

FEDERAL OMBUDSMAN'S
REPORT ON GOVERNMENT
PROCUREMENT SYSTEM TO ADDRESS
MAL-ADMINISTRATION AND
ENSURE TRANSPARENCY



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Islamabad
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It gives me immense personal satisfaction to present this Report of the Committee on *“Government Procurement System – To Address Maladministration and Ensure Transparency.”*

The institution of the Wafaqi Mohtasib has, in the past three years, risen beyond the routine resolution of day to day problems arising from maladministration in government departments and organizations and has, in addition, pursuant to the orders of the Honourable Supreme Court of Pakistan, targeted systemic weaknesses in governance issues which, if addressed holistically, would have long-lasting and healthy impact on all institutions of the state, reducing day to day complaints and improving the standards of governance. Public procurement is one such area that it focuses on, being the strategic tool to optimise the quality and efficiency of governance.

Public procurement is an essential component of governance functions, integral to all activities, programs and projects related to administration and promoting economic and social development.

Expending public funds by government departments must meet the criteria of optimal and fair utilization, equity, fairness, transparency and quality in procurement of goods and services. The World Bank, the Asian Development Bank and the donor community attach high importance to the public procurement regulations and methods.

As an emerging economy, committed to delivering on national development and public welfare, Pakistan needs to continually evaluate its public procurement regime and processes.



In view of the large amounts of money involved, avoidance of waste and even minor savings resulting from better procurement practices could make a huge difference to the economy as well as improve operational efficiency and in achieving development goals in a timely manner.

Given the importance of this subject, a Committee was constituted under the chairmanship of Mr. Shams-ul-Mulk, President GIK Institute of Engineering Sciences & Technology, former Caretaker Chief Minister, Khyber Pakhtunkhwa and former Chairman WAPDA and comprised of senior public officials who headed major procurement agencies of the country, and included:

- 1) Mr. Salman Bashir, former Secretary, Ministry of Foreign Affairs, High Commissioner of Pakistan to India and Ambassador to China
- 2) Mr. Mian Muhammad Javed, former Chairman, Pakistan Telecommunications Corporation, Pakistan Telecommunications Authority and Pakistan Electronic Media Regulatory Authority
- 3) Mr. Iftikhar Rashid, former Secretary, Ministry of Communications, Inspector General of Motorway Police and Chairman, Pakistan Electronic Media Regulatory Authority
- 4) Mr. Zafarullah Khan, former Secretary, Ministry of Water & Power
- 5) Dr. Abdul Wajid Rana, former Secretary, Finance Division and Economic Affairs Division, Government of Pakistan and Member Federal Public Service Commission
- 6) Mr. Najeeb Ullah Malik, former Secretary, Ministry of Information Technology and former Chief Secretary, Punjab
- 7) Mr. Ashfaq Mehmood, former Secretary, Ministry of Water and Power
- 8) Maj Gen (Retd) Hidayatullah Khan Niazi, former Chairman, National Highways Authority
- 9) Maj Gen (Retd) Farrukh Javed, former Chairman, National Highways Authority
- 10) Mr. Tahir Shamshad, Vice President, National Engineering Services Pakistan (Pvt) Limited
- 11) Mrs. Farah Ayub Tarin, former Controller General of Accounts
- 12) Ms. Nazrat Bashir, former Managing Director, Public Procurement Regulatory Authority – Member/Secretary of the Committee.



The Committee has produced a Report that is both candid and incisive and contains recommendations on the whole range of procurement issues taking into account international best practices. We are thankful to the Chairman and Members of the Committee who worked completely in honorary capacity and truly appreciate the spirit in which they selflessly rendered their services for a cause that, like most of us, they hold crucial for the country. We are particularly grateful to Ms. Nuzrat Bashir, a former BS-22 officer of Pakistan Administrative Services, who contributed immensely to the preparation of the report based on her experience as former Managing Director of PEPRA.

We hope the recommendations of the Committee will be considered and implemented in the spirit in which they have been formulated.

Johar Farooq

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CHAPTER- 1

INTRODUCTION

1. The Honorable Wafaqi Mohtasib was pleased to constitute a Committee chaired by Mr. Shams ul Mulk, former caretaker Chief Minister, Khyber Pakhtunkhwa and Chairman WAPDA, to study and propose recommendations for redressing maladministration and for ensuring transparency in government procurement system. The composition of the committee is as follows:

- i) Mr. Shams ul Mulk, former caretaker Chief Minister, Khyber Pakhtunkhwa and former Chairman WAPDA- Chairman of the committee
- ii) Mr. Salman Bashir, former Secretary, Ministry of Foreign Affairs - Member
- iii) Mr. Mian Muhammad Javed, former chairman PTCL, PTA and PEMRA - Member
- iv) Mr. Iftikhar Rashid, former Secretary Communications and Inspector General Police - Member
- v) Mr. Zafarullah Khan, former Secretary Water & Power - Member
- vi) Maj Gen (Retd) Hidayatullah Khan Niazi, former Chairman, NHA - Member
- vii) Maj Gen (Retd) Farrukh Javed, former chairman, NHA - Member
- viii) Mr. Ashfaq Mahmood, former Secretary Water and Power - Member
- ix) Mr. Naguib Ullah Malik, former Secretary IT and former Chief Secretary, Punjab - Member
- x) Mr. Ijaz Chaudhry, former Secretary Ministry of Petroleum and former chief secretary Sindh - Member
- xi) Mrs. Farah Ayub Tarin, former Controller General Accounts - Member
- xii) Mr. Abdul Wajid Rana, former Finance Secretary - Member
- xiii) Mr. Tahir Shamshad, Vice president, NESPAK - Member
- xiv) Ms. Nazrat Bashir, Senior Advisor and former Managing Director PPRA - Member/ Secretary
(Mr. Ashfaq Mahmood and Mr. Ijaz Chaudhry could not attend the meetings due to their personal commitments).

Provision of Establishment of the office of Wafaqi Mohtasib (Federal Ombudsman) Order 1983 and the Notification

2. Article 9 (1) provides that “The Mohtasib may on a complaint by an aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of maladministration on part of the Agency or any of its officers or employees”.

Article 9 (3) provides that “for carrying out the objectives of this Order and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for

studies to be made or research to be conducted and may recommend appropriate steps for their eradication”.

Article 18 provides that “The Mohtasib may, whenever he thinks fit, establish standing or advisory committees at specified places with specific jurisdiction for performing such functions of the Mohtasib as are assigned to them from time to time and every report of such committee shall first be submitted to the Mohtasib with its recommendations for appropriate action.”

Article 19 provides that “The Mohtasib may, by order in writing, delegate such of his powers as may be specified in the order to any member of his staff or to a standing or advisory committee, to be exercised subject to such conditions as may be specified and every report of such member or committee shall first be submitted to the Mohtasib with his or its recommendations for appropriate action”.

Under Article 2 (2) “Maladministration” includes:

A decision, process, recommendation. Act of Omission or commission which-

(a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons; or

(b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory; or

(c) is based on irrelevant grounds; or

(d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as bribery, jobbery, favoritism, nepotism and administrative excesses; and

(ii) neglect, inattention, delay, incompetence and ineptitude, in the administration or discharge of duties and responsibilities.

CHAPTER-2

Methodology

3. The Committee held eight meetings. It invited experts from NESPAK and PILDAT to make presentations and had before it several documents submitted by members including PPRA Ordinance and Rules, a Paper titled “Most Common Procurement fraud schemes and their primary red flags”, a Paper titled 'Legal Framework of Public Procurement System in Pakistan' containing a comprehensive analysis of the PPRA and indicating its shortcomings, and papers on the inherent weaknesses in the procurement process highlighting the need to work on implementation methodology and to address white collar crimes. These are given as annex.

Terms of Reference for the Study

4. The Terms of Reference of the Committee were discussed in its first meeting held on 3rd March, 2016 and finalized as follows:

- a) review of legal regime relating to public procurement in Pakistan;
- b) difficulties faced by the government and the suppliers in conforming with and implementing public procurement laws and procedures given the imperatives of good governance and development;
- c) international best practices in public procurement including principles, procedures and practices and scope of adopting these in Pakistan;
- d) recommendations for improving the procurement regime in Pakistan with a view to addressing maladministration and ensuring transparency.

Framing of Issues

5. During discussions following issues came to the fore:

Governance Issues: The discussions focused on the issue of governance and reasons why public sector institutions were not delivering. The need for addressing the basic issue of lack of efficient governance was germane to the mandate of the Committee. The adherence to the rules was possible only in normal and average conditions. It could not always be so in extraordinary situations. The Civil Servants are the custodian of public funds and every decision in this regard must meet the criteria of public interest.

Legal Issues: The legal framework of Public Procurement is comprehensive and covers all situations that may arise in the procurement process. What needs to be addressed is the problems that may arise in the implementation of the Rules. The exemption clause in the PPRA Ordinance led to some scams in the past. It was also not evident that the monitoring mechanism provided in the PPRA Ordinance had been fully availed.

Compliance Issues: these included non-compliance of Rules by the procuring entities. The rules are seen as a cause of delays and there are attempts to circumvent the rules particularly by avoiding wide publicity through advertisements, selection of firms through single source, frequent negotiations and not following the time lines provided in the rules for planning and minimum 15 days and 30 days after competitive bidding in local and international bidding respectively. There was also a view among the members that the rules may be scrapped completely. In evaluating compliance with good procurement, it was important to look at the actual completion costs.

Issues of capacity: The quality of Human resource is of fundamental importance. Selection of officers and staff for the procurement should be based on merit and only persons of known integrity may be selected.

Use of Technology: Introduction of e-procurement, on-line uploading of tenders and annual plans, monitoring and evaluation through the use of technology is the need of the hour.

Grievance Redressal: The introduction of neutral second tier for redressing the grievances of suppliers/contractors is important to avoid long litigation in courts of law.

CHAPTER-3

REVIEW OF THE PPRA LEGAL REGIME

6. Public procurement is an essential function of governance and a critical element of national development. The annual expenditure on public procurement is estimated by the World Bank as ranging between 15-20 % of GDP. Pakistan's GDP in nominal terms is US \$284 billion. At the rate of 20%, the public procurement would be approximately US \$ 56.8 billion. Avoiding wasteful expenditure, ensuring quality and timely delivery of projects and programs is a sine qua non for development and public welfare and directly correlates with rules, procedures and practices of public sector institutions.

7. Public Procurement Regulatory Authority (PPRA) was set up under an Ordinance in 2002 to address related issues and in particular to ensuring transparency, fairness and equity in public procurements. The World Bank and the Asian Development Bank actively sensitized the Government in this regard. The PPRA was meant to bring transparency, clarity and uniformity in methods of public procurement relating to goods, works and services and to ensure that procuring agencies, while engaging in procurement, shall ensure that procurements are conducted in a fair and transparent manner, the object of procurement brings value for money to the agency and the procurement process is efficient and economical. It was designed to be user friendly. However, it did not sufficiently deal with quality aspects of 'standards' and timely awarding and completion of contracts, nor provides a neutral redress mechanism in case of conflicts or disputes.

8. PPRA has a normative role in recommending rules, which require the approval of the Federal Government; requires all procuring entities to devise a mechanism, for planning in detail for all proposed procurements with the object of realistically determining the requirements of procuring entities, within its available resources, delivery time or completion date and benefits that are likely to accrue to the procuring entity in future; ensure that tenders are appropriately drafted and advertised on its web site. It has no powers to rectify aberrations necessitated by legitimate reasons; cannot override audit objections; while an oversight body, the procuring entities are responsible for contract descriptions and implementation.

9. While the *raison d'être* of the PPRA is clear, the rationale of putting PPRA in the category of regulatory bodies raises some questions. Regulatory bodies are generally set up to regulate free market commercial players, whereas in case of PPRA the purpose is to perform this

function over government departments and public sector bodies, which are autonomous. The provisions in the law regarding PPRA functions and powers of the Authority show that it has been assigned, in most part, a role to monitor application of laws and their implementation and additionally make recommendations to the government. Section 5 (2) (f) of the Ordinance give it the lofty task of monitoring overall performance of procuring agencies. The sub section states “monitor overall performance of procuring agencies and make recommendations for improvement in their institutional set up”. It is, however, not clear how PPRA could perform this function. It is thus a watch dog but actually without an implementation arm. Neither has it the means to actually assist the Ministries as required in Section 5 (2) (g) the PPRA Ordinance, 2002 which states “provide and coordinate assistance to procuring agencies for developing and improving their institutional framework and public procurement activities”. It is not clear how it could provide assistance to the Ministries, except recommend exemptions only with the approval of the Prime Minister. It is thus a rather benign body mainly ensuring transparency of large tenders. Absence of a neutral redress mechanism means that in case of disputes only recourse is the courts of law, where considerable time could lapse at the expense of project completion.

10. In general, the law does say that Authority may take such measures for improving various aspects of procurement as may be necessary but except for making regulations and guidelines etc. the functions to be performed relating to procurement described are brief and open to broad interpretation. In case of 'works' PPRA has notified documents of Pakistan Engineering Council (PEC) as standard. However, no standard bidding documents are available for procurement of Goods and consultancy services. PPRA monitors tenders advertised in the print media and indicates violation of Rules and issues policy guidelines. This monitoring is only a part of the process. The major part is quality of documents used, fair evaluation and effective contract management including dispute resolution.

11. There is no central grievance redressal mechanism. This function is only limited to a departmental committee of each procuring entity. Regulatory bodies are charged with responsibility to provide a platform for listening to the complaints and providing relief. Although there are no direct public consumers involved in case of PPRA but as users and beneficiaries of facilities built and created by procurement agencies (e.g. NHA) general public is very much a stake holder. The vendors and suppliers are main stake holders who need an independent appellant forum which can provide a second tier for providing relief in between procurement agency and courts of law. PPRA should remain non-intrusive as far as possible but it should perform a defined function in dealing with public complaints for which

a provision in law is needed. Alternate dispute resolution mechanisms are in an infancy in Pakistan. The committee observed that stay orders from courts are in many instances the cause of delay in completion of works or delivery of goods. Avenues for out of courts adjudication would help and make procurement more efficient. In the same direction arbitration is a very important provision. The present arbitration act dates back to 1940. This needs revision to meet the challenges of new environment.

12. In large contracting, pre-bid conferences are useful in clearing concepts of prospective bidders about specification and other aspect of the tenders. This should be encouraged.

13. Earlier experience shows that pre-audits can be source of delay. Audit authorities are not accountable for delivery of projects and are neither competent technically nor pushed to do the exercise conclusively within a given time frame.

14. Laying down regulations is a key activity of PPRA. In view of diversity in nature of works, supplies and services, PPRA may prepare separate regulations for works and supplies and services like it has done for consultancy services. Such specific regulations can be advantageous in application and further streamlining of the contracting process for each activity. The Word “services” is required to be defined in a more comprehensive manner and should include new business concepts e.g. ‘outsourcing’. Consultancy and Training be specifically mentioned etc. Software is an important item in purchase. It should be mentioned under appropriate head like goods.

