

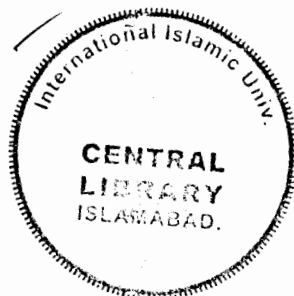
PUBLIC PROCUREMENT REFORMS IN PAKISTAN

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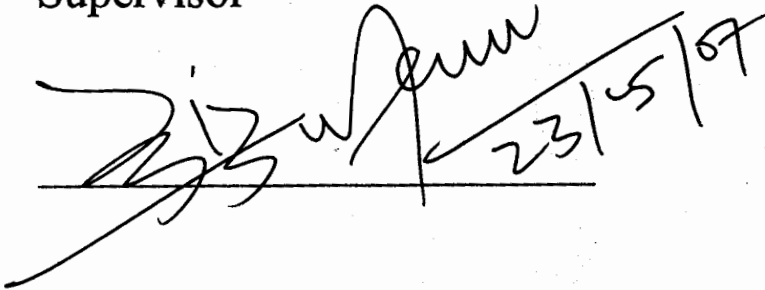
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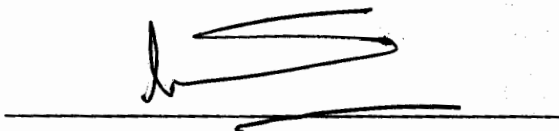


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Dedication

This work is dedicated to my parents, May Allah bestow upon high blessings in this world and hereinafter.

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Mansoor Ali

Abstract.

Academically, Public Procurement has been a neglected area of study even though Governmental entities and Public Procurement practitioners have diligently work to improve Public Procurement practices.

A strong and well functioning Procurement system would be the one that is governed by a clear legal frame work establishing the rule for transparency, efficiency and mechanism for enforcement, and coupled with an institutional arrangement that ensures consistency in overall policy formulation and implementation. A professional cadre of staff that implements and manages the Procurement function is also necessary.

Public Procurement is the process by which large amounts of public funds are utilized by the public entities to purchase goods and service from the public sector. Vast amount of money are therefore expended through the Public Procurement system. A Procurement system that has loose or inadequate rules and which are also poorly enforced provide opportunities for misuse of the contract award process through corruption and other patronage arrangements .Those in the private sector and their collaborators in the public institutions who benefited from such flawed systems have a very deep vested interests in the maintenance of status-quo. Vested interests in such systems can also manifest themselves in various other ways. They could be for example including local business cartels that may have an interest in maintaining a legal frame work that prohibits competition from foreign supplier etc.

Fundamental reforms to a system in which some or all of those vested interests exists call for dismantling of entrenched practices and institutions (both formal and informal) with a view to injecting transparency and competition to the system and increasing the accountability of public officials. However those wishing to maintain the status quo resist change quiet strongly because such reforms will normally involve the loss of direct economic and / or political benefits.

In order to regulate or streamline Procurement, Government of Pakistan promulgated the Public Procurement Regulatory Authority Ordinance 2002 and formulated the

rules by using the sec 26(Power of the federal Government to make rules) for carrying out the purpose of said ordinance. Although it essentially covers the Procurement of goods and services in Government, however the perusal reveals that the substantial and material elements of important nature are conspicuously missing.

Considering the significance and pertinence of my thesis I feel that it is imperative to review the sections of Public Procurement Regulatory Authority Ordinance and Public Procurement Rules and highlight those issues which require rethinking and consideration in the light of my analysis.

The main object/ aim of this exercise is to provide an intellectual support to policy makers in order to strengthen the Procurement regime and legislative environment. So the comments on review able sections (accordingly to my perception) of Public Procurement Regulatory Ordinance 2002 and Public Procurement Rules 2004 are as well mentioned in said dissertation.

Although the topic of the dissertation is Public Procurement Reforms in Pakistan, which is in fact area of wide discussion so by keeping in view the university requirement, my focusing area is Public Procurement law reforms in Pakistan. In addition to all this for the purpose of my thesis the word Government and Public Procurement are used as substitutive words.

List of Abbreviations

- GOVT: Government
- WTO: World Trade Organization
- USA: United States of America
- GATS: General Agreements on Trade and Services.
- CPGS: Common Wealth Procurement Guidelines.
- GPA: Government Procurement Agreement.
- EFTA: European Free Trade Association.
- NAFTA: North American Free Trade Agreement.
- APEC: Asia Pacific Economic Co-operation.
- FTAA: Free Trade Area of America.
- GOP: Government of Pakistan.
- IDB: Inter American Bank.
- UNDP: United Nations Development Program.
- TEC: Tender Evaluation Committee.
- CCPH: Code of Civil Procedure of Hungary.
- CPTU: Central Procurement Technical Unit
- AO: Accountancy Officer
- CBO: Community based organization
- GOSL: Government of Sri Lanka
- MAPL: Ministry appointed procurement committee.
- MPP: Master procurement plain
- NPA: National procurement agency
- SBD: Standard bidding document.
- SLR: Sri Lankan rupee.
- PTS: Procurement time schedule.

