Any bidder aggrieved by any act of the procuring entity may follow the two tier grievance redressal mechanism in the following manner:

- (a) file a complaint in writing to the head of procuring entity in accordance with prescribed procedure; and
- (b) file an appeal to the Authority against the decision of the procuring entity within fifteen days in accordance with the prescribed procedure.

(2) The decision of the Authority on appeal shall be final.

36. **Power to make rules**---Government may make rules for carrying out the purposes of this Act.

37. **Repeal**---(1) The Khyber Pakhtunkhwa Public Procurement of Goods, Works, Services and Consulting Services Ordinance, 2002 (Khyber Pakhtunkhwa Ord. No. XVIII of 2002) is hereby repealed.

(2) Notwithstanding the repeal of Khyber Pakhtunkhwa Procurement of Goods, Works, Services and Consulting services Ordinance, 2002 (Ord. No. XVIII of 2002), any public procurement initiated under the repealed law, shall, if not inconsistent with the provisions of this Act shall be executed and dealt with in accordance with the provisions of repealed law.

38. **Removal of Difficulties.**---If any difficulty arises in giving effect to any of the provisions of this Act, Government may, by notification in the official Gazette, make such provision as may appear to it necessary for the purpose of removing the difficulty.

BY ORDER OF MR. SPEAKER

PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)

Secretary

Provincial Assembly of Khyber Pakhtunkhwa