15. It will be appropriate if functions of the Authority (PPRA) also encompass the tasks of capacity building and training and creation of national consciousness about need for transparency in procurement. It is only PPRA which can play an effective role by holding workshops, seminars and refresher courses on procurement practices and related issues. Apart from officials of procurement agencies, contractors and suppliers have to be included as beneficiaries of such a program. Reforming and training contractors and their personnel is key to efficient procurement and implementation of work and PEC under PPRA guidance can play a meaningful role in this regard.

16. According to PPRA rules donor’s procedures have precedence over national rules, auditors often disregard this instruction and insist that national rules prevail. They also insist that negotiations be carried out with the lowest evaluated bidder to reduce the prices prior to award of contract whereas such financial negotiations are not allowed under the rules nor allowed in the donor financed projects.

17. Regarding membership of the PPRA Board, the Committee observed that presence of secretaries of economic ministries on the board tantamount to conflict of interest. Inclusion

of secretaries of divisions like Planning and Law etc. could be considered as an option. Against slots of private sector representative inclusion of Chairman of Pakistan Engineering Council and Chairman Federation of Pakistan Chamber of Commerce and Industry on Board can help engage firms which are stake holders.

18. Some of the common ills plaguing implementation of Procurement agencies portfolio for small and medium size works are:

- Advertising “call for bids” before RFP tender documents are ready
- Discrimination in transmittal of bid documents to pre-qualified bidders. (Mandatory use of IT for delivery of tender/ Bid documents in addition to normal mail can provide a solution and improve upon the procurement practices.)
- Collusion of bidders.
- Unauthorized subletting of contracts.
- Post award change in scope of work or change in specifications by procurement agencies

Claims for escalation in price. Such age old undesirable practices have become part of work culture in Pakistan. PPRA should frame new regulations or procedures to deal with such practices in an effective manner.

CHAPTER-4

PPRA, GOVERNANCE AND NATIONAL DEVELOPMENT

19. The PPRA regime is increasingly deemed as an impediment to decision making and speedy and qualitative completion of projects of national importance. Unfortunately, and perhaps unfairly, PPRA has become an excuse not to take decisions as it is seen by the public functionaries, as a tool of harassment by agencies, in the name of accountability and anti-corruption.

20. In evaluating PPRA, it is necessary to take a holistic view of the state of governance and to take essential corrective measures, as a matter of national priority. Over the past several decades, there has been a visible deterioration in the functioning of civil service institutions at all levels. This could be attributed to political instability, politicization of bureaucracy, outdated rules of business, procedures and methods of work. Ideals, conviction and moral integrity and sheer professionalism are the hallmarks of an effective civil service. Corruption, nepotism and a political culture that places a premium on 'personal loyalty' rather than 'merit' and 'institutional integrity' corrodes the moral fiber of society.

21. The Committee recognized, as the core problem, the disconnect of the political governance structure with effective institutional capacity. This has led to the continuing decapacitation of Institutions in Pakistan; this is perhaps the smaller evil; the bigger being the corruptionization of institutions.

Institutions are like living beings. They need nourishment to live, occasional capacity audits to identify ailments, followed by effective medication.

22. The malaise in governance is a cause of despondency and erosion of public trust and faith in state institutions. The ordinary citizen feels harassed, helpless and exploited and finds it difficult to seek justice or avail basic civic amenities and enjoy fundamental rights, as a matter of course. Over- regulation, centralization, dissipation of authority and lack of trust are the key negatives. As a result, bureaucracy, known for its competence and dynamism has been obliged to take a back seat. This lack of ownership of public sector projects is a major issue. Authority has been so blatantly scattered that no one feels responsible; tier after tier of scrutiny monitoring and oversight has given birth to a culture of mistrust and brought the

government to a standstill. This is an impotence in governance, which can be remedied, if given the attention that it deserves.

23. PPRA comes in handy to prevaricate and delay decisions. State sponsored projects are rarely completed as per schedule. Quality is often compromised and even essential service institutions such as public hospitals tend to adhere to procurement rules and procedures at the expense of urgently getting lifesaving equipment and medicines. On the other hand, emphasis on mere conformity with rules and procedures provides an avenue to unscrupulous elements to indulge in gross corruption. By fulfilling procedural requirements, such elements beat the system and escape accountability and commit grave breaches of public trust and responsibility. This is truly an untenable situation and requires bold measures to rectify the anomalies and calls for streamlining rules, procedures and practices to enable efficient and effective governmental functioning. The question is whether PPRA could provide guidelines, in its domain, with a new mind set. At the core is the human element or those who have been invested with authority and resources to take decisions and to ensure that programs and projects are actually delivered in a timely manner and for the welfare of the people.

24. PPRA is in fact user friendly and the regime can be made to work effectively by building a greater degree of flexibility and creating greater awareness among the public servants, the private sector and the general public. The practice of giving exemptions from PPRA stipulated requirements has largely been non uniform, arbitrary and a function of political discretion. It is being felt that 'exemptions' was the only way out for getting a firm and timely grip on projects of national importance. The decision to exempt projects under CPEC from international competitive bidding is an example. The Committee, felt that in the present circumstances, this was justified. The CPEC is so important for Pakistan and China that mere exemption from bidding is not the only needed instrument for assured completion of the project. A lot more would be needed and it is hoped that this is understood.

25. In the sixties mega projects of Tarbela and Mangla Dams were accomplished by WAPDA. However, the post-Tarbela development plan considered by the World Bank in its famous report, "The development of Water and Power Development of West Pakistan-A Sectoral analysis". This plan recommended construction of Kalabagh dam around 1990, followed by Basha dam a few years later, which WAPDA tentatively determined to be 2010 AD. This plan was set aside by the political leadership on the plea that Kalabagh dam failed to obtain consensus. For future also no project of that dimension has been undertaken, such as the Kalabagh Dam or other medium to large hydro power projects.

26. The proclivity of the bureaucracy to involve supposedly government sponsored bodies such as NESPAK or FWO on several projects is mainly to escape responsibility arising from conforming with PPRA related rules and the apprehension of critiques and sense of vulnerability to unfounded accountability. This practice discourages the prospects of utilizing the potential of the private sector for national development. There was a view in the Committee that PPRA is proving to be an impediment to development. Few countries in the world are blessed with resources comparable to Pakistan and fewer still in need of its development for the fifth largest populated country in the world. All impediments to development must therefore be eliminated. There is clearly the need for bringing about 'clarity' on rules such as Public Procurement Regulatory Authority (PPRA), Pakistan Engineering Council(PEC) and General Financial Rules(GFR) and the need to 'harmonize' them.

27. There is also the need to have a better implementation mechanisms devised. Problems relating to 'survey' or lack of it; appointment of consultants; lack of legal backing to building codes; absence of Building Information Models (BIM); as well as issues of 'capacity and capability' need to be addressed. There are also matters relating to “standards” and “specifications”. PPRA only dealt with procurement methods and not with standards. The existing Patwari system has also contributed to lack of correct indication of project sites and consequently incorrect or insufficient surveys. All of this is relevant for effective and quality project delivery and national development and accordingly its addressing/redressal need prompt and effective actions.

28. On assessment of governance in Pakistan at the federal and provincial levels by PILDAT in 2014-15, Procurements was one of the subjects that was evaluated. PILDAT had not yet started to assess governance at the Local Bodies level. One of the biggest challenge was to activate Union Councils to deliver optimally. Pakistan dilemma has been that while these policies and action plans were well articulated and implementation was by reasonably trained people, delivery was not good. Local bodies have a long history in sub- continent. In India, they made a constitutional amendment to ensure continuity and regular elections. In Pakistan, local bodies were seen as a hindrance to dishing out patronage by political governments. The provincial governments worked effectively for amendment 18 to the Constitution, that increased its portfolio of subjects under its jurisdiction. However, it did not move with same fervor for passing on any subjects and powers to the district/ union level institutions.

29. In development, implementation is the most important aspect. In decision making, approval process allowing fast track implementation, but founded on firm ground is essential. Nothing like this exists in the current system. Public interest was served not by complying with multiple rules but according approval to a contract in accordance with best market value and the capacity of the entity to fulfill tender commitments. In evaluating procurement systems, it was important to take into account how long it took to award a contract and the time it took to complete the project. It was also important to have clarity on job description and job specifications these aspects presently do not fall in PPRA's domain but are with procurement entities. The criteria of taking the lowest bid, needs to be approached with caution, as to the experience and antecedents of the vendor.

30. The Committee was of the view that the concept of Performance Audit should be expanded and strengthened. The Audit procedures and methods are overwhelmingly relevant to financial audits, ignoring entirely the all-important economic developmental prerogatives.

31. Foreign investors feel that Pakistani laws, rules and regulations are heavily loaded against foreign investment and international manufacturers/contractors. As a result, hardly any foreign investment matures in Pakistan despite the availability of preferential loans. The host of impediments primarily procedural and bureaucratic are responsible for this inertia.

32. In case of 'works' PPRA has notified documents of Pakistan Engineering Council (PEC) as standard. However, no standard bidding documents are available for procurement of Goods and consultancy services. PPRA monitors tenders advertised in the print media and indicates violation of Rules and issue policy guidelines. This monitoring is only a part of the process. The major part is quality of documents used, fair evaluation and effective contract management including dispute resolution. There exists no central grievance redressal mechanism. This function is only limited to a departmental committee of each procuring entity, which generally lacks credibility. The vendors and suppliers are main stake holders who need an independent appellant forum which can provide a second tier for providing relief in between procurement agency and courts of law. PPRA should remain non-intrusive as far as possible but it should perform a defined function in dealing with public complaints for which a provision in law is needed.

33. Alternate dispute resolution mechanisms are in an infancy in Pakistan. The committee observed that stay orders from courts are in many instances the cause of delay in completion of works or delivery of goods. Avenues for out of courts adjudication would help and make procurement more efficient. In the same direction arbitration is a very important provision.

The present arbitration act dates back to 1940. This needs revision to meet the challenges of new environment

34. According to PPRA rules donor's procedures have precedence over national rules, auditors often disregard this instruction and insist that national rules prevail. They also insist that negotiations be carried out with the lowest evaluated bidder to reduce the prices prior to award of contract whereas such financial negotiations are not allowed under the rules nor allowed in the donor financed projects. Such cases should be totally rejected.

35. The system is unfortunately based on lack of trust on the government functionaries adding layers of so-called checks that these instead of facilitating the execution of the projects only hampers smooth process, and becomes counterproductive. It is pity that these systems also encourage rampant corruption and become a vehicle of corruption by multiple organizations involved in the process. There is a dire need for simple implementable and transparent procedure, based on trust and confidence in the personnel of integrity employed by the government. Integrity stays where accountability is timely and effective.

CHAPTER-5

INTERNATIONAL BEST PRACTICES

36. Over a period of time Public procurement has come to be recognized as a strategic tool all over the world. It helps governments to achieve development, social and environmental objectives rather than merely compliance of rules and regulations.

37. Significant reforms are taking place in many countries. Large share of public expenditure is utilized in procurement. According to OECD, approximately 15-20% of the GDP is spending on public procurement. In Uganda, this expenditure is about 60-70% of the GDP, India spends about US \$300 billion, which is about 25-30% of the GDP. Similarly, Bhutan spends about 25% of its GDP of their annual budget in public procurement. Maldives public procurement expenditure is to the tune of \$ 2.2 billion and Bangladesh spends more than US\$ 3 billion annually on public procurement. Because of the magnitude of the spending involved, a small savings in public procurement through efficiency and economy can release large financial resources. In India, for example 10% savings would mean release of US\$ 30 billion per year. This saving can be utilized to achieve development and to mitigate poverty.

38. Keeping in view the above, the international community has moved to the performance based procurement rather than mere compliance of Rules and are looking for innovative ways for sustainable procurement system. The world is moving towards use of technology. In procurement also, the adoption of technology is critical in enhancing value of procurement. Similarly, professional training of officials and civil servants cannot be overlooked. The officials are the principal agents in the implementation of public procurement.

39. There is an emphasis on development of an integrated set of tools and good practices to help strengthen procurement system leading to overall development of a country. Transparency, economy and efficiency in public procurement is considered crucial for achieving the goal of economic development and poverty alleviation. Opportunities for corruption are often linked to lack of transparency. Thus civil society awareness, protection of whistle blowers, internal controls and external audit and oversight is also given due importance.

40. Maladministration in public procurement takes place when the legislative and regulatory framework is weak or not conducive to full attainment of public interest in the shortest possible time ; public procurement is not integrated with the Public Financial Management (PFM) system: those responsible for implementing it are not well organized and do not have

the necessary skills; oversight mechanisms - oversight by public procurement regulatory body and external and internal audits - are weak; anti-fraud and anti-corruption regulations are weak; and the public procurement system is not adopting innovative ways of conducting and managing procurement, e.g. electronic Government Procurement (e-GP), Public Private Partnership (PPP), Framework Agreements (FAs), performance measurement techniques, etc. This scenario also leads to lack of transparency in public procurement.

CHAPTER-6

RECOMMENDATIONS

A) GOVERNANCE ISSUES

41. The Committee was of the view that it was necessary for the Parliament to address the issues relating to Governance on a non-partisan basis and to undertake far reaching reforms to restore the integrity, impartiality and capacity of the civil service and state institutions in a comprehensive manner. In this regards, urgent attention needs to be given to merit based selection, reviewing the Rules of Business, rules and procedures, and methods of work so as to improve efficiency, service delivery and realize the projects of national development expeditiously and qualitatively. Without such reforms, the space of governance will continue to shrink and the non-state actors and the mafia would gain ground causing irreparable harm to the nation. The solution to this malaise is simple provided the will is there. All one has to do is to simplify procedures, laws, rules and regulations; dispense with more than one tier of monitoring; make authority and responsibility coterminous; along with swift and stringent accountability in case of failure or malfeasance.

(Review mandated by Cabinet/ Parliament)

Medium term

42. Civil servants were facing harassment and political interference. It was important that they be given constitutional protection. Special mechanisms for Grievance Redressal for civil servants should be instituted.

43. The financial autonomy of Ministries may be ensured by enabling their respective secretaries to administer their sanctioned budgets without prior concurrence of the Finance Ministry

(Cabinet/ Finance/ Establishment Division)

Short term

44. A system of performance audit should be strengthened. Performance evaluation should be correlated with implementation of programs, projects, and decisions

(Auditor General)

Short term

45. Federal Secretaries should have term based appointments and should be held responsible for the functioning of their Ministry.