1. Chapter 1

Introduction/Historical development

1.1 Define Procurement

The word Procurement basically originates from the word procure verb. Procured – procuring, procures, transitive to get by special effort, obtain or acquire, manage to procure a pass, to bring about; effect; procure a solution to a knotty problem¹.

The dictionary defines Procurement as “to get possession of or to obtain”.

Or the process to obtain materials, supplies and contracts at the best price reasonably available through open and fair competition².

1.1.1 According to East Borne Borough Council

Procurement covers the process by which works goods and services are acquired from suppliers and providers and managed throughout their life. Effective Procurement must be measured as much by social outcomes and community benefits as by financial gains³.

1.1.2 University College Dublin defines Procurement.

“Procurement” is the term used to describe the strategic element of purchasing⁴.

1.1.3 Different peoples define differently about Procurement, for instance⁵.

Procurement is a set of activities performed by, as part of acquisition effort.

Procurement means purchase, hire, lease, rental or exchange or any other commercial transaction involving the outlay of funds in return of, for the provision of supplies.

Procurement describes the system process phase, wherein the buyers creates and approves an order that incites the seller’s action to approve the required documents.

Procurement is the acquisition process leading up to the purchase of goods or services.

¹ What is Procurement.htm. The Open Group, making standards, work.

² Webster’s Dictionary.

³ www.EastBoroughCouncil.com

⁴ www.UniversityCollegeDublin/procurement.com

⁵ www.google.com

Procurement is a part of financials system that includes various, purchasing accounts payable and asset management functions.

Procurement is the acquisition of goods or services at the best total cost of ownership in the right quantity, at the right time, in the right place for the direct benefit or use of governments, corporations, or individuals generally via but not limited to a contract. In short Procurement is the entire process or function associated with the buying of goods and services to support business operations and the key step of the Procurement includes: planning or needs analysis, strategic sourcing, purchasing, order management and ongoing cost and suppliers performance management, and Procurement can also be used more narrowly to refer exclusively to the purchasing aspect of buying process.

1.2 Types of Procurement:

Public Procurement.

Private Procurement.

1.2.1 Public Procurement

Public Procurement means acquisition of goods, services or construction of any work financed wholly or partially out of public funds unless otherwise excluded by Federal Govt¹.

Public procurement is an important function of Government for several reasons for instance, the sheer magnitude of Procurement outlays has a great impact on the economy and needs to be well managed. Indeed in all countries in the world, estimated of the financial activities of Government Procurement managers are believed to be in the order of 10% - 30% of GNP.

Public Procurement has been utilized as an important tool for achieving economic, social and other objectives. In developed as well as developing countries disregarding their economic, social and political environment a sound Procurement system seems two groups of goals, Procurement goals and non procurement goals. The Procurement goals normally includes quality, cost, (more than just a price), minimizing business, financial and technical

¹ Public Procurement Regulatory Authority Ordinance 2002 section 2(L).

risks, maximizing competition and integrity, non procurement goals normally includes economic goals (preferring domestic or local firms) environment protection or green procurement (promoting the use of recycled goods) social goods (assisting minority and women owned business concerns) and inter relation goals. It is very difficult for policy makers and Public Procurement professionals to make an option decision as there are always trade-off between these goals.

These Procurement goals and policies are implemented either by non-legal means such as internal administrative circulars or by formal statements, rules or regulations.

1.2.2 Private Procurement:

Private Procurement means acquisition of goods, services or construction of any work which is not financed wholly or partially out of public funds, but which is wholly or partially financed privately¹.

Main focus of research is Public Procurement law reforms in Pakistan so Private Procurement would not be discuss more to the extent of defining the term.

1.3 Public Procurement history:

Public Procurement has long history written on a red clay tablet found in Syria the earliest Procurement orders dates from between 2400 and 2800 B.C. the order was for “50 jars of fragrant smooth oil for 600 small weight in grain”. Other evidence of historical Procurement includes the development of silk trade between China and Greek colony in 800 B.C. Then the Procurement practice continued in a traditional way and different countries adopted their policies accordingly to their circumstances and socio-economic values².

The said practices continued, and there was a movement towards adopting uniform Government Procurement Code and different states and countries promulgated \ prepared properly Procurement Codes for instance USA adopted and promulgated, “The Model Procurement Code in 1951”.

¹ Self generated definition.

² Journal of Public Procurement, Volume 1, Issue 1, 9-50 (2001). Khi V.Thai

And in Pakistan the Public Procurement law predates accordingly to available record was “Public Debt (Amended) Ordinance 2002” which amended the Public Debt Act 1944, in pursuance of the proclamation of emergency of the 14th day of Oct 1999, and President of Islamic Republic of Pakistan promulgated the said Ordinance. In it there were only two sections, first was short title, extent, commencement and second was the amendment of Section 14, Act XVIII of 1944.

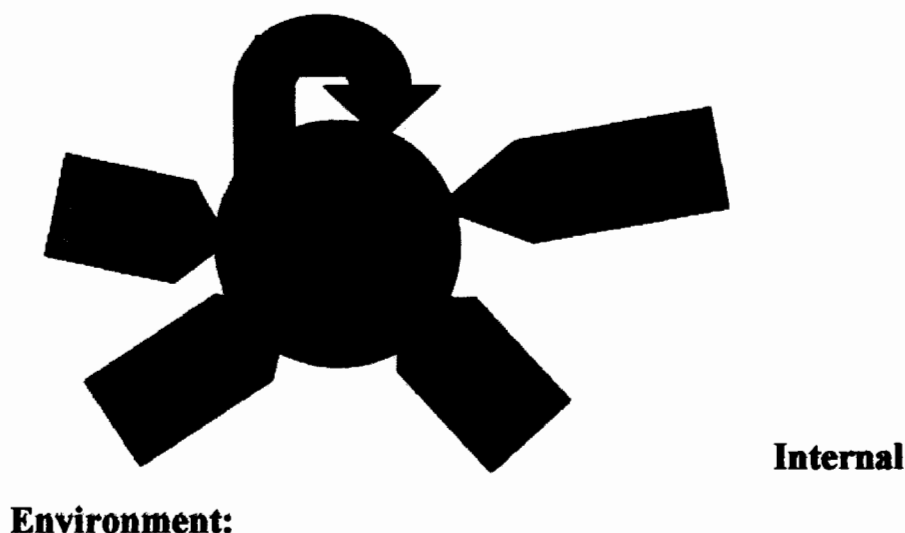
This ordinance was amended by “Public Procurement Regulatory Authority Ordinance 2002” which includes detail guide lines about the Public Procurement Regulatory Authority, management and administration of Authority, financial provisions etc.

The current. prevailing situation demonstrates that the Authority has established and trying to contribute more in Public Procurement sector by evolving the factors of accountability, efficiency and transparency.

1.4 Environment of Public Procurement

Similar to other systems the Public Procurement systems ability to accomplish procurement policies/ goals is influenced by its environment and the environment influencing the Public systems includes, internal environment, legal environment, political environment, socio economic and other environmental forces.(see Figure 1)¹

FIGURE 1
The Environment of Public Procurement System



¹ Journal of Public Procurement, Volume 1, Issue 1, 9-50 (2001). Khi V.Thai

The Public Procurement system's ability to accomplish Procurement policies or goals is influenced very much by internal forces and it includes, interaction between various elements of Public Procurement systems, various officials and organizations in branches of Government, and various actors and sub agencies within a department or executive agency and actors and organization external to sub agencies¹.

1.4.2 Market Environment:

Market conditions have a great influence over the Public Procurement systems effort to maximize competition. Moreover, the market determines whether or not socio-economic objective of Procurement are accomplished whether or not a Governmental entity can fulfill its needs, timeliness of fulfillment, and the quality and costs of purchased goods, services and the capital assets .As markets become more and more globalized through Regional and International Trade Agreements and Treaties, the Public Procurement system has to be adjusted and become more complicated¹.

1.4.3 Legal Environment:

The Public Procurement much influenced by legal environment and different from public environment regulations and the rules, the legal forces refers to a broad legal frame work that governs all business activities including research and development. In developing and particularly transitional countries, where legal systems are not comprehensive, Government contracts may need detail provisions¹.

1.4.4 Political Environment:

In democracy many individual groups and organizations in the private sector including trade associations, professional associations and business firms and companies (commonly known as the interest groups) are actually involved in all aspects of Public Procurements. Having various interest objective and beliefs, interest groups are involved in Public Procurement in several ways, such as

¹ Journal of Public Procurement, Volume 1, Issue 1, 9-50 (2001). Khi V.Thai

lobbying legislative bodies to pass or alter Procurement statutes, influencing the implementation of these statutes etc. Normally a Government program that is eventually adopted is a compromise among different views of interest groups, policy makers and management¹.

1.4.5 Social Economic and Other Environmental Forces:

Some countries impose social policies on their Public Procurement (such as a policy placing a fair proportion of Government acquisitions with women and minority- owned small business) most Governmental entities, be it developed or developing country or Federal state or local Governments use their large Procurement outlays for economic stabilization or development purposes by referring national or local firms over firms from other countries or other geographical locations¹¹.

In addition to social and economic environment Public Procurement professionals are under other external pressures such as environment protection movement, and the foreign policy etc.

¹ Journal of Public Procurement, Volume 1, Issue 1, 9-50 (2001). Khi V.Thai

Chapter 2 -- International Co-operation

2.1 International Instruments / Conventions of Govt / Public Procurement

2.1.1 WTO

There are three areas of work in the WTO on Government Procurement:

Transparency in Government addressed by a working group of all WTO members.

Government Procurement in services handled by the working party on GATS rules.