(Cabinet/ Establishment Division)

Short term

46. Appointments in the civil service should be made on merit. The performance should be judged by actual delivery

(Establishment Division)

Long term (continuous process)

47. Civil servants are the custodians of public funds and every decision in this regard must meet the criteria of 'public interest'. Deviation from rules, where necessary and in the public interest should be permitted, the reasons thereof should be explicitly stated and recorded

(PPRA/ Finance Division)

Short term

B. PUBLIC PROCUREMENT RULES

48. Chief Procurement Officer may be notified in each procuring entity

49. Financial limits given for various methods of advertising needs to be enhanced

50. The threshold for petty purchases and request for quotations may be enhanced

51. Black listing of contractors/suppliers (Rule 19) may include cross-debarment i.e. those black listed by agencies like world bank, ADB. Moreover, safe guards may be introduced so as to ensure black listed firms do not continue by changing their name
(Public Procurement Regulatory Authority)

Short term

52. There is no neutral or second tier for right of appeal. Dispute resolution mechanism may be introduced to avoid lengthy litigation. In the current Rule for grievance redressal, the provision of Appeal to the Secretary/Head of Organization may be provided.
(Public Procurement Regulatory Authority)

Medium term

53. A new rule may be added to provide for review of records of Procurement activities periodically by the Authority of top ten high value procurements and a random audit of certain numbers of the remaining transactions of procuring agencies. The findings of the post procurement review may be provided to the procuring agency for improvement in the institutional frame work and public procurement activities
(Public Procurement Regulatory Authority)

Short term

54. A new rule regarding Frame work agreements may be added whereby the procurement is made for a certain volume or quantity of a particular good, a set of goods or services and works over a specific period against an agreed sum or rate
(Public Procurement Regulatory Authority)

Short term

55. A new rule may be added to cover situations where a procuring agency executes works using its own resources including labor, equipment, materials, and supplies
(Public Procurement Regulatory Authority)

Short term

56. A new rule pertaining to green procurement may be added
(Public Procurement Regulatory Authority)

Short term

57. In case a contractor fails to deliver any or all of the goods, works or services within the period agreed in the contract, the procuring agency may either allow an extension in the contract period pursuant to a written request by the contractor with justifications or deduct the

amount, as liquidated damages, a sum equivalent to the percentage specified in the contract for each week or part thereof of delay
(Public Procurement Regulatory Authority)
Short term

C. STANDARD BIDDING DOCUMENTS

58. Standard bidding documents for Goods and Consulting services may be developed
(Public Procurement Regulatory Authority)
Medium term

59. Standard bidding documents for works developed by PEC and adopted by PPRA may be completely harmonized to remove any confusion
(Public Procurement Regulatory Authority)
Short term

D. STANDARDS FOR COMMON USE ITEMS

60. Standards/catalogues may be developed for common use items
(Public Procurement Regulatory Authority)
Medium term

E. CONSOLIDATED PROCUREMENT

61. Rules may be formulated to provide for consolidated procurements at least of common use items like stationery
(Public Procurement Regulatory Authority)
Medium term

F. PPRA BOARD OF MEMBERS

62. Private members should be inducted in the Board of Members of PPRA. Conflict of interest should be minimized by maintaining proper mix of members in the Board. Inclusion of Secretary Law Division and Planning Division may be considered
Administratively the PPRA is under Cabinet Division, Secretary cabinet division may be included in Board
(Cabinet Division)
Medium term

G. EXEMPTIONS

63. In principle, granting of exemptions from the application of PPRA rules may appear to violate the spirit of the Rules. Effective checks should be maintained to avoid abuse of such provision. However, exemptions may only be given for reasons of national/public interest, and these may be explicitly recorded
(PPRA Board of Members)
Short term

H. TIME LINES FOR PROJECTS

64. Time lines for completion of projects should be made sacrosanct. They must not be revised frequently
(Procuring entities)
Short term

65. A list of Actual Completion Costs may be maintained by the Procuring entities and shared with PPRA

I. CAPACITY BUILDING

66. Public awareness of PPRA Rules and capacity building of staff involved in the procurement activities is necessary. This should be undertaken in Administrative Training Institutions in addition to National Institute of Public Procurement (Public Procurement Regulatory Authority / Administrative Training Institutions)
Short term

67. Systematic approach of capacity building for identified group of officers and staff in procuring entities may be undertaken through E-training, half day training or 3-days training courses
(Public Procurement Regulatory Authority)
Short term

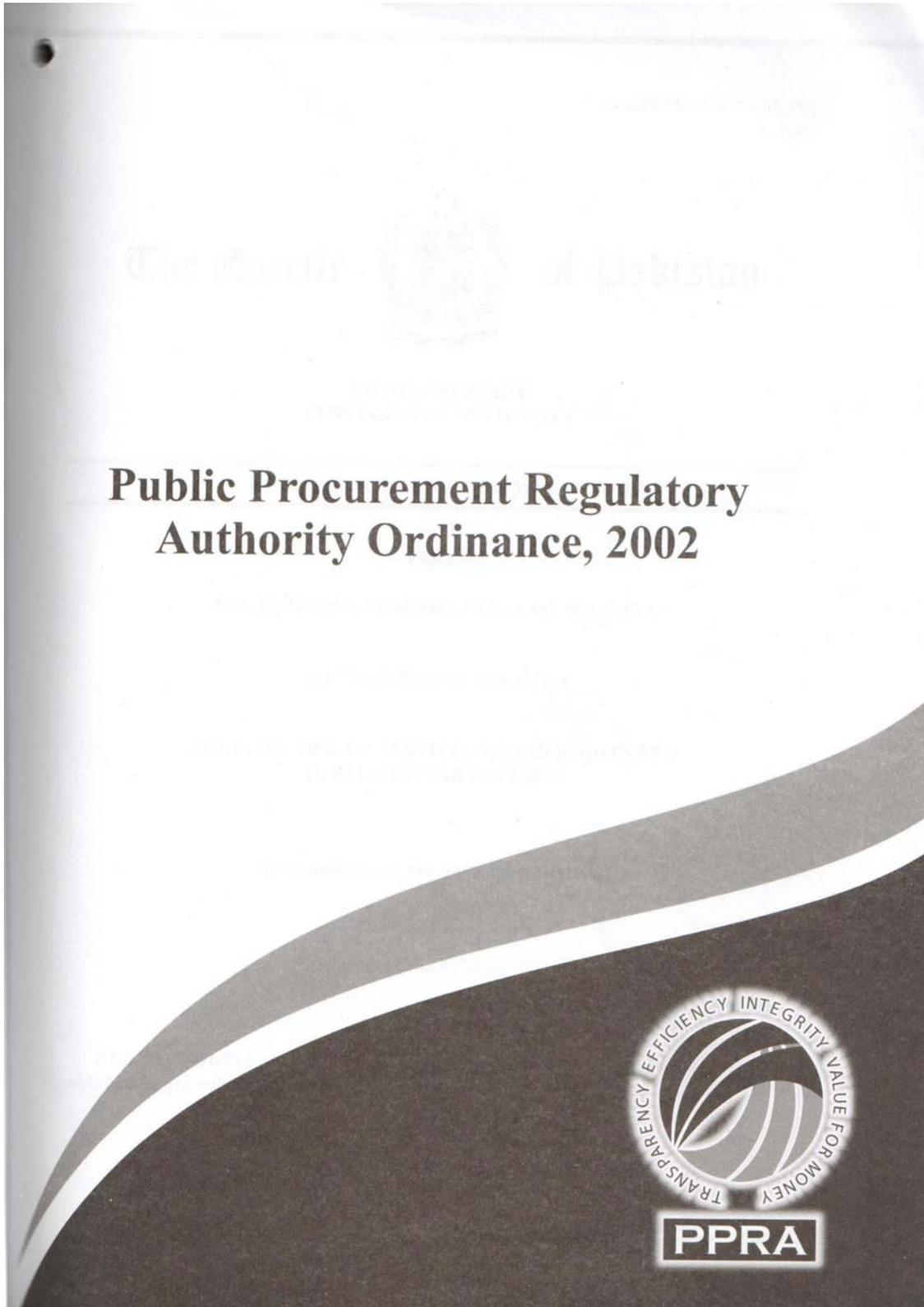
68. PPRA may formulate procurement training modules for use by academies and academic institutions
(Public Procurement Regulatory Authority)
Medium term

69. Performance reviews of those who have undergone training should be undertaken to measure impact of training on actual procurement performance
(Public Procurement Regulatory Authority)
Short term

70. E-PROCUREMENT

Develop a web based e-Procurement System for registered Suppliers on with a clear cut Strategy
(Public Procurement Regulatory Authority)
Medium- term

ANNEXURES



REGISTERED No.M-302
L.7646

The Gazette  of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, MAY 15, 2002

PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF PAKISTAN

MINISTRY OF LAW, JUSTICE, HUMAN RIGHTS AND
PARLIAMENTARY AFFAIRS

(Law, Justice and Human Rights Division)

Islamabad, the 15th May, 2002

F.No.2(1)/2002-Pub.-The following Ordinance promulgated by the President is hereby published for general information:-

ORDINANCE NO. XXII OF 2002

**AN
ORDINANCE**

to provide for the establishment of Public Procurement Regulatory Authority for regulating public procurement of goods, services and works in the public sector

WHEREAS it is expedient to provide for the establishment of a Public Procurement Regulatory Authority for regulating procurement of goods, services and works in the public sector and for matters connected therewith or ancillary thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

**CHAPTER I
PRELIMINARY**

1. Short title, extent and commencement.-(1) This Ordinance may be called the Public Procurement Regulatory Authority Ordinance, 2002.

- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definitions.-In this Ordinance, unless there is anything repugnant in the subject or context,-

- (a) "Authority" means the Public Procurement Regulatory Authority established under section 3;
- (b) "Board" means the Board constituted under section 6;
- (c) "Chairperson" means the Chairperson of the Board;
- (d) "Fund" means the fund established under section 9;
- (e) "goods" means articles and objects of every kind and description including raw materials, products, equipment, machinery, spares and commodities in any form and includes services incidental to installation, transport, maintenance and similar obligations related to the supply of goods if the value of these services does not exceed the value of such goods;
- (f) "Managing Director" means the Managing Director appointed under section 8;
- (g) "member" means a member of the Authority;
- (h) "misprocurement" means public procurement in contravention of any provision of this Ordinance, any rules, regulations, orders or instructions made thereunder or any other law in respect of, or relating to, public procurement;
- (i) "prescribed" means prescribed by rules made under this Ordinance;
- (j) "procuring agency" means:-

- (i) any Ministry, Division, Department or any Office of the Federal Government;
- (ii) any authority, corporation, body or organization established by or under a Federal law or which is owned or controlled by the Federal Government;
- (k) "Public Fund" means the Federal Consolidated Fund and the Public Account of the Federation and includes funds of enterprises which are owned or controlled by the Federal Government;
- (l) "public procurement" means acquisition of goods, services or construction of any works financed wholly or partly out of the Public Fund, unless excluded otherwise by the Federal Government;
- (m) "regulations" means regulations made under this Ordinance;
- (n) "rules" means rules made under this Ordinance;
- (o) "service" means any object of procurement other than goods or works; and
- (p) "works" means any construction 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 incidental services such as drilling, mapping, satellite photography, seismic investigations and similar activities, if the value of those services does not exceed that of the works themselves.

CHAPTER II ESTABLISHMENT OF AUTHORITY

3. Establishment of Authority.- (1) There is hereby established an Authority to be called the Public Procurement Regulatory Authority for carrying out the purposes of this Ordinance.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal, with powers subject to the provisions of this Ordinance, to acquire and hold property, both moveable and immovable, and, sue and be sued by the name assigned to it by sub-section (1).

(3) The headquarters of the Authority shall be at Islamabad and it may establish its offices at such other place or places in Pakistan as it may consider appropriate.

4. Power of the Federal Government to issue directives.-The Federal Government may, as and when it considers necessary, issue directives to the Authority on matters of policy, and such directives shall be binding on the Authority.

5. Functions and powers of the Authority.- (1) Subject to other provision of this Ordinance, the authority may take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, services and works in the public sector.

(2) Without prejudice to the generality or the powers conferred by sub-section (1), the Authority may-

- (a) monitor application of the laws, rules, regulations, policies and procedures in respect of, or relating to, procurement;
- (b) monitor the implementation of and evaluate laws, rules, regulations, policies and

procedures in respect of, or relating to, inspection or quality of goods, services and works and recommend reformulation thereof or revisions therein as it deems necessary;

- (c) recommend to the Federal Government revisions in or formulation of new laws, rules and policies in respect of or related to public procurement;
- (d) make regulations and lay down codes of ethics and procedures for public procurement, inspection or quality of goods, services and works;
- (e) monitor public procurement practices and make recommendations to improve governance, transparency, accountability and quality of public procurement;
- (f) monitor overall performance of procuring agencies and make recommendation for improvements in their institutional set up;
- (g) provide and coordinate assistance to procuring agencies for developing and improving their institutional framework and public procurement activities;
- (h) submit reports to the Government in respect of public procurement activities of procuring agencies;
- (i) call any functionary of procuring agencies to provide assistance in its functions and call for any information from such agencies in pursuance of its objectives and functions; and
- (j) perform any other function assigned to it by the Federal Government or that is incidental or consequential to any of the aforesaid functions.

CHAPTER III MANAGEMENT AND ADMINISTRATION OF THE AUTHORITY

6. Board.- (1) General directions and administration of the Authority and its affairs shall vest in a Board which may exercise all powers, perform all functions and do all acts and things which may be exercised, performed or done by the Authority.

(2) The Board shall consist of the following Members, namely:-

(1)	Secretary, Finance Division	Chairperson
(2)	Secretary, Ministry of Industries	Member
(3)	Secretary, Defence Production Division	Member
(4)	Secretary, Ministry of Water and Power	Member
(5)	Secretary, Ministry of Housing and Works	Member
(6)	Secretary, Ministry of Communications	Member
(7)	Three Members from private sector be nominated by the Federal Government	Members
(8)	Managing Director	Member

(3) The Managing Director shall act as Secretary to the Board.

(4) A member appointed from the private sector shall hold office for a period of three years and shall be entitled to such terms and conditions as the Federal Government may determine.

(5) A member from the private sector may, by writing in his hand addressed to the Federal Government, resign his office.

(6) A casual vacancy in the office of a private sector member shall be filled by appointment of another member from the private sector for the residue of the terms of his predecessor.

7. Meeting of the Board.- (1) The meeting of the Board shall be presided over by the Chairperson or, in his absence the member elected by the members, shall preside at the meeting of the Board.

(2) Five members shall constitute a quorum for a meeting of the Board requiring a decision by the Board.

(3) The meeting of the Board shall be held at such times, places and in such manner as may be prescribed by regulation.

(4) The members shall have reasonable notice of the time and place of the meeting and matters on which a decision by the Board shall be taken in such meeting.

(5) The decision of the Board shall be taken by the majority of its members present and, in case of a tie, the member presiding a meeting shall have a casting vote.

(6) All orders, determination and decision of the Board shall be taken in writing and shall be signed by the Managing Director.

8. Managing Director.- (1) The Federal Government shall select and appoint a whole time Managing Director to serve as member of the Board and shall be responsible for day to day administration of the Authority for such period and on such terms and conditions as the Federal Government may, determine.

(2) The Managing Director shall be appointed for three years and he shall be eligible for re-appointment but his total tenure shall in no case exceed six years.

(3) No person shall be appointed or continue as Managing Director, if he-

- (a) has been convicted of an offence involving moral turpitude;
- (b) has been removed from service for misconduct;
- (c) has been adjudicated as insolvent;
- (d) is incapable of discharging his duties by reasons of physical or mental incapacity and has been so declared by a Medical Board appointed by the Federal Government; or
- (e) fail to disclose any conflict of interest at or within the time provided for such disclosure by or under this Ordinance or contravene any of the provisions of this Ordinance.

(4) The Managing Director may, at any time, resign his office by writing under his hand addressed to the Federal Government.

(5) The Managing Director shall be paid such salary and allowances as the Federal Government may determine but his salary and allowances shall not be varied to his disadvantage during his term of office.

(6) The Managing Director shall not, during the term of his office, engage himself to any other service, business, vocation or employment nor shall he before the expiration of one year

thereof enter into employment or accept any advisory or consult relationship with any person engaged in public procurement activity:

Provided that where the Managing Director is Government servant there shall be no such restrictions on his employment after he has retired or transferred from the post of Managing Director and where he is from private sector he shall not have any direct or indirect financial interest or have any connection with any company engaged in public procurement activity for so long as he holds office and for a period of one year thereafter.

- (7) The Managing Director shall have power and responsibility to-
- (a) exercise administrative control over the personnel of the Authority;
 - (b) exercise, in respect of the Authority, such other management, administrative and financial powers as deemed appropriate by the Authority;
 - (c) submit the annual budget proposals of the Authority to the Board;
 - (d) prepare the annual report of the Authority for the Board and the Federal Government;
 - (e) exercise such powers as the Board may delegate to him; and
 - (f) act on behalf of the Authority, in any emergency, subject to the obligation to report such action to the Board at its next meeting and to seek the Board's ratification of any action so taken.

CHAPTER IV FINANCIAL PROVISIONS

9. Fund.- (1) There is hereby established a Fund to be known as the Public Procurement Regulatory Authority Fund which shall vest in Authority and shall be utilized by the Authority to meet the charges in connection with its functions under this Ordinance.

- (2) To the credit of the Public Procurement Authority, a fund shall be placed comprising-
- (a) such sums as the Federal Government may, from time to time, allocate to it in the annual budget;
 - (b) grants;
 - (c) income from investment by the Authority; and
 - (d) all other sums or properties which may in any manner become payable to, or vest in, the Authority in respect of any matter.

(3) The Authority, while performing its functions and exercising its powers under the Ordinance, shall exercise highest sense of prudence as far as expenditures are concerned.

10. Expenditure to be charged on the Fund.-The Fund shall be expended for the purpose of-

- (a) paying any expenditure lawfully incurred by the Authority, relating to remuneration of its members, employees, advisers, and consultants of the Authority, including provident fund contributions, superannuating allowances or gratuities, legal fees and costs as well as other fees and costs;
- (b) paying any other expenses, costs or expenditure properly incurred or accepted by the Authority in the performance of its functions or the exercise of its powers under this Ordinance;

- (c) purchasing or hiring equipment, machinery and any other work and undertakings in the performance of its functions or the exercise of its powers under this Ordinance;
- (d) repaying any financial accommodation received; and
- (e) generally, paying any expenses for carrying into effect the provisions of this Ordinance.

11. Power to obtain finances and receive grants.-The Authority may, from time to time and with the approval of the Federal Government, accept grants from entities both domestic and international, including multilateral agencies for meeting any of its obligations or performing of any of its functions.

12. Investment.-The Authority may invest its surplus funds in accordance with the instructions of the Federal Government.

13. Budget and accounts.-The Authority shall cause its accounts to be maintained properly and in respect of each financial year submit for approval of the Federal Government by such date and in such form as may be specified by Federal Government a statement showing the estimated receipts and current expenditure and the sums to be required from the Government during the next financial year.

14. Maintenance of accounts.-The Authority shall cause proper accounts to be kept and shall after the end of each financial year cause to be prepared for that financial year a statement of accounts of the Authority which shall include a balance sheet and an account of receipt and expenditure.

15. Audit.-The accounts of the Authority, shall be audited every year by the Auditor General of Pakistan.

CHAPTER V REGULATORY AND OTHER PROVISIONS

16. Information.- (1) The Authority may call for any information required by it for carrying out the purposes of this Ordinance, from any person or any institution in public procurement activities and any such person or institution shall provide the required information called by the Authority.

(2) The Authority shall furnish to the Federal Government such information with respect to the policies and procedures it is pursuing or proposes to pursue in the performance of any of its functions under this Ordinance as the Federal Government may, from time to time, require.

17. Annual Report.-Within one hundred and twenty days from the end of each financial year, the Authority shall cause a report to be prepared on its activities including inquiries and investigations made by the Authority under this Ordinance during that financial year and release to the public after it has been seen by the Cabinet.

CHAPTER VI MISCELLANEOUS

18. Appointment of officers and staff, etc.- (1) The Authority may, from time to time and within its resources, appoint such officers, servants, advisers, consultants and experts as it may

consider necessary for performance of its functions.

(2) The Authority shall by regulations prescribe the procedure for appointment of its officers, servants, advisers, consultants and experts and the terms and conditions of their service.

19. Members, officers, etc. to be public servants.-The Chairperson, members, Director-General, officers, servants, advisers, consultants and experts of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance or the rules and regulations made thereunder, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

20. Delegation.- The Authority may, by such conditions and limitations as it may deem fit to impose, delegate any of its functions or powers to the Managing Director, or one or more members or any of its officers except the power to-

- (a) approve audited accounts;
- (b) recommend exemption under section 21; and
- (c) make or repeal regulation made under this Ordinance.

21. Power to exempt.- The Authority may, for reasons to be recorded in writing, recommend to the Federal Government that the procurement of an object or class of objects in the national interest be exempted from the operation of this Ordinance or any rule or regulation made thereunder or any other law regulating public procurement and the Federal Government on such recommendations shall exempt the aforesaid objects or class of objects from the operation of the laws and rules and regulations made thereunder.

***[21A. Ordinance not to apply to certain bodies corporate, etc.]** (1) Notwithstanding anything contained in this Ordinance the provisions thereof shall not apply to a body corporate, company, institution undertaking or establishment specified in the Schedule to this Ordinance, which has been privatized pursuant to the Privatization Commission Ordinance, 2000 (LII of 2000).

(2) The Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto, modify or omit any entry therein.]

22. Validity of proceedings.- No act or proceedings of the Authority or the Board, shall be invalid by reason only of the existence of vacancy in, or defect in the constitution of, the Authority or the Board.

23. Indemnity.- No suit, prosecution, or other legal proceedings shall lie against the Authority, the Board, the Chairperson or any member, officer, servants, advisers or consultants of the Authority in respect of anything in good faith done or intended to be done under this Ordinance or the rules and regulations made thereunder.

24. Common seal.- (1) The Authority shall have a common seal and such seal shall be kept by the Managing Director or such other person as the Chairperson may authorize.

(2) The seal shall be authenticated in the same manner as may be prescribed by regulation and any document purported to be sealed with the seal so authenticated shall be receivable as

*Inserted vide Section 19 of the Finance Act, 2006 (Act No. III of 2006)

evidence of the particular stated in the document.

25. Winding up.-No provision of law relating to winding up of bodies corporate shall apply to the Authority and the Authority shall not be wound up except by the orders of the Federal Government in the same manner as the Federal Government may direct.

26. Power of the Federal Government to make rules.-The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

27. Power of the Authority to make regulations.-The Authority may make regulations, not inconsistent with the provisions of this Ordinance and the rules made thereunder, for carrying out the purposes of this Ordinance.

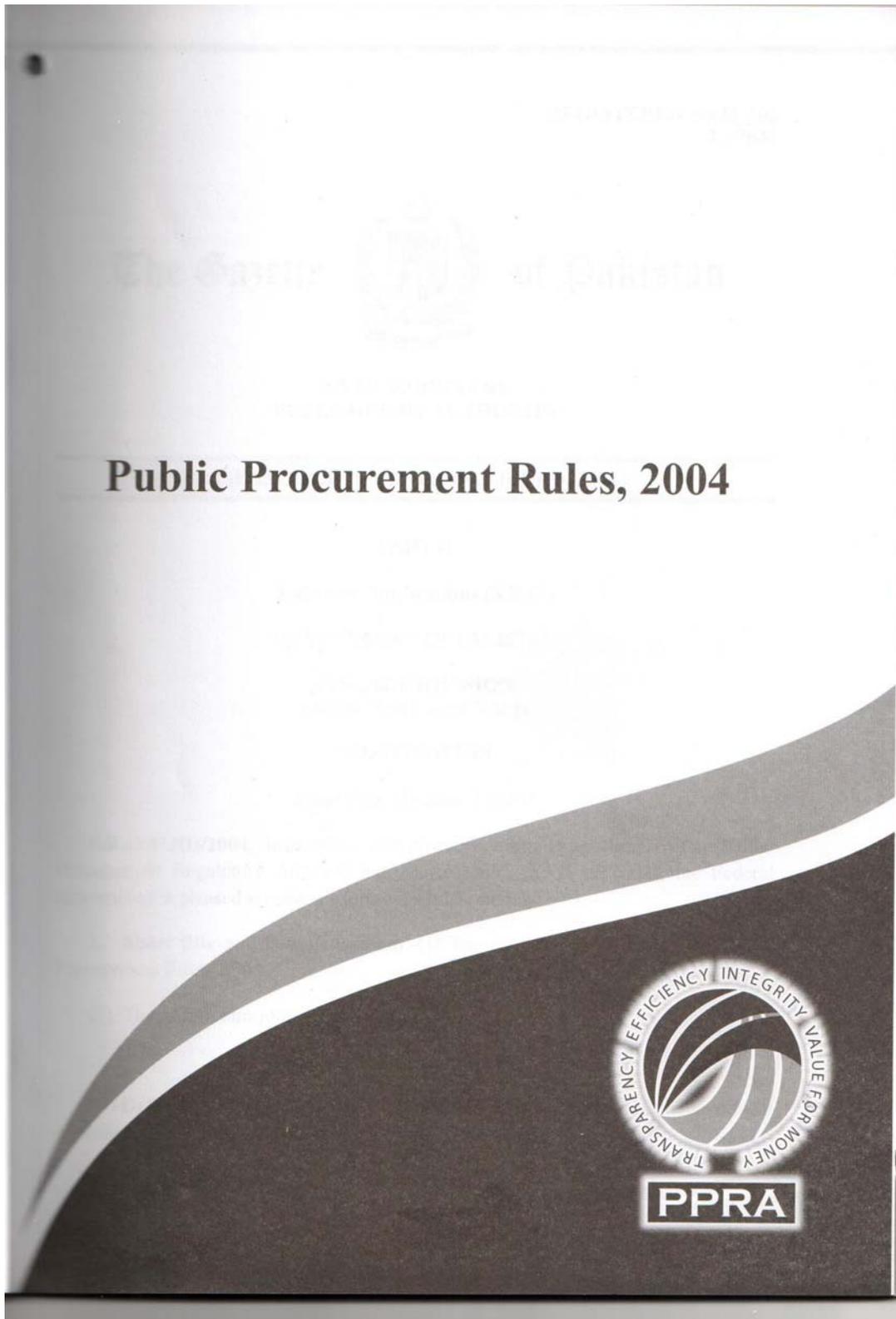
GENERAL
PERVEZ MUSHARRAF,
President.

MR. JUSTICE
MANSOOR AHMED,
Secretary.

***[THE SCHEDULE]**

1. The Pakistan Telecommunication Company

*Inserted vide Section 19 of the Finance Act, 2006 (Act No. III of 2006)



The Gazette  of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, JUNE 9, 2004

PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN

FINANCE DIVISION
(Admn. And Coord. Wing)

NOTIFICATION

Islamabad, the June 8, 2004

S.R.O.432(I)/2004.- In exercise of the powers conferred by section 26 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Federal Government is pleased to make the following rules, namely:-

1. Short title and commencement.-(1) These rules may be called the Public Procurement Rules, 2004.

(2) They shall come into force at once.

GENERAL PROVISION

2. Definitions.- (1) In these rules, unless there is anything repugnant in the subject or context,-

- (a) "bid" means a tender, or an offer, in response to an invitation, by a person, consultant, firm, company or an organization expressing his or its willingness to undertake a specified task at a price;
- (b) "bidder" means a person who submits a bid;
- (c) "competitive bidding" means a procedure leading to the award of a contract whereby all the interested persons, firms, companies or organizations may bid for the contract and includes both national competitive bidding and international competitive bidding;
- (d) "contractor" means a person, consultant, firm, company or an organization who undertakes to supply goods, services or works;
- (e) "contract" means an agreement enforceable by law;
- (f) "corrupt and fraudulent practices" includes the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official or the supplier or contractor in the procurement process or in contract execution to the detriment of the procuring agencies; or misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non competitive levels and to deprive the procuring agencies of the benefits of free and open competition and any request for, or solicitation of anything of value by any public official in the course of the exercise of his duty;
- (g) "emergency" means natural calamities, disasters, accidents, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment;
- (h) "lowest evaluated bid" means,-
 - (i) a bid most closely conforming to evaluation criteria and other conditions specified in the bidding documents; and
 - (ii) having lowest evaluated cost;
- (i) "Ordinance" means the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002);
- (j) "repeat orders" means procurement of the same commodity from the same source without competition and includes enhancement of contracts;
- (k) "supplier" means a person, consultant, firm, company or an organization who undertakes to supply goods, services or works; and
- (l) "value for money" means best returns for each rupee spent in terms of quality, timeliness, reliability, after sales service, up-grade ability, price, source, and the combination of whole-life cost and quality to meet the procuring agency's requirements.

(2) The expressions used but not defined in these rules shall have the same meanings as are assigned to them in the Ordinance.

3. Scope and applicability.-Save as otherwise provided, these rules shall apply to all procurement made by all procuring agencies of the Federal Government whether within or outside Pakistan.

4. Principles of procurements.- Procuring agencies, while engaging in procurements, shall ensure that the procurements are conducted in a fair and transparent manner, the object of procurement brings value for money to the agency and the procurement process is efficient and economical.

5. International and inter-governmental commitments of the Federal Government.-Whenever these rules are in conflict with an obligation or commitment of the Federal Government arising out of an international treaty or an agreement with a State or States, or any international financial institution the provisions of such international treaty or agreement shall prevail to the extent of such conflict.

6. Language.- (1) All communications and documentation related to procurements of the Federal Government shall either be in Urdu or English or both. Except where a procuring agency is situated outside the territories of Pakistan and procurements are to be made locally, the procuring agency may use the local language in addition to Urdu or English.

(2) Where the use of local language is found essential, the original documentation shall be in Urdu or English, which shall be retained on record; for all other purposes their translations in local language shall be used:

Provided that such use of local language ensures maximum economy and efficiency in the procurement.

(3) In case of the dispute reference shall be made to the original documentation retained on record.

7. Integrity pact.-Procurements exceeding the prescribed limit shall be subject to an integrity pact, as specified by regulation with approval of the Federal Government, between the procuring agency and the suppliers or contractors.

PROCUREMENT PLANNING

8. Procurement planning.-Within one year of commencement of these rules, all procuring agencies shall devise a mechanism, for planning in detail for all proposed procurements with the object of realistically determining the requirements of the

procuring agency, within its available resources, delivery time or completion date and benefits that are likely to accrue to the procuring agency in future.