The Government Procurement agreement – a “Plurilateral Agreement” signed by some WTO members, administered by the Plurilateral Committee¹.

2.1.2 UNCITRAL Model Law on Procurement of Goods, Construction and Services 1994

UNCITRAL model law on Procurement of goods, construction and services 1994 is an important instrument for Public Procurement. It consist of six chapters, which includes detail guide lines about Int'l obligations of the state relating to Procurement and inter-governmental agreements within the state, methods of Procurement and their condition for use, tendering proceedings, solicitation of tenders and of applicant to pre-qualify, principle method for Procurement of services, procedures for alternative methods of Procurement and review procedure etc².

2.1.3 Common Wealth Procurement Guide Lines: January 2005

The common wealth Procurement guide lines – January 2005 are issued by the minister for finance and administration, the CPGS established the core Procurement policy frame work and articulate the Government's expectations of all departments. The CPGS established the Procurement policy frame work within which agencies determine their own specific Procurement practices.³ The common wealth

¹ <http://www.wto.org>

² UNCITRAL Model Law on Procurement of Goods, Construction and Services, 1994

³ www.commonwealthprocurementguideline.com

Procurement guide lines include Procurement policy framework, mandatory Procurement procedures, other government policies etc¹.

2.1.4 WTO Agreements

WTO Agreement on Government Procurement. The GPA was signed in Marakesh on 15th April 1994, at the same time as the agreement establishing the WTO. The new agreement entered into force on 1st January 1996. The GPA is one of the “Plurilateral agreements”. It establishes on agreed framework of rights and obligation among its parties with respect to their national laws, regulations, procedures and practices in the area of Government Procurement. The corner stone of the rules in the agreement is non-discrimination².

2.1.5 Convention Establishing the European Free Trade Association

4th January, 1960, the said Convention established between, The Republic of Austria, The Kingdom of Denmark, The Kingdom of Norway, The Portuguese Republic, The Kingdom of Sweden, Swiss Confederation and United Kingdom of Great Britain and Northern Island. It includes 59 articles and article 37 is specified for Public Procurement which states³:

“The member states re-affirm their rights and obligations under the WTO agreement on Government Procurement (GPA). Under this Convention, the member states broaden the scope of their commitment under WTO Government Procurement agreement with an aim to pursue liberalization on Public Procurement markets.

To this effect, the member state shall secure non discriminative, transparent and reciprocal access to their respective Public Procurement markets and shall ensure open and effective competition based on equal treatment.

2.1.6 United Nation Convention Against Corruption

On fifth session Vienna, march 10 – 12, 2003 the said Convention established, the purpose of this Convention was to promote and strengthen the measures to prevent corruption, and to promote integrity, ethical conduct and good public and private

¹ Common Wealth Procurement Guidelines, January 2005.

² <http://www.wto.org>

³ www.europeantradeassociation.com

governance. The United Nation Convention Against Corruption while discussing the Public Procurement and public financial management states¹:

“Each party shall in accordance with the fundamental principles of its legal system, take the necessary steps to established Procurement rules with appropriate threshold values based on transparency competition and objective criteria in decision making”.

2.1.7 Convention on Combating Bribery of Foreign Public Officials in Int’l Business Transactions, adopted by the negotiating conference on 21st Nov. 1997

The said Convention includes “11 recommendations” (A-K) and “recommendation F” is specified for Public Procurement which recommends:

- a. Member countries should support the efforts in World Trade Organization to pursue an agreement on transparency in Government Procurement.
- b. Member countries laws and regulations should permit authorities to suspend from competition for public contract enterprises determined to have bribed foreign officials in contravention of that member’s national laws, and to the extent of a member applies Procurement sanctions to enterprises that are determined to have bribed public officials, such sanctions should be applied equally in case of bribery of foreign officials.
- c. In accordance with the recommendation of development assistance committee, member countries should require anti- corruption provisions in bilateral aid funded Procurement, promote the proper implementation of anti corruption provisions in Int’l development institutions, and work closely with development partners to combat corruption in all development co-operation efforts².

¹ www.unconventionagainstcorruption.com

² Convention on Combating Bribery of Foreign Public Officials in Int’l Business Transactions, adopted by the negotiating conference on 21st Nov. 1997 (<http://www.slovak-embassy.jp>)

2.2 Regional and Bilateral Instruments of Public/ Govt

Procurement:

2.2.1 NAFTA: North American Free Trade Agreement

NAFTA is basically between the Government of Canada, the Government of United Mexican's States, and the Government of United States of America. It's an important regional instrument which consists of 29 chapters on different issues and chapters which is specified for Government Procurement includes four sections, first is for scope, coverage and national treatment, second for tendering procedure, third for bid challenges and fourth for general provisions¹.

2.2.2 APEC: Asia Pacific Economic Co-Operation

APEC is a regional instrument for Government Procurement since its inception in 1989 APEC regions has consistently been the most economically dynamic part of the world. Consumers in Asia Pacific have been directly and indirectly benefited from the collective and individual actions of APEC members economics. APEC conduct different meetings for the discussion of currently facing issues for instance the APEC ministerial meeting conducted at Bussan, Republic of Korea on 15-16 Nov 2006 and in it among other issues Government Procurement was also discussed. Under the heading of trade and digital economy ministers recognized the outcome of the dialogue on technology choice in Feb, 2005, which focused on the relationship between the promotion of innovation and the development of knowledge based – economies and technology neutral Policies and regulations, open Int'l and voluntary standards and non discriminatory, transparent, technology, neutral and merit based Government Procurement².

2.2.3 FTAA: Free Trade Area of America

At the summit of the Americas that took place in Miami on Dec 10, 1994, the heads of states and Governments of 34 countries from the western hemisphere approved a plan of action which included the mandate to conclude the negotiation of a

¹ SICE Foreign Trade Information System. (<http://www.sice.oas.org>)

² www.apec.org

hemisphere free trade area by the year 2005, denominated the Free Trade Area of America (FTAA). Within this framework different meetings were held in order to advance the implementation of the plan of action agreed in Miami and the working group on Government Procurement held its first meeting in Washington D.C on June 25th and 26th 1996 and the Inter American Bank IDB provide support to the working group on Government Procurement and the IDB comparison study includes following major topics, which are the major elements covered in existing Government Procurement arrangements for instance, scope and coverage, government enterprises, tender documentation, negotiation with tenders, dispute settlement exception etc. In FTAA there is negotiating group on Government Procurement which even provides the assistance on request¹.

2.2.4 Bilateral Investment Treaty Between the Government of Hashemite Kingdom of Jordon and The Government of Republic of Singapore.

It consists of 25 articles and articles 2 discusses about Public Procurement. The purpose of this treaty was to promote greater economic co-operation between the parties and the parties agrees that a stable framework for investment will maximize the effective utilization of economic resources and improving living standards².

2.2.5 Canada Costa Rica Free Trade Agreement

Canada and Costa Rica free trade agreement is an important regional instrument for Public Procurement. The said agreement discusses about different areas and the article specifies for Government Procurement states,

The parties agree to co-operate with the aim of achieving further liberalization of Public Procurement markets and greater transparency in Public Procurement³.

The parties recognize that technological co-operation can contribute to achieving these aims and agree to co-operate in exploring potential approaches to such technical co-operation through existing mechanisms particularly with respect to the application of information technology in Government Procurement.

¹ <http://alca-ftaa.org> (FTAA: Free Trade Area of America)

² <http://www.jftp.gov.jo>

³ www.canadacostaricafreetrade.com

The parties shall within 3 years after the entry into force of this agreement, meet to review the said article¹.

2.2.6 Free Trade Agreement between Republic of Croatia and Republic of Moldova

Free Trade Agreement between the Republic of Croatia and Republic of Moldova is as well an important regional tool for Govt. / Public Procurement. It discusses the different issues between the countries and article 23 discusses about Public Procurement².

The parties consider the liberalization of their respective Procurement markets as an objective of this agreement.

The parties shall progressively develop regulations on Public Procurement for the purpose of ensuring mutual access to bidding based contract on their Public Procurement markets at the latest to the end of transitional period.

The joint committee shall examine the evolution of regulations in this area, aiming to meet the objectives of this article, and shall recommend concrete ways to implement its provision.

During the time of examination, the joint committee may take into consideration, in particular within the framework of Int'l relations development the possibility of expanding the coverage or / and degree of expression of market.

¹ Canada Costa Rica Free Trade Agreement.

² free trade agreement between republic of croatia and republic of moldova

2.3 Other Instruments

2.3.1 1st Int'l Public Procurement Conference (2004)

1st Int'l Public Procurement Conference conducted at Fort Lauderdale on 21 – 23 Oct 2004. Different issues were discussed in said conference and the long description which was given in the conference was as follows:

Public Procurement has been a neglected area of research, despite its importance as a key function of Government; Public Procurement faces greater public scrutiny than its counterpart in the private sector. Public Procurement professionals walk a tight rope over the real world, being responsive to policy makers and citizens while trying to improve efficiency and effectiveness. Moreover, Public Procurement more than just purchasing goods and services needed for Government operations. It is used as a policy tool to achieve social, economic and political objectives.

Finally, a changing environment of technological advances Int'l trade agreements changes in business practices and increased demands by various stakeholders (policy makers, taxpayers and business partners) is facing major changes in the Public Procurement function. The conference provided an opportunity for practitioners and researchers alike to share best practices discuss critical issues of concern and exchange work experiences¹.

2.3.2 2nd International Public Procurement Conference (2006)

The 2nd conference aim at extending and deepening the topics of major interest that arose in 1st international conference on Procurement by selecting theoretical, empirical, practical and institutional contribution on variety of topics. The main issues discussed in said conference were as follows²:

Public Procurement and institutions (law, politics and public finance)

Procurement and innovation (new technologies, e-procurement, firms investment in R&D innovation)

The role of standards in Procurement market.