9. Limitation on splitting or regrouping of proposed procurement.- Save as otherwise provided and subject to the regulation made by the Authority, with the prior approval of the Federal Government, a procuring agency shall announce in an appropriate manner all proposed procurements for each financial year and shall proceed accordingly without any splitting or regrouping of the procurements so planned. The annual requirements thus determined would be advertised in advance on the Authority's website as well as on the website of the procuring agency in case the procuring agency has its own website.

10. Specifications.-Specifications shall allow the widest possible competition and shall not favour any single contractor or supplier nor put others at a disadvantage. Specifications shall be generic and shall not include references to brand names, model numbers, catalogue numbers or similar classifications. However if the procuring agency is convinced that the use of or a reference to a brand name or a catalogue number is essential to complete an otherwise incomplete specification, such use or reference shall be qualified with the words "or equivalent":

*[Provided that this rule shall not apply to procurement made by public sector commercial concerns on the demand of private sector client specifying, in writing, a particular brand, model or classification of equipment, machinery or other objects.]

11. Approval mechanism.-All procuring agencies shall provide clear authorization and delegation of powers for different categories of procurement and shall only initiate procurement once approval of the competent authorities concerned has been accorded.

PROCUREMENT ADVERTISEMENTS

12. Methods of advertisement.- (1) Procurements over **[one hundred] thousand rupees and up to the limit of **[two million] rupees shall be advertised on the Authority's website in the manner and format specified by regulation by the Authority from time to time. These procurement opportunities may also be advertised in print media, if deemed necessary by the procuring agency:

**Provided that the lower financial limit for advertisement on Authority's website for open competitive bidding shall be the prescribed financial limit for request for quotations under clause (b) of rule 42.

*Inserted vide S.R.O. No. 1022(I)/2008 dated 23-9-2008

**The word "forty" was substituted with the words "one hundred" vide S.R.O.1241(I)/2006 dated 13-12-2006

***The words "one million" was substituted with the words "two million" vide S.R.O.1241(I)/2006 dated 13-12-2006

(2) All procurement opportunities over *[two million] rupees should be advertised on the Authority's website as well as in other print media or newspapers having wide circulation. The advertisement in the newspapers shall principally appear in at least two national dailies, one in English and the other in Urdu.

(3) In cases where the procuring agency has its own website it may also post all advertisements concerning procurement on that website as well.

(4) A procuring agency utilizing electronic media shall ensure that the information posted on the website is complete for the purposes for which it has been posted, and such information shall remain available on that website until the closing date for the submission of bids.

13. Response time.- (1) The procuring agency may decide the response time for receipt of bids or proposals (including proposals for pre-qualification) from the date of publication of an advertisement or notice, keeping in view the individual procurement's complexity, availability and urgency. However, under no circumstances the response time shall be less than fifteen **[days] for national competitive bidding and thirty **[days] for international competitive bidding from the date of publication of advertisement or notice.

All advertisements or notices shall expressly mention the response time allowed for that particular procurement along with the information for collection of bid documents which shall be issued till a given date, allowing sufficient time to complete and submit the bid by the closing date:

Provided that no time limit shall be applicable in case of emergency.

(2) The response time shall be calculated from the date of first publication of the advertisement in a newspaper or posting on the website, as the case may be.

(3) In situations where publication of such advertisements or notices has occurred in both electronic and print media, the response time shall be calculated from the day of its first publication in the newspapers.

14. Exceptions.-It shall be mandatory for all procuring agencies to advertise all procurement requirements exceeding ***[prescribed financial limit which is applicable under sub-clause (i) of clause (b) of rule 42]. However, under following circumstances deviation from the requirement is permissible with the prior approval of the Authority:-

**The words "one million" was substituted with the words "two million" vide S.R.O.1241(I)/2006 dated 13-12-2006

***The words "working days" were substituted with the word "days" vide S.R.O.1241(I)/2006 dated 13-12-2006

****The words "forty thousand rupees" were substituted with the words "prescribed financial limit which is applicable under subclause (i) of the clause (b) of rule 42" vide S.R.O.1241(I)/2006 dated 13-12-2006

- (a) the proposed procurement is related to national security and its publication could jeopardize national security objectives; and
- (b) the proposed procurement advertisement or notice or publication of it, in any manner, relates to disclosure of information, which is proprietary in nature or falls within the definition of intellectual property which is available from a single source.

PRE-QUALIFICATION, QUALIFICATION AND DIS-QUALIFICATION OF SUPPLIERS AND CONTRACTORS

15. Pre-qualification of suppliers and contractors.- (1) A procuring agency, prior to the floating of tenders, invitation to proposals or offers in procurement proceedings, may engage in pre-qualification of bidders in case of services, civil works, turnkey projects and in case of procurement of expensive and technically complex equipment to ensure that only technically and financially capable firms having adequate managerial capability are invited to submit bids. Such pre-qualification shall solely be based upon the ability of the interested parties to perform that particular work satisfactorily.

(2) A procuring agency while engaging in pre-qualification may take into consideration the following factors, namely:-

- (a) relevant experience and past performance;
- (b) capabilities with respect to personnel, equipment, and plant;
- (c) financial position;
- (d) appropriate managerial capability; and
- (e) any other factor that a procuring agency may deem relevant, not inconsistent with these rules.

16. Pre-qualification process.- (1) The procuring agency engaging in pre-qualification shall announce, in the pre-qualification documents, all information required for pre-qualification including instructions for preparation and submission of the pre-qualification documents, evaluation criteria, list of documentary evidence required by suppliers or contractors to demonstrate their respective qualifications and any other information that the procuring agency deems necessary for pre-qualification.

(2) The procuring agency shall provide a set of pre-qualification documents to any supplier or contractor, on request and subject to payment of price, if any.

Explanation.- For the purposes of this sub-rule price means the cost of printing and providing the documents only.

(3) The procuring agency shall promptly notify each supplier or contractor submitting an application to pre-qualify whether or not it has been pre-qualified and shall make available to any person directly involved in the pre-qualification process, upon request, the names of all suppliers or contractors who have been pre-qualified. Only suppliers or contractors who have been pre-qualified shall be entitled to participate

further in the procurement proceedings.

(4) The procuring agency shall communicate to those suppliers or contractors who have not been pre-qualified the reasons for not pre-qualifying them.

17. Qualification of suppliers and contractors.- A procuring agency, at any stage of the procurement proceedings, having credible reasons for or prima facie evidence of any defect in supplier's or contractor's capacities, may require the suppliers or contractors to provide information concerning their professional, technical, financial, legal or managerial competence whether already pre-qualified or not:

Provided that such qualification shall only be laid down after recording reasons therefor in writing. They shall form part of the records of that procurement proceeding.

18. Dis-qualification of suppliers and contractors.-The procuring agency shall disqualify a supplier or contractor if it finds, at any time, that the information submitted by him concerning his qualification as supplier or contractor was false and materially inaccurate or incomplete.

19. Blacklisting of suppliers and contractors.- The procuring agencies shall specify a mechanism and manner to permanently or temporarily bar, from participating in their respective procurement proceedings, suppliers and contractors who either consistently fail to provide satisfactory performances or are found to be indulging in corrupt or fraudulent practices. Such barring action shall be duly publicized and communicated to the Authority:

Provided that any supplier or contractor who is to be blacklisted shall be accorded adequate opportunity of being heard.

METHODS OF PROCUREMENT

20. Principal method of procurement.-Save as otherwise provided hereinafter, the procuring agencies shall use open competitive bidding as the principal method of procurement for the procurement of goods, services and works.

21. Open competitive bidding.-Subject to the provisions of rules 22 to 37 the procuring agencies shall engage in open competitive bidding if the cost of the object to be procured is more than *[the prescribed financial limit which is applicable under sub-clause (i) of clause (b) of rule 42].

22. Submission of bids.- (1) The bids shall be submitted in a sealed package or packages in such manner that the contents are fully enclosed and cannot be known until duly opened.

(2) A procuring agency shall specify the manner and method of submission and

*The words "forty thousand rupees" was substituted with the words "the prescribed financial limit which is applicable under sub-clause (i) of the clause (b) of rule 42" vide Cabinet Division S.R.O.No.1241(I)/2006, dated 13-12-2006

receipt of bids in an unambiguous and clear manner in the bidding documents.

23. Bidding documents.- (1) Procuring agencies shall formulate precise and unambiguous bidding documents that shall be made available to the bidders immediately after the publication of the invitation to bid.

(2) For competitive bidding, whether open or limited, the bidding documents shall include the following, namely:-

- (a) invitation to bid;
- (b) instructions to bidders;
- (c) form of bid;
- (d) form of contract;
- (e) general or special conditions of contract;
- (f) specifications and drawings or performance criteria (where applicable);
- (g) list of goods or bill of quantities (where applicable);
- (h) delivery time or completion schedule;
- (i) qualification criteria (where applicable);
- (j) bid evaluation criteria;
- (k) format of all securities required (where applicable);
- (l) details of standards (if any) that are to be used in assessing the quality of goods, works or services specified; and
- (m) any other detail not inconsistent with these rules that the procuring agency may deem necessary.

(3) Any information, that becomes necessary for bidding or for bid evaluation, after the invitation to bid or issue of the bidding documents to the prospective bidders, shall be provided in a timely manner and on equal opportunity basis. Where notification of such change, addition, modification or deletion becomes essential, such notification shall be made in a manner similar to the original advertisement.

(4) Procuring agencies shall use standard bidding documents as and when notified by regulation by the Authority:

Provided that bidding documents already in use of procuring agencies may be retained in their respective usage to the extent they are not inconsistent with these rules, and till such time that the standard bidding documents are specified by regulations.

(5) The procuring agency shall provide a set of bidding documents to any supplier or contractor, on request and subject to payment of price, if any.

Explanation.- For the purpose of this sub-rule price means the cost of printing and providing the documents only.

24. Reservations and preference.- (1) Procuring agencies shall allow all prospective bidders to participate in procuring procedure without regard to nationality, except in cases in which any procuring agency decides to limit such participation to

national bidders only or prohibit participation of bidders of some nationalities, in accordance with the policy of Federal Government.

(2) Procuring agencies shall allow for a preference to domestic or national suppliers or contractors in accordance with the policies of the Federal Government. The magnitude of price preference to be accorded shall be clearly mentioned in the bidding documents under the bid evaluation criteria.

25. Bid security.-The procuring agency may require the bidders to furnish a bid security not exceeding five percent of the bid price.

26. Bid validity.- (1) A procuring agency, keeping in view the nature of the procurement, shall subject the bid to a bid validity period.

(2) Bids shall be valid for the period of time specified in the bidding document.

(3) The procuring agency shall ordinarily be under an obligation to process and evaluate the bid within the stipulated bid validity period. However, under exceptional circumstances and for reason to be recorded in writing, if an extension is considered necessary, all those who have submitted their bids shall be asked to extend their respective bid validity period. Such extension shall be for not more than the period equal to the period of the original bid validity.

(4) Bidders who:-

- (a) agree to extension of their bid validity period shall also extend the validity of the bid bond or security for the extended period of the bid validity;
- (b) agree to the procuring agency's request for extension of bid validity period shall not be permitted to change the substance of their bids; and
- (c) do not agree to an extension of the bid validity period shall be allowed to withdraw their bids without forfeiture of their bid bonds or securities.

27. Extension of time for submission of bids.-Where a procuring agency has already prescribed a deadline for the submission of bids and due to any reason the procuring agency finds it necessary to extend such deadline, it shall do so only after recording its reasons in writing and in an equal opportunity manner. Advertisement of such extension in time shall be done in a manner similar to the original advertisement.

OPENING, EVALUATION AND REJECTION OF BIDS

28. Opening of bids.- (1) The date for opening of bids and the last date for the submission of bids shall be the same. Bids shall be opened at the time specified in the bidding documents. The bids shall be opened at least thirty minutes after the deadline for submission of bids.

(2) All bids shall be opened publicly in the presence of the bidders or their

representatives who may choose to be present, at the time and place announced prior to the bidding. The procuring agency shall read aloud the unit price as well as the bid amount and shall record the minutes of the bid opening. All bidders in attendance shall sign an attendance sheet. All bids submitted after the time prescribed shall be rejected and returned without being opened.

29. Evaluation criteria.-Procuring agencies shall formulate an appropriate evaluation criterion listing all the relevant information against which a bid is to be evaluated. Such evaluation criteria shall form an integral part of the bidding documents. Failure to provide for an unambiguous evaluation criteria in the bidding documents shall amount to mis-procurement.

30. Evaluation of bids.- (1) All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. Save as provided for in sub-clause (iv) of clause (c) of rule 36 no evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.

(2) For the purposes of comparison of bids quoted in different currencies, the price shall be converted into a single currency specified in the bidding documents. The rate of exchange shall be the selling rate, prevailing on the date of opening of bids specified in the bidding documents, as notified by the State Bank of Pakistan on that day.

(3) A bid once opened in accordance with the prescribed procedure shall be subject to only those rules, regulations and policies that are in force at the time of issue of notice for invitation of bids.

31. Clarification of bids.- (1) No bidder shall be allowed to alter or modify his bid after the bids have been opened. However the procuring agency may seek and accept clarifications to the bid that do not change the substance of the bid.

(2) Any request for clarification in the bid, made by the procuring agency shall invariably be in writing. The response to such request shall also be in writing.

32. Discriminatory and difficult conditions.-Save as otherwise provided, no procuring agency shall introduce any condition, which discriminates between bidders or that is considered to be met with difficulty. In ascertaining the discriminatory or difficult nature of any condition reference shall be made to the ordinary practices of that trade, manufacturing, construction business or service to which that particular procurement is related.

33. Rejection of bids.- (1) The procuring agency may reject all bids or proposals at any time prior to the acceptance of a bid or proposal. The procuring agency shall upon request communicate to any supplier or contractor who submitted a bid or proposal, the grounds for its rejection of all bids or proposals, but is not required to justify those grounds.

(2) The procuring agency shall incur no liability, solely by virtue of its invoking sub-rule (1) towards suppliers or contractors who have submitted bids or proposals.

(3) Notice of the rejection of all bids or proposals shall be given promptly to all suppliers or contractors that submitted bids or proposals.

34. Re-bidding.- (1) If the procuring agency has rejected all bids under rule 33 it may call for a re-bidding.

(2) The procuring agency before invitation for re-bidding shall assess the reasons for rejection and may revise specifications, evaluation criteria or any other condition for bidders as it may deem necessary.

35. Announcement of evaluation reports.-Procuring agencies shall announce the results of bid evaluation in the form of a report giving justification for acceptance or rejection of bids at least ten days prior to the award of procurement contract.

36. Procedures of open competitive bidding.- Save as otherwise provided in these rules the following procedures shall be permissible for open competitive bidding, namely:-

(a) *Single stage - one envelope procedure.*-Each bid shall comprise one single envelope containing, separately, financial proposal and technical proposal (if any). All bids received shall be opened and evaluated in the manner prescribed in the bidding document.

(b) *Single stage – two envelope procedure.*-

(i) The bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;

(ii) the envelopes shall be marked as “FINANCIAL PROPOSAL” and “TECHNICAL PROPOSAL” in bold and legible letters to avoid confusion;

(iii) initially, only the envelope marked “TECHNICAL PROPOSAL” shall be opened;

(iv) the envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the procuring agency without being opened;

(v) the procuring agency shall evaluate the technical proposal in a manner prescribed in advance, without reference to the price and reject any proposal which does not conform to the specified requirements;

- (vi) during the technical evaluation no amendments in the technical proposal shall be permitted;
 - (vii) the financial proposals of bids shall be opened publicly at a time, date and venue announced and communicated to the bidders in advance;
 - (viii) after the evaluation and approval of the technical proposal the procuring agency, shall at a time within the bid validity period, publicly open the financial proposals of the technically accepted bids only. The financial proposal of bids found technically non-responsive shall be returned un-opened to the respective bidders; and
 - (ix) the bid found to be the lowest evaluated bid shall be accepted.
- (c) *Two stage bidding procedure.-*

First Stage:

- (i) the bidders shall first submit, according to the required specifications, a technical proposal without price;
- (ii) the technical proposal shall be evaluated in accordance with the specified evaluation criteria and may be discussed with the bidders regarding any deficiencies and unsatisfactory technical features;
- (iii) after such discussions, all the bidders shall be permitted to revise their respective technical proposals to meet the requirements of the procuring agency;
- (iv) the procuring agency may revise, delete, modify or add any aspect of the technical requirements or evaluation criteria, or it may add new requirements or criteria not inconsistent with these rules:

Provided that such revisions, deletions, modifications or additions are communicated to all the bidders equally at the time of invitation to submit final bids, and that sufficient time is allowed to the bidders to prepare their revised bids:

Provided further that such allowance of time shall not be less than fifteen days in the case of national competitive bidding and thirty days in the case of international competitive bidding;

- (v) those bidders not willing to conform their respective bids to the procuring agency's technical requirements may be allowed to withdraw from the bidding without forfeiture of their bid security;

Second Stage:

- (vi) the bidders, whose technical proposals or bids have not been rejected and who are willing to conform their bids to the revised technical requirements of the procuring agency, shall be invited to submit a revised technical proposal along with the financial proposal;
- (vii) the revised technical proposal and the financial proposal shall be opened at a time, date and venue announced and communicated to the bidders in advance; and
- (viii) the revised technical proposal and the financial proposal shall be evaluated in the manner prescribed above. The bid found to be the lowest evaluated bid shall be accepted:

Provided that in setting the date for the submission of the revised technical proposal and financial proposal a procuring agency shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and prepare their financial proposals accordingly.

- (d) *Two stage – two envelope bidding procedure.-*

First Stage:

- (i) the bid shall comprise a single package containing two separate envelopes. Each envelope shall contain separately the financial proposal and the technical proposal;
- (ii) the envelopes shall be marked as “FINANCIAL PROPOSAL” and “TECHNICAL PROPOSAL” in bold and legible letters to avoid confusion;
- (iii) initially, only the envelope marked “TECHNICAL PROPOSAL” shall be opened;
- (iv) the envelope marked as “FINANCIAL PROPOSAL” shall be retained in the custody of the procuring agency without being opened;
- (v) the technical proposal shall be discussed with the bidders with reference to the procuring agency's technical requirements;
- (vi) those bidders willing to meet the requirements of the procuring agency shall be allowed to revise their technical proposals following these discussions;

- (vii) bidders not willing to conform their technical proposal to the revised requirements of the procuring agency shall be allowed to withdraw their respective bids without forfeiture of their bid security;

Second Stage:

- (viii) after agreement between the procuring agency and the bidders on the technical requirements, bidders who are willing to conform to the revised technical specifications and whose bids have not already been rejected shall submit a revised technical proposal and supplementary financial proposal, according to the technical requirement;
- (ix) the revised technical proposal along with the original financial proposal and supplementary financial proposal shall be opened at a date, time and venue announced in advance by the procuring agency:

Provided that in setting the date for the submission of the revised technical proposal and supplementary price proposal a procuring agency shall allow sufficient time to the bidders to incorporate the agreed upon changes in the technical proposal and to prepare the required supplementary financial proposal; and

- (x) the procuring agency shall evaluate the whole proposal in accordance with the evaluation criteria and the bid found to be the lowest evaluated bid shall be accepted.

37. Conditions for use of single stage two envelope, two stage and two stage two envelope bidding procedures.- Single stage one envelope bidding procedure shall ordinarily be the main open competitive bidding procedure used for most of the procurement. Other appropriate procedures of open competitive bidding shall be selected in the following circumstances, namely:-

- (a) single stage two envelope bidding procedure shall be used where the bids are to be evaluated on technical and financial grounds and price is taken into account after technical evaluation;
- (b) two stage bidding procedure shall be adopted in large and complex contracts where technically unequal proposals are likely to be encountered or where the procuring agency is aware of its options in the market but, for a given set of performance requirements, there are two or more equally acceptable technical solutions available to the procuring agency; and
- (c) two stage two envelope bidding method shall be used for procurement

where alternative technical proposals are possible, such as certain type of machinery or equipment manufacturing plant.

ACCEPTANCE OF BIDS AND AWARD OF PROCUREMENT CONTRACTS

38. Acceptance of bids.- The bidder with the lowest evaluated bid, if not in conflict with any other law, rules, regulations or policy of the Federal Government, shall be awarded the procurement contract, within the original or extended period of bid validity.

39. Performance guarantee.-Where needed and clearly expressed in the bidding documents, the procuring agency shall require the successful bidder to furnish a performance guarantee which shall not exceed ten per cent of the contract amount.

40. Limitation on negotiations.- Save as otherwise provided there shall be no negotiations with the bidder having submitted the lowest evaluated bid or with any other bidder:

Provided that the extent of negotiation permissible shall be subject to the regulations issued by the Authority.

41. Confidentiality.-The procuring agency shall keep all information regarding the bid evaluation confidential until the time of the announcement of the evaluation report in accordance with the requirements of rule 35.

42. Alternative methods of procurements.- A procuring agency may utilize the following alternative methods of procurement of goods, services and works, namely:-

- (a) *petty purchases.*- Procuring agencies may provide for petty purchases where the object of the procurement is below the financial limit of *[twenty five thousand] rupees. Such procurement shall be exempt from the requirements of bidding or quotation of prices:

Provided that the procuring agencies shall ensure that procurement of petty purchases is in conformity with the principles of procurement prescribed in rule 4:

Provided further that procuring agencies convinced of the inadequacy of the financial limit prescribed for petty purchases in undertaking their respective operations may approach the Federal Government for enhancement of the same with full and proper justifications.

- (b) *request for quotations.*- A procuring agency shall engage in this method of procurement only if the following conditions exist, namely:-
- (i) the cost of object of procurement is below the prescribed limit of

*The words "ten thousand" were substituted with the words "twenty five thousand" vide S.R.O. 1241(I)/2006 dated 13-12-2006

*[one hundred thousand] rupees:

**[Provided that the respective Boards of Autonomous bodies are authorized to fix an appropriate limit for request for quotations method of procurement subject to a maximum of rupees five hundred thousand which will become financial limit under this sub-rule].

- (ii) the object of the procurement has standard specifications;
- (iii) minimum of three quotations have been obtained; and
- (iv) the object of the procurement is purchased from the supplier offering the lowest price:

Provided that procuring agencies convinced of the inadequacy of the financial limit prescribed for request for quotations in undertaking their respective operations may approach the Federal Government for enhancement of the same with full and proper justifications;

(c) *direct contracting*.- A procuring agency shall only engage in direct contracting if the following conditions exist, namely:-

- (i) the procurement concerns the acquisition of spare parts or supplementary services from original manufacturer or supplier:

Provided that the same are not available from alternative sources;

- (ii) only one manufacturer or supplier exists for the required procurement:

Provided that the procuring agencies shall specify the appropriate fora, which may authorize procurement of proprietary object after due diligence;

- (iii) where a change of supplier would oblige the procuring agency to acquire material having different technical specifications or characteristics and would result in incompatibility or disproportionate technical difficulties in operation and maintenance:

Provided that the contract or contracts do not exceed three

*The words "forty thousand" were substituted with the words "one hundred thousand" vide S.R.O.1241(I)/2006 dated 13-12-2006
**for the semicolon at the end, a colon was substituted and there after the above proviso was added vide S.R.O.1241(I)/2006 dated 13-12-2006

years in duration;

- (iv) repeat orders not exceeding fifteen per cent of the original procurement;
- (v) in case of an emergency:

Provided that the procuring agencies shall specify appropriate fora vested with necessary authority to declare an emergency;

*[(iv) when the price of goods, services or works is fixed by the government or any other authority, agency or body duly authorized by the Government, on its behalf]; and

[(vii) for purchase of *[motor vehicle] from local original manufacturers or their authorized agents at manufacturer's price.]

(d) *negotiated tendering*.- A procuring agency may engage in negotiated tendering with one or more suppliers or contractors with or without prior publication of a procurement notification. This procedure shall only be used when,-

- (i) the supplies involved are manufactured purely for the purpose of supporting a specific piece of research or an experiment, a study or a particular development;
- (ii) for technical or artistic reasons, or for reasons connected with protection of exclusive rights or intellectual property, the supplies may be manufactured or delivered only by a particular supplier;
- (iii) for reasons of extreme urgency brought about by events unforeseeable by the procuring agency, the time limits laid down for open and limited bidding methods cannot be met. The circumstances invoked to justify extreme urgency must not be attributable to the procuring agency;

Provided that any procuring agency desirous of using negotiated tendering as a method of procurement shall record its reasons and justifications in writing for resorting to negotiated tendering and shall place the same on record.

43. On account payments.- All procuring agencies shall make prompt payments to suppliers and contractors against their invoices or running bills within the time given in the conditions of the contract, which shall not exceed thirty days.

* Inserted vide S.R.O. 65(I)/2006 dated 27-1-2006

** Inserted vide S.R.O. 1241(I)/2006 dated 13-12-2006

*** The words "motor car" were substituted with the words "motor vehicle" vide S.R.O.1022(I)/2008 dated 23-09-2008

44. Entry into force of the procurement contract.-A procurement contract shall come into force:

- (a) where no formal signing of a contract is required, from the date the notice of the acceptance of the bid or purchase order has been given to the bidder whose bid has been accepted. Such notice of acceptance or purchase order shall be issued within a reasonable time; or
- (b) where the procuring agency requires signing of a written contract, from the date on which the signatures of both the procuring agency and the successful bidder are affixed to the written contract. Such affixing of signatures shall take place within a reasonable time:

Provided that where the coming into force of a contract is contingent upon fulfillment of a certain condition or conditions, the contract shall take effect from the date whereon such fulfillment takes place.

45. Closing of contract.- (1) Except for defect liability or maintenance by the supplier or contractor, as specified in the conditions of contract, performance of the contract shall be deemed close on the issue of overall delivery certificate or taking over certificate which shall be issued within thirty days of final taking over of goods or receiving the deliverables or completion of works enabling the supplier or contractor to submit final bill and the auditors to do substantial audit.

(2) In case of defect liability or maintenance period, defect liability certificate shall be issued within thirty days of the expiry of the said period enabling the supplier or contractor to submit the final bill. Except for unsettled claims, which shall be resolved through arbitration, the bill shall be paid within the time given in the conditions of contract, which shall not exceed sixty days to close the contract for final audit.

MAINTENANCE OF RECORD AND FREEDOM OF INFORMATION

46. Record of procurement proceedings.- (1) All procuring agencies shall maintain a record of their respective procurement proceedings along with all associated documentation for a minimum period of five years.

(2) Such maintenance of record shall be subject to the regulations framed in this regard from time to time.

47. Public access and transparency.-As soon as a contract has been awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public:

Provided that where the disclosure of any information related to the award of a contract is of proprietary nature or where the procuring agency is convinced that such

disclosure shall be against the public interest, it can withhold only such information from public disclosure subject to the prior approval of the Authority.

REDRESSAL OF GRIEVANCES AND SETTLEMENT OF DISPUTES

48. Redressal of grievances by the procuring agency.- (1) The procuring agency shall constitute a committee comprising of odd number of persons, with proper powers and authorizations, to address the complaints of bidders that may occur prior to the entry into force of the procurement contract.

(2) Any bidder feeling aggrieved by any act of the procuring agency after the submission of his bid may lodge a written complaint concerning his grievances not later than fifteen days after the announcement of the bid evaluation report under rule 35.

(3) The committee shall investigate and decide upon the complaint within fifteen days of the receipt of the complaint.

(4) Mere fact of lodging of a complaint shall not warrant suspension of the procurement process.

(5) Any bidder not satisfied with the decision of the committee of the procuring agency may lodge an appeal in the relevant court of jurisdiction.

49. Arbitration.- (1) After coming into force of the procurement contracts, disputes between the parties to the contract shall be settled by arbitration.

(2) The procuring agencies shall provide for a method of arbitration in the procurement contract, not inconsistent with the laws of Pakistan.

50. Mis-procurement.- Any unauthorized breach of these rules shall amount to mis-procurement.

51. Overriding effect.- The provisions of these rules shall have effect notwithstanding anything to the contrary contained in any other rules concerning public procurements:

Provided that the prevailing rules and procedures will remain applicable only for the procurement of goods, services and works for which notice for invitation of bids had been issued prior to the commencement of these rules unless the procuring agency deems it appropriate to re-issue the notice for the said procurement after commencement of these rules.

[No.F.6(1)Admn.V/04]

Sd/-
SAJID HASAN
Additional Secretary

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THE MOST COMMON PROCUREMENT FRAUD SCHEMES AND THEIR PRIMARY RED FLAGS

MARCH 6, 2012 BY W. MICHAEL KRAMER

BRIBES AND KICKBACKS

A bribe is usually defined as the giving or receiving of a "thing of value" to corruptly influence the actions of another, most commonly to influence a contract award or the execution of a contract. A "kickback" is a bribe paid by the contractor after it is paid. Most bribes in exchange for large contract awards in international development projects are paid as kickbacks, usually 5%-20% of the contract value.

Corrupt payments

The bribe need not be in money or cash, and often is not. Any benefit given or received with the intent to corruptly influence the recipient can be a bribe.

"Things of value" that have been given and received as bribes include:

- Expensive gifts, free travel and lavish entertainment
- "Loans," whether or not repaid
- Use of credit cards
- Sexual favors (hiring of prostitutes, etc.)
- Overpaying for purchases, e.g., paying \$20,000 for a car worth \$5,000
- Cash
- Fees and commissions, even if recipient allegedly provided services to the payer
- Hidden interests in business transactions

Often the payments follow the general sequence outlined above, with the amount and form of payments becoming more significant and incriminating as the scheme progresses.

Corrupt influence

- Corrupt influence often is reflected as, among other things:
- Qualifying an unqualified or untested company to bid or be a vendor
- Improper or non-competitive contract awards
- Paying too much for goods or services
- Buying too much of an item, or buying inappropriate items
- Continued acceptance of low quality or non-compliant goods or services

As the corruption continues, the abuses often turn into fraud, such as fictitious invoices, with the parties conspiring to split the profits. Eventually the excesses of the scheme lead to its detection, as the mounting evidence of favorable treatment and fraud, and the conspicuous expenditures of the conspirators, call attention to their behavior.