Accountability and transparency (preventing corruption, ethical codes) in Public Procurement.

Competition in Procurement (impact on SME'S competition and antitrust).

¹ 1st Int'l Public Procurement Conference (2004)

² [2nd intl public procurementconference2006](#)

Procurement process and performances (business models).

Public tendering (procedures, auction design).

Handling socio-economic concern in Public Procurement policies (environment, employment, SME'S).

Administration of Public Procurement (structure, policies centralization, decentralization).

Corporate governance, models and Public Procurement¹.

2.3.3 International conference on Electronic Government

Procurement

The International Conference on E- Procurement conducted on 26 to 28th Oct 2004 at Manila, Philippines.

In it the different aspect of E- Procurement were discussed for instance:

Best practices and lessons learned from Korea, Romania and UNDP, preparing the strategy, e- readiness surveys, e-Commerce legislation , authentication, Procurement law, and digital signatures².

2.3.4 Co-Operation Agreement between the European Community and the Peoples Republic of Bangladesh on Partnership and Development

The purpose of this agreement was to establish an excellent relations and links of friendship and co-operation between the European community and Bangladesh and having regard to the foundations for close relationship between the European community and Bangladesh laid by the agreement between the community³.

The said Agreement consist of 21 articles, among other issues article 3 is about development co-operation and sec 6 of this article demonstrates that , within the limits of their competences the parties agrees that they will work to improve exchange of information and access to their respective Public Procurement markets on the basis of reciprocity. To this end, the community encourages Bangladesh to join WTO

¹ 2nd Int'l Public Procurement Conference (2006)

² <http://www.mdb-egp.org>

³ cooperation agreement between the european community and the people republic of bangladesh on partnership and development

Plurilateral agreement on Government Procurement¹.

¹ <http://www.grain.org/docs/brl-eu-bgd-coop-agreement-en>

Chapter 3 -- Analysis of Public procurement regime in different jurisdictions

3.1 Analysis of Public Procurement regime in different jurisdictions.

The Public Procurement law predates in Pakistan accordingly to the available record was Public Debt Act 1944 before the promulgation of the said Act different institutes/ departments Procures their services and goods by using their own formulated bylaws. Even in Public Debt act 1944 there was no specific section for the Procurement of goods and the services. And this Act amended by Public Debt (amendment) Ordinance 2002. In it there were only two sections, first was short title, extent, commencement and second was the amendment of Section 14, Act XVIII of 1944.

This ordinance was amended by “Public Procurement Regulatory Authority Ordinance 2002” which includes detail guide lines about the Public Procurement Regulatory Authority, management and administration of authority, financial provisions etc.

The current. prevailing situation demonstrates that the authority has established and trying to contribute more in Public Procurement sector by evolving the factors of accountability, efficiency and transparency and the said Authority formulated the rules “Public Procurement Rules 2004” by using the powers given by the Authority to Public Procurement Regulatory authority Ordinance 2002 in section 26.

I consider necessary for the appropriateness of thesis to mention the Public Procurement Regimes of different jurisdictions which were as follows.

3.1.1 Public Procurement Regime in Bangladesh.

In Bangladesh Public Procurement Regulation apply to all Procurements except where Government decides that it is in the interest of national security or national defense to use a different method. The purpose of these Regulations is to promote value for money in Public Procurement on behalf of the Government while ensuring that Public Procurement methods are conducted in a fair, transparent and non-discriminatory manner, thereby promoting economic and social development services¹.

¹ The Public Procurement Regulations 2003.
Government of People’s Republic of Bangladesh.

To the extent that these Regulations conflict with an obligation of the Government under or arising out of an agreement with one or more other countries or with international organization(s), the provisions of that agreement shall prevail provided that prior concurrence of the Cabinet Division and IMED shall be obtained before entering into any obligation necessitating non-application of the Regulations in whole or in part. In all other respects, Public Procurement shall be governed by these regulations.

3.1.1.1 Procuring entities

Subject to the Delegation of Financial Powers and subject also to such guidance and instructions regarding the implementation of these Regulations as may be given by the CPTU, the Head of a Procuring Entity, or authorized nominee, is ultimately responsible for decisions and actions taken by a procuring entity under these Regulations. Procurement decisions shall be taken in a manner which promotes transparency of the process¹.

3.1.1.2 Policy formulation, co-ordination, monitoring and improvement

Under the Government, the central organ for policy formulation, co-ordination, monitoring and improvement of the Public Procurement process in Bangladesh is the CPTU.