The major red flags of bribes and kickbacks

- Improper (e.g., non-competitive) selection of a contractor Unjustified favoritism of a certain contractor, e.g. approval of high prices, excessive purchases, continued acceptance of low quality goods, etc.
- Unnecessary broker or middleman involved in transactions
- Procurement official accepts inappropriate gifts and entertainment
- Unexplained increase in wealth by procurement official

Collusive Bidding by Contractors

Groups of bidders might secretly agree to submit complementary high bids to allow pre-selected contractors to win contracts on a rotating basis, or to divide contracts by territory, or take other steps to defeat the competitive process and divide work.

Collusive bidding, also known as "bid rigging" will drive up prices in the affected industry. It is

most common in industries with high start up and entry costs and relatively few bidders, such as road construction, paving and waste disposal.

Some form of bid rigging often accompanies kickback schemes in order to insure that the corrupt company is selected.

The major red flags of collusive bidding

- Winning bid too high compared to cost estimates, published price lists, similar jobs or industry averages; persistent high prices over time
- Rotation of winning bidders by job, type of work or geographical area
- Losing bidders hired as subcontractors
- Unusual bid patterns. For example, the bids are:
 - Too high
 - Too close
 - Too consistent
 - Too far apart
 - Round numbers
 - Incomplete Identical or similar to prior or other bid
- Apparent connections between bidders: common addresses, personnel, phone numbers, etc.

CHANGE ORDER ABUSE

A contractor, in collusion with procurement official, can submit a low bid to insure winning a contract, and then increase its price and profits by submitting change order requests after the contract is awarded.

A dishonest contractor, acting alone or in collusion with contract personnel, can submit unjustified or inflated change order requests to increase profits, or, as the result of corruption, use the change order process to extend a contract that should be re-bid.

The major red flags of change order abuse:

- Weak controls and lax procedures regarding review of need for change orders
- Numerous, unusual or unexplained change orders for a specific contractor approved by same employee
- Pattern of low bid award followed by change orders that increase the price or scope of the contract, or extend the contract period
- Vague contract specifications followed by change orders
- Incomplete or "preliminary" specifications subject to change based on later engineering studies, etc.

CO-MINGLING OF CONTRACTS

Dishonest contractors can submit multiple bills on different contracts or work orders for work performed or expense incurred only once. A contracting official can facilitate the scheme and share in the profits by writing similar work orders under different contracts and accepting the multiple billings.

The major red flags of co-mingling of contracts:

- The contractor submits several billings for the same or similar expenses or work under different jobs or contracts
- The contractor submits the same or similar documentation to support billings on different contracts
- Multiple awards for similar work are given to the same contractor
- Similar work orders are issued to the same contractor under more than one contract

CONFLICT OF INTEREST

Conflicts of interest can arise if procurement personnel have undisclosed interests in a supplier or contractor, accept inappropriate gifts, favors or kickbacks from vendors, or engage in unapproved employment discussions with current or prospective contractors or suppliers.

Kickbacks can be prosecuted as a conflict of interest, as well as bribery. A conflict of interest case might be easier, as the prosecution need show only that the kickbacks, which can be in the form of gifts and favors, were not disclosed, rather than having to prove corrupt intent.

The major red flags of conflict of interest

- Unexplained or unusual favoritism of particular contractor or vendor

- Contracting or purchasing employee lives beyond means
- Employee has discussions about employment with current or prospective vendor
- Close socialization with and acceptance of inappropriate gifts, travel or entertainment from a vendor
- Procurement employee appears to conduct side business

EXCLUDING QUALIFIED BIDDERS

A dishonest procurement employee, probably in collusion with a corrupt bidder, can use a variety of tactics to exclude other qualified bidders, including arranging narrow or unduly burdensome pre-qualification criteria, establishing unreasonable bid specifications, splitting purchases to avoid competitive bidding, making unjustified sole source awards, and so on.

The major red flags of excluding qualified bidders

- A significant number of qualified bidders fail to bid
- Unreasonably narrow contract specifications
- Allowing an unreasonably short time limit to bid
- Adopting unreasonable "pre-qualification" procedures
- The failure to adequately publicize requests for bids, e.g., using only local publications, or failing to publicize the request for bids

FAILURE TO MEET CONTRACT SPECIFICATIONS

A contractor that knowingly delivers works, goods or services that do not meet contract specifications may be guilty of fraud if it falsely represents that it has complied with the contract or deliberately conceals its failure to do so. If it has not made fraudulent representations or concealed its acts, the contractor would be liable for breach of contract rather than fraud.

The major red flags of failure to meet contract specifications

- Discrepancies between test and inspection results and contract claims and specifications
- Failed tests or inspections
- Low quality, poor performance and high volume of complaints
- Early failure or high repair rates

FALSE, INFLATED OR DUPLICATE INVOICES

Suppliers or contractors can intentionally submit false (meaning that no services were provided), duplicate or inflated invoices. The scheme can involve a contractor acting alone or in collusion with an employee of the victim organization who shares in the profits.

The major red flags of false, inflated or duplicate invoices

General red flags

- Weak or un-enforced controls in the receipt of goods and payment of invoices
- Inadequate, copied or apparently altered supporting documents

Red flags of false invoices

- Invoiced goods or services cannot be located in inventory or accounted for
- No receiving report for invoiced goods or services
- Questionable or no purchase order for invoiced goods or services
- Red flags of inflated invoices
 - Invoice prices, amounts, item descriptions or terms exceed or do not match:
 - Contract terms
 - Purchase order
 - Receiving records
 - Inventory or usage records
- Discrepancies between invoice and supporting documents.

Red flags of duplicate invoices

Multiple invoices:

- In the same or similar amount to the same or related vendors
- On the same invoice or purchase order
- For the same or similar goods or services

Multiple invoices with the same:

- Description of goods or services
- Amount
- Invoice number
- Purchase order number

Total payments to vendor exceed total purchase order or contract amounts

FALSE STATEMENTS AND CLAIMS

Contractors or suppliers can submit false information about their employee credentials and experience, invoice for goods and services that are not delivered, charge for higher quality items than are provided, submit false or defective bonds, or make a variety of other false statements and claims.

The major red flags of false statements and claims

- Discrepancies between reported facts and test and inspection results
- Refusal or inability to provide supporting documentation
- Inadequate or apparently altered supporting documentation
- High rate of rejections, returns or failures
- Complaints from users

IMPREST FUND ABUSE

Replenished "imprest funds" (also known as "operating accounts" or "petty cash funds") can be embezzled or used improperly by contractor employees. The employees might submit false or inflated requests for reimbursement of expenses, use the fund for personal or unauthorized expenditures, or "double-dip" by submitting reimbursement both to the fund and accounts payable.

The major red flags of imprest fund abuse

- No oversight or weak controls on disbursements and reimbursements
- Lack of supporting documentation; altered or copied documentation
- Endorsement on check differs from payee; unusual or second endorsement
- Disbursement of same or similar amounts to same person from both imprest fund accounts and accounts payable
- Use of imprest accounts for unauthorized purposes, "loans" or in amounts in excess of those permitted

LEAKING OF BID INFORMATION

Procurement personnel can leak bid information from other bidders, or confidential pre-bid information, to a favored bidder to give it an unfair advantage in the bidding process. Such schemes usually occur as the result of corruption.

The major red flags of leaking of bid information

- Poor controls on bidding procedures, e.g., failure to enforce deadlines, non-public opening of bids, etc.
- Winning bid just under the next lowest bid
- Acceptance of late bids
- Bid due date extended unnecessarily
- Late bidder is the low bidder

MANIPULATION OF BIDS

A procurement employee, probably as the result of corruption, can manipulate the bidding process in a number of ways to benefit a favored contractor or supplier. These include leaking information regarding competing bids, accepting late bids, changing bids, re-bidding work and so on.

A contractor can also submit a "low" bid with the understanding that the corrupt procurement official will approve later contract amendments and price increases.

The major red flags of manipulation of bids

- Poor controls and inadequate bidding procedures

- Winning bid voided for "errors" in contract specifications and the job is re-bid
- Acceptance of late bids
- Bids are "lost"
- A qualified bidder disqualified for questionable reasons

FICTITIOUS VENDOR

In a weakly controlled environment, an employee with procurement responsibilities, or in accounts payable, or an outsider, can submit bills from a non-existent vendor. Normally fictitious vendors claim to provide services or consumables, rather than goods or works that can be verified.

Dishonest bidders also can submit "bids" from fictitious bidders as part of bid rigging schemes.

Phantom vending schemes occur more often than thought, and can be detected relatively easily through automated proactive fraud detection programs.

The major red flags of fictitious vendor

- Weak controls: same employee can order, receive and approve payment for goods or services
- Paid vendors not on the approved vendor list
- Vendors not listed in business or telephone directories.
- Invoiced goods or services cannot be located or verified.
- Vendor address is mail drop

PRODUCT SUBSTITUTION

A supplier or contractor can substitute products or materials of lesser quality than specified in the contract, or use counterfeit, defective or used parts, in order to increase profits or comply with contract time schedules.

The dishonest supplier might give gifts or favors to inspectors or pay kickbacks to contracting officials to facilitate the scheme, and will submit false documentation to conceal it.

The major red flags of product substitution

- Unusual or generic packaging
- Discrepancy between product's description or normal appearance and actual appearance (e.g., "new" product appears to be used)
- Product identification numbers differ from published or catalogue numbers or numbering system
- Above average number of test or operation failures, early replacements, or high maintenance and repair costs.

PURCHASES FOR PERSONAL USE OR RESALE

An employee can purchase items through his agency or company that are intended for his personal use, such as tools, personal computers, or automobile parts, or that the employee intends to resell as part of a side business, such as computer parts or inventory.

The major red flags of purchases for personal use or resale

- High volume or unusual purchases of "consumer items" or items suitable for personal use or resale
- Business purchases from vendors that sell consumer products
- Purchased items "returned" to vendor without vendor credit or refund
- Purchased items to be drop shipped or delivered to another location
- Suspect employee conducts an outside business

RIGGED SPECIFICATIONS

An employee with procurement responsibilities, probably in collusion with a supplier or contractor, drafts a request for bids or proposals that contain specifications that are either too narrow or too broad.

Unduly narrow specifications allow only a favored contractor to qualify, and unduly broad specs can be used to qualify an otherwise unqualified contractor to bid. Broad specs can also be used in connection with later contract amendments and change orders to facilitate a corruption scheme.

The major red flags of rigged specifications

- Only one or a few bidders respond to request for bids
- Similarity between specifications and winning contractor's product or services
- Specifications are significantly narrower or broader than similar previous requests for bids
- Purchaser uses brand name in request for bids
- High number of competitive or sole source awards to one supplier

SPLIT PURCHASES

A single procurement can be split into two or more purchase orders or contracts, each below upper level review or competitive bidding thresholds, to avoid review or competitive selection. Repetition of this scheme, favoring the same parties, can be a strong indicator of corruption.

The major red flags of split purchases

- Two or more similar procurements from the same supplier in amounts just under competitive bidding or upper level review limits
- Unjustified separation of purchases, e.g. separate contracts for labor and materials, each of which is below competitive bidding limits, but when combined is over such limits
- Sequential purchase orders or invoices under upper level review or competitive bidding limits
- Contracts under the competitive bid limit followed by change orders that increase amounts of the contract

UNBALANCED BIDDING

"Unbalanced bidding" includes a number of schemes in which bidders manipulate line item bid prices in order to gain an advantage in the bidding process. The schemes include:

- Quoting high prices on line items that the contractor knows or anticipates will be the subject of change orders increasing the quantity of goods or works required. For example, a in a road project might quote an exceptionally high price each of for 100 safety barriers, knowing that the number to be procured will later, after the contract award, be increased to 1000. The bidder might be informed of the proposed change as the result of a corrupt relationship with project officials.
- Quoting dramatically lower prices on line items that the bidder knows – perhaps by being tipped off as the result of bribes to project officials – will not be called for after contract award. This information allows the favored bidder to drastically lower its price on the unneeded items to defeat its uninformed competitors.

The major red flags of unbalanced bidding

- Particular line item bids appear to be unreasonably low
- Subsequent change orders reducing requirements for low bid line item
- Particular line item bids do not appear to have been performed or purchased as specified in the contract
- Bidder close to procurement personnel or participated in drafting contract specifications

UNJUSTIFIED SOLE SOURCE AWARDS

Often as the result of corruption, a procurement official can avoid or defeat competitive selection requirements by making an improper sole source award to a favored contractor. Such awards can be made directly, citing special circumstances, or by manipulating the bidding process to avoid the competitive bidding limit, etc. If corruptly motivated, such awards often result in higher prices, lower quality or other disadvantages to the contracting organization.

The major red flags of unjustified sole source awards

- Sole source award above or just below competitive bidding limits
- Previously competitive procurements become non-competitive
- No justification or documentation for non-competitive awards
- Split purchases to avoid competitive bidding limits
- Awards made below the competitive bid limits that are followed by change orders that exceed such limits

UNNECESSARY PURCHASES

Unnecessary, excessive or inappropriate purchases of goods or services, or unnecessary repairs, might indicate corruption or purchases for personal use or resale.

The major red flags of unnecessary purchases

- Unusual or unexplained high volume purchases of products or services from a particular supplier
- Surplus sales followed by reorders
- Replacement or repairs after unreasonably short time period
- Inadequate or rushed needs analysis and justification

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Annexure-D

March 03, 2015

Inherent weakness in procurement process:

1. Inadequate adoption of rules and procedure by PEC for categorization of Contractors and Consultants.
2. Physical checks of assets, manpower, technical knowhow and financial capacities are either too weak or non-existent.
3. As a whole categorization system is non-transparent.
4. PPRA Rules are ambiguous and sometimes unclear on the part of PEC.
5. Lack of planning with respect to design, ground survey results into inconsistent BOQ's. Which further results into imbalance bids.
6. Evaluation criteria is usually unclear leaving a lot to personal Judgment and interpretation.
7. Since projects are mostly politically motivated, hence lack of professional touch results in microscopic time in planning and tendering.
8. Lowest bid phenomenon has given rise to cut-throat prices resulting into substandard works, increased variation orders, extension in time, contractual hurdles and inconvenience of department staff.
9. Lack of formal training for procurement officers.
10. Collusive bidding by contractors to allow pre-selected contractors to win at high bid price.
11. Lack of dissemination of information on black-listed firms among procurement agencies of Pakistan.
12. Non-coherent procurement documents.