In the performance of its tasks, the CPTU shall:

monitor compliance with these Regulations and propose any amendment to them or any new laws and regulations regarding Public Procurement which appear necessary in the light of international practices and experience gained in the course of the Public Procurement process in Bangladesh;

issue guidance and instructions regarding the interpretation and implementation of these Regulations and give, on request, advice and assistance to procuring entities without, however, diminishing the responsibility of a procuring entity;

the CPTU shall not get involved in, or provide opinion on, any specific Procurement or contract award decision;

prepare standard documents to be used in connection with Public Procurement;

¹ The Public Procurement Regulations 2003.
Government of People's Republic of Bangladesh.

present an annual report to the Government regarding the overall functioning of the Public Procurement system, including recommendations on measures to be taken by the Government to revise and improve procurement approval method and other measures to enhance the quality of Procurement work;

request and receive information/records from procuring entities to the extent appropriate to its information needs;

develop a Public Procurement website with information relating to Public Procurement in Bangladesh, including information concerning the award of contracts exceeding a certain threshold determined by the CPTU;

develop, promote and support training and professional development of officials and other persons engaged in Public Procurement, including their adherence to the highest ethical standards.

3.1.1.3 Consultative Committee on Public Procurement

There shall be a standing Consultative Committee on Public Procurement to aid and advise the Government in bringing improvement to the Public Procurement process and to make recommendations to achieve that objective¹.

3.1.1.4 Qualification of tenderer

In order to participate in Public Procurement, tenderers must qualify by meeting the following criteria and such other criteria as a procuring entity considers appropriate under the circumstances that they:

possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, have the legal capacity to enter into the contract;

are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing;

have fulfilled their obligations to pay taxes and social security contributions under the relevant national regulations. Documentary evidence to be provided by a foreign tenderer to demonstrate that it meets the criterion in this paragraph may consist of a written declaration to that effect by the tenderer.

¹ The Public Procurement Regulations 2003.
Government of People's Republic of Bangladesh.

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3.1.1.5 Choice of Procurement Method

Open Tendering Method

Except as otherwise provided in the Regulations, a procuring entity shall use open tendering as the preferred method of Procurement for goods and related services, works and physical services.

A procuring entity may use a method other than open tendering only subject to some exceptions in the regulation. And only when justified on sound technical and/or economic grounds the Head of a Procuring Entity may also authorize Procurement other than open tendering¹.

3.1.1.6 Advertisements

A procuring entity shall be responsible for advertising directly all invitations to pre-qualify or invitations to tender for goods, works and services. Invitations to pre-qualify and Invitations to tender shall be advertised in at least one Bengali-language newspaper and in one English-language newspaper, both of wide daily circulation in the country, and on the CPTU website if it is required.

3.1.1.7 Invitation for prequalification

A procuring entity may engage in prequalification proceedings with a view towards identifying, prior to the submission of tenders and/or proposals for physical services in Procurement proceedings, the applicants that are qualified to deliver the object of the Procurement.

The invitation for prequalification shall contain, as a minimum;

the name and address of a procuring entity;

a brief description of the object of the Procurement, including desired time for delivery or completion;

the means and conditions for obtaining the prequalification document and the place from which it may be obtained;

a summary of the required qualification criteria;

the place and deadline for submission of the applications for prequalification, and

the date of availability of the prequalification documents, if already known

¹ The Public Procurement Regulations 2003.
Government of People's Republic of Bangladesh.

The time allowed for applicants to prepare their pre-qualification applications shall not be less than 28 days, provided the prequalification documents are ready for sale by the date of the advertisement.

3.1.1.8 Pre-Qualification documents

The prequalification documents shall include, as a minimum:

a description of the object of the Procurement along with a summary of the principal terms and conditions of the contract that will be entered into as a result of this Procurement;

instructions for preparing and submitting prequalification applications;

any evidence or other supplementary information in conformity with the Regulations that must be submitted by applicants to demonstrate their qualifications; and

the manner and place for submission of applications to pre qualify and the deadline for submission¹.

3.1.1.9 Invitation for tender

The invitation for tender shall contain, as a minimum:

the name and address of a procuring entity;

a brief description of the goods, works or services to be obtained, including desired time limit for delivery or completion;

the means and conditions for obtaining the tender documents and the place from which they may be obtained;

the place and deadline for the submission of tenders;

the place and time for opening of tenders, along with an announcement that tenderers' representatives are allowed to attend the opening of tenders; and

the amount of tender security.

The time allowed for tenderers to prepare their tenders shall not be less than 28 days for open tendering for goods, works and physical services and for restricted tendering 14 days for goods and 21 days for works and physical services, provided the tender documents are ready for sale by the date of the advertisement.

3.1.1.10 Submission and receipt of tenders

¹ The Public Procurement Regulations 2003.
Government of People's Republic of Bangladesh.

Tenders shall be in writing, signed and submitted in a sealed envelope, to the place(s) and before the deadline stated in the Invitation for Tender. Tenders shall be properly marked by the tenderers in order not to be confused with other types of correspondence and may be hand-delivered, posted by mail or sent by a courier service. A procuring entity shall, on request, provide the tenderer with a receipt showing the date and time when it's tender was received.

Tenders received after the deadline for submission shall be returned unopened to the tenderer¹.

3.1.1.11 Opening of tenders

At the time stipulated in the tender documents for opening of tenders, which should follow immediately after the deadline for submission of tenders, a procuring entity shall open in public and at one physical location all tenders received on or before the deadline.