Questionnaire for Procuring Agencies

1. Does awarding of contract to lowest bidder compromise the quality of work?
2. If so, is there any way to stop the awarded work and reassign to a new contractor?
3. Lowest cost is not necessarily the most economical cost; most economical cost is an optimum combination of price and quality. What measures are taken to arrive at the optimum price and quality combination for procurement?
4. Procurements exceeding the prescribed limit shall be subject to an Integrity Pact, as specified by regulation with approval of the Federal Government between the procuring agency and the suppliers or contractors. Is the Integrity Pact included in such cases?
5. How frequently is direct contracting used and under what circumstances?
6. Has the committee to address the grievances of bidders been formed as required under Public Procurement Rules?
7. Do procuring agencies regularly maintain a list of blacklisted suppliers/contractors as required under the rules? If so is it regularly publicized and communicated to the authority?
8. Please state how frequently are bids rejected and under what circumstances?
9. In exceptional circumstances exemption from operation of Public Procurement Rules 2004 can be obtained. Please state if any exemption was obtained: the number of cases and the factors that led to this may please be stated.
10. While hiring consultants what criteria is followed and how much preference is given to local consultants viz a viz foreign consultants.
11. Please indicate number of local/foreign consultancies awarded and the nature of cases.
12. In case of hiring consultants is any search made to explore local expertise?
13. Provision of backup services/maintenance is an integral part of sound procurement system, does the procuring agency maintain an updated list of

firms having good track record of living upto their advertised claim of providing the services during and after procurement?

14. In order to avoid media criticism, do you think that it would be appropriate to give major details of procurement of mega projects along with achieved milestones in the media?

15. Is frequent transfer of Project Directors a major hindrance in success of a project/procurement?

16. Is inadequate training of junior project staff including training in procurement methods a critical factor that leads to confusion, changes in scope and rework in case the senior project manager leaves or retires?

1. Barring initiatives initiated by the top political hierarchy hardly anything is moving in Pakistan, this is because the obtaining environment is not conducive to good governance or decision making .Over regulation dissipation of authority and lack of trust are the key negatives. As a result:
 - I. Bureaucracy, known for its dynamism has literally become a cluster of glorified clerks who make excellent plans but cannot deliver.
 - II. Authority has been so blatantly scattered that no one feels responsible.
 - III. Tier after tier of scrutiny monitoring and oversight has given birth to a culture of mistrust and brought the govt. to a standstill.
2. The solution to this malaise is simple provided the will is there will in there. All one has to do is :
 - I. Simplify procedures, laws, rules and regulations.
 - II. Dispense with more than one tier of monitoring.
 - III. Make authority and responsibility coterminous.
 - IV. Swift and stringent accountability in case of failure or malfeasance.
3. Foreign investors feel that Pakistani laws, rules and regulations are heavily loaded against foreign investment and international manufacturers/contractors. As a result hardly any foreign investment matures in Pakistan despite the availability of preferential loans. It is painful that GOP was unable to utilize a Chinese committed funding of nearly 2 Billion US\$ and the Chinese Government officially protested through its Ministry of Commerce.

The host of impediments primarily procedural and bureaucratic are responsible for this inertia. The system is unfortunately based on lack of trust on the government functionaries adding layers of so-called checks that these instead of facilitating the execution of the projects only hampers smooth process, and becomes counterproductive. It is pity that these systems also encourage rampant corruption and become a vehicle of corruption by multiple organizations involved in the process. There is a dire need for simple implementable and transparent procedure, based on trust and confidence in the personnel of integrity employed by the government.

4. The above contention is substantiated by going through the history of two recent projects. Neelum Jhelum Hydro Power Project advertised for open bids could only be awarded after the 3rd open bid and Jaglot Skardu Road Project still under process despite repeat bidding after three years. This entailed unforgivable delay and significant escalation in cost.

5. Case Study Neelum Jhelum Hydro Power Project

The project was taken in hand after signing of the contract on 19-12-2007. The contract was based on internationally accepted template of FIDIC (Fédération Internationale Des Ingénieurs-Conseils) an internationally recognized contract document. During the implementation the contactors faced following hindrances in the smooth implementation of the project:-

- I. Ironically WAPDA engaged an American Consultant for Chinese Contractors. From the very beginning one could see an environment of conflict and hostility. Thanks to a plethora of rules made by engineering council that have made the role of employer secondary compared to the Consultant. Matters are further compounded by the notorious accountability laws which place the contractor at the mercy of the Consultant and the employer conveniently avoids any responsibility and passes it on to the Consultants.
- II. The engineering designs of all the projects are based on Western standards. This creates its own complications for the Chinese and further compounds the already intimidating working conditions resulting in debilitating impact on the progress of work.
- III. In order to, facilitate timely implementation of the project an independent corporate entity namely Neelum Jhelum Hydro Power Project Company was registered but no powers were delegated to the company till recently and all the decisions were taken by WAPDA defeating the very purpose of this company. No one wants to delegate the authority and a centralized system becomes a hurdle in most of the mega projects.
- IV. The visa policy for Chinese nationals has never been spelled out clearly despite the fact that thousands of their engineers and skilled workers are engaged in

various projects. It took one year to understand the procedures for work visa for our principals that is complex and beyond the comprehension of most of the Chinese companies. They normally come on business visa which is extended from time to time and every time the extension is granted after a lot of efforts that has even delayed the arrival of their key personnel for these project.

6. Case study Jaglot Skardu Road by NHA

Jaglot-Skardu Road Project is another project of strategic importance of NHA that too has run into difficulties. Bids for this project were invited 5 years back and it was being funded by the Chinese Exim Bank with a soft loan of 94% of the total cost of the project. 6% was not funded because this amount is mandatory withholding income tax. During the processing of this case strangle-hold of bureaucracy was obvious during the entire process in the garb of implementation of the PPRA rules. The project was stalled despite nearly three years processing one year of evaluation and intense negotiations. The reasons to kill the projects were technical objections by the ministry. Therefore an opportunity to build this road was lost and fresh bids were invited in 2014. The same company that had given expression of interest (EOI) earlier submitted its bid as it had invested time and resources on the project. It again confronted the same bureaucratic barriers evaluation process through a time consuming torturous route and was now on the verge of giving up the project. When last year NHA signed the contract, for nearly 10 months after that the file kept shuttling between ministry and Planning Commission and finally last month without assigning any reason the Govt. has ordered NHA to invite fresh bids. The company is filing claims against NHA and may also take legal action. No one will be held responsible for this delay and significant escalation in cost.

7. Epilogue

The arguments employed to scare the political leadership and derail project are interpretation of complicated PPRA Laws/Rules by the bureaucracy and interventions of NAB that requires an elaborate Performa with surfeit of documents under section 33-A delaying the processing. To add to the woes of the government institutions quite a few NGOs funded by the foreign countries and the media are always ready to muddy the water and an active judiciary that has to rely on interpretation of these complex procedures results in impeding the process with colossal loss to the country.

Proposal for the Committee on Government procurement system

The draft of recommendations presented in committee meeting on 25th April has been perused. Suggestions against a couple of recommendations are made in later paragraphs. Firstly however, it is necessary to have a look on the PAPRA laws.

1. PAPRA Law

While the *raison d'être* of the PAPRA is clear in our minds, present nomenclature used in the ordinance/ laws does not fully synchronize with the aims and objectives. Even rationale of putting PAPRA in the class of regulatory bodies raises some questions. Regulatory bodies are generally set up to regulate free market commercial players whereas in case of PAPRA the purpose is to perform this function over govt. departments and public sector bodies which are autonomous. The provisions in the law regarding PAPRA functions and powers of the Authority show it has been assigned, in most part, role to monitor application of laws and their implementation and additionally make recommendations to the government.

In generality, the law does say that Authority may take such measures for improving various aspects of procurement as may be necessary but except for making regulations & guidelines etc. the functions to be performed relating to procurement described are too brief and have room to be more explicit.

On the other hand its functions mentioned against item (f) and (g) in para-5 of ordinance give it the lofty task of monitoring overall performance of procuring agencies. The purpose and need for this provision has to be examined in detail to comprehend as to why this role has been given to PAPRA and what is the mechanism through which PAPRA can perform such a function. This will enable

the Committee to decide whether this provision needs to be retained or amended to bring it in line with the objectives. Similarly in item (g) what is intended by word "provide assistance" to ministries. Mode and nature of assistance by PAPRA in the law should be specified.

It will provide due emphasize if under functions of Authority is included tasks of capacity building and training and creation of national consciousness about need for transparency in procurement. It is only PAPRA which can play an effective role by holding workshops, seminars and refresher courses on procurement practices and related issues. Apart from officials of procurement agencies, contractors and suppliers have to be included in beneficiaries of such a programme.

Regarding membership of the PAPRA Board, Committee members observed that presence of secretaries of economic ministries on the board tantamount to conflict of interest. Perhaps bringing secretaries of divisions like Planning and Law etc. could be considered as are option. Against slots of private sector representative chairman of Pakistan Engineering Council and Chairman Federation of Pakistan Chamber of Commerce and industry on board can help engage firms which are stake holders. Reforming and training contractors and their personnel is key to efficient procurement and implementation of work and PEC under PAPRA guidance can play a meaningful role in this regard.

Definitions

Before proceeding ahead, a few comments about definitions provided in the law. Word "services" is required to be defined in a more comprehensive manner and should include new business concepts e.g. 'outsourcing'. Consultancy and Training be specifically mentioned etc.

In the same direction arbitration is very important provision. The present arbitration act dates back to 1940. This needs revision to meet the challenges of new environment.

2. Rules

- a. In large contracting pre-bid conferences are useful in clearing concepts of prospective bidders about specification and other aspect of the tenders. In the rules provision should be made for same.
- b. In recommendation 21, of the committee pre-audit of large contract has been mentioned. Earlier experience shows that pre-audits can be source of delay. Audit authorities are not accountable for delivery of projects and as such are not pushed to do the exercise conclusively within the time frame.

3. Regulations

Laying down regulations is key activity of PAPRA. In view of diversity in nature of works, supplies and services PAPRA may prepare separate regulations for works and supplies like it has done for consultancy services. Such specific regulations can be advantageous in application and further streamline the contracting process for each activity.

4. Mis-procurement

Procurement agencies portfolio consist of small and medium size works. Some of the common ills plaguing implementation of such works are mentioned here. Such age old undesirable practices have become part of work culture.

Software is an important item in purchase. It should be mentioned under appropriate head like goods.

Redressal of grievances

Regulatory bodies are charged with responsibility to provide a platform for listening to the complaints and providing relief. Although there are no direct public consumers involved in case of PAPRA but as users and beneficiaries of facilities built and created by procurement agencies (e.g. NHA) general public is very much a stake holder.

(a) Complaints about contract award.

The vendors and suppliers are main stake holders who need an independent appellant forum which can provide a second tier for providing relief in between procurement agency and courts of law. PPRA should remain non intrusive as far as possible but it should perform a defined function in dealing with public complaints for which a provision in law is needed.

4. Dispute Resolution

This mainly concerns the implementation phase of works and delivery of supplies and services. A lot of work has been done on this topic internationally. Alternate dispute resolution systems in Pakistan are in infancy.

As the committee observed stay orders from courts are in many cases cause of delay in completion of works or delivery of goods. A venue for out of courts adjudication could improve upon the situation and make procurement more efficient.

1. Advertising "call for bids" before RFP tender documents are ready.
2. Discrimination in transmittal of bid documents to pre-qualified bidders.

Mandatory use of IT for delivery of tender/ Bid documents in addition to normal mail can provide a solution and improve upon the procurement practices.

Other malpractices frequently encountered are

3. Collusion of bidders.
4. Unauthorized subletting of contracts.
5. Post award change in scope of work or change in specifications by procurement agencies.
6. Claims for Escalation in price.

Existing safeguards are lacking in effectiveness to deal with these unfair practices. PPRA should frame new regulations or procedure to deal with such practices in more effective manner.

(Mian Muhammad Javed)

**LEGAL FRAME WORK OF PUBLIC PROCUREMENT SYSTEM
IN PAKISTAN**

Public Procurement Regulatory Authority Ordinance 2002

Short Comings

- a) It is limited only to tender stage which covers invitation to bids, evaluation and award of contract. It should include implementation stage in which the performance of contract is managed
- b) It does not cover disposal of assets, auctions, lease agreements
- c) The Board of PPRA (section 6) consists of 7 Federal Secretaries including managing director and 3 private members. The inclusion of majority of federal secretaries could be conflict of interest as they are also the procuring entities. The positions of private members are vacant since last four years
- d) Annual report (section 17) is required to be made public after it has been seen by the Cabinet. The cabinet may stall the report because it consists of performance of their ministries. Thus the condition of making it public only after cabinet approval may be removed;
- e) The power to exempt (section 21) may be strengthened to include by providing that such exemptions may be made public
- f) A section may be included to enable e-procurement, for example invitation and evaluation bids electronically and acceptance of e-signatures etc.

decision of the committee can go to court. There is no neutral or second tier for right of appeal

- g) The threshold for petty purchases and request for quotations may be enhanced {Rule42(a,b)}
- h) The new rule may be added to provide for review of records of Procurement activities periodically by the Authority of top ten high value procurements and a random audit of certain numbers of the remaining transactions of procuring agencies. The findings of the post procurement review may be provided to the procuring agency for improvement in the institutional frame work and public procurement activities.
- i) A new rule regarding Frame work agreements can be added whereby the procurement is made for a certain volume or quantity of a particular good, a set of goods or services and works over a specific period against an agreed sum or rate (lump sum or per Item)
- j) A new rule can be added where a procuring agency executes works using its own resources including labor, equipment, materials, and supplies
- k) A new rule pertaining to green procurement may be added
- l) In case a contractor fails to deliver any or all of the goods, works or services within the period agreed in the contract, the procuring agency either shall allow an extension in the contract period pursuant to a written request by the contractor with justifications or deduct the amount, as liquidated damages, a sum equivalent to the percentage specified in the contract for each week or part thereof of delay
- m) A rule may provide coordinated or consolidated procurement of common use items to get the benefit of economies of scale

- n) A rule regarding procurement through procurement agents may be added
- o) A rule regarding pre-contract audits may be included so as not to impair the efficiency of the procurement cycle. It would reinforce the integrity of the process and facilitates greater efficiencies

Public Procurement Rules 2004

Shortcomings

- a) International and inter-governmental agreements of the Federal government (Rule 5) may include UN agencies also
- b) Limitation on splitting or regrouping of proposed procurement (Rule 9) puts a bar on splitting or regrouping of the already planned procurements without taking into account the "Packaging" factor or provision for lots in procurements. There are, however, circumstances when splitting and packaging has to be done for competition and benefitting from economies of scale
- c) To facilitate procuring agencies to make bulk purchases of commodities like Urea, Sugar and other items it may be allowed to award lots to one or more bidders keeping in view the bid price, supplier capacity, quality performance and any outstanding orders with supplier. This will help procuring agencies like TCP and USC to procure goods in large volume at a time without resorting to price matching with bidders other than the lowest;
- d) Financial limits given for various methods of advertising may be enhanced. {Rule 12(2)}
- e) Black listing of contractors/suppliers (Rule 19) may include cross-debarment i.e. those black listed by agencies like world bank, ADB. Currently black listing is only for respective procuring entity it may be made applicable to all procuring entities. Moreover, safe guards may be introduced so as to ensure black listed firms do not continue by changing their name
- f) Redressal of grievance (Rule 48) is provided by the respective procuring entity. Any bidder not satisfied with the



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