Tenders shall be opened in the presence of the members of the Tender Evaluation Committee (TEC). Tenderers, or their authorized representatives, shall be allowed to attend the opening of tenders.

The name of the tenderer, tender modifications, discounts or withdrawals, presence of tender security, if so required, and the total amount of each tender and any alternatives, if so permitted, shall be read out aloud and recorded, and a copy of the record shall be made available to any tenderer on request.

Tenders not opened in public shall not be considered and shall be returned unopened.

3.1.1.12 Examination and evaluation of tenders

A procuring entity shall appoint only one Tender Evaluation Committee (TEC) at the appropriate level to examine, evaluate and prepare a report with recommendations for award for submission directly to the approving authority.

¹ The Public Procurement Regulations 2003.
Government of People's Republic of Bangladesh.

The Tender Evaluation Committee (TEC) shall consist of at least five members, of whom two shall be experienced in Procurement and from outside of the procuring entity. The Head of the procuring entity shall select these two members at his discretion. Once appointed, the composition of the Tender Evaluation Committee should not be changed without valid grounds.

The members of the Tender Evaluation Committee shall:

certify in the tender evaluation report that “the evaluation has followed the requirements of the Regulations, Procedures and Tender Documents, that all facts and information have been correctly reflected in the Evaluation Report and that no substantial or important information has been omitted”; and

after the opening of the tenders sign a declaration of impartiality confirming that they have no business or other links to any of the competing tenderers¹.

3.1.1.13 Notification of award and signing of contract

Prior to the expiry of the period of tender validity, a procuring entity shall notify the successful tenderer that its tender has been accepted. The notification of award shall state the value of the proposed contract, the amount of the performance security, the time within which, the performance security shall be submitted and the time within which the contract shall be signed.

The amount of the performance security shall be sufficient to ensure proper performance of the contract.

The notification of award shall constitute the formation of a contract between the parties. The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties.

If the successful tenderer fails to sign the contract, fails to provide any required performance security, the procuring entity shall select a successful tender from among the remaining responsive tenders, by order of ranking, subject to the right of the procuring entity to reject all tenders.

3.1.1.14 Other Procurement Methods

Two-stage tendering method

¹ The Public Procurement Regulations 2003.
Government of People’s Republic of Bangladesh.

When a procuring entity engages in two-stage tendering, it shall, in the first stage, invite un priced technical proposals on the basis of a tender document outlining a conceptual design and/ or a stipulated performance specification. In addition to indicating the contractual terms and conditions of supply, the tender document shall establish the criteria for determination of tender responsiveness.

In response to the invitation, tenderers shall submit proposals describing the technical performance, quality or other characteristics of the goods, works or services that they consider best suited to meet a procuring entity's Procurement needs in addition to commenting on the contractual terms and conditions of supply. A procuring entity shall, at this stage, review all the tenders with the assistance of the Tender Evaluation Committee and retain only the responsive tenders and engage in individual confidential discussions with each of the responsive tenderers concerning any aspect of their proposals excluding price. At the end of these discussions a procuring entity shall issue a 'Minute of Tender Adjustments' to each individual responsive tenderer that will outline the changes required in its tender's specification and/or design as agreed with a procuring entity for incorporation in the second stage tender. A procuring entity shall treat all first stage tenders, including the discussions with individual tenderers, in such a manner so as to avoid disclosure of their contents to any other competing tenderer.

In the second stage, a procuring entity shall revise the tender document and stipulate the detailed evaluation criteria for the second stage tenders which shall include cost of ownership during the useful lifetime of the object of the Procurement, where applicable, and invite all responsive tenderers from the first stage to submit their priced "best and final" tenders in accordance with the requirements of the second stage tender documents and the individual "Minutes of Tender Adjustments" issued to each tenderer¹.

3.1.1.15 Use of International Competition

Open tendering with international competition

When, in the absence of domestic capacity, effective competition cannot be obtained special efforts are made to attract international competition, Procurement in

¹ The Public Procurement Regulations 2003.
Government of People's Republic of Bangladesh.

appropriate cases preceded by prequalification of tenderers, and complemented with the Provisions.

3.1.1.16 Negotiation and Contract award for proposals

A procuring entity may negotiate with the successful consultant with respect to the proposal methodology, work plan and training inputs but shall not seek or permit changes in the rates quoted for staff remuneration proposed by the consultant.

The proposal evaluation committee shall submit the proposal evaluation report with its recommendations for award of contract, to the approving authority as determined in the Approval Procedure and Delegation of Financial Powers, in an expeditious manner, so that the award of contract can be notified before expiry of the validity of proposals, without having to seek extension. The procuring entity shall notify the successful consultant that its proposal has been accepted¹.

3.1.1.17 Complaints and Appeals

Right to Complain

Any tenderer who claims to have suffered, or who may suffer, loss or damage due to a breach of a duty imposed on a procuring entity by these Regulations may complain in accordance with Regulation.

The Review Panel

The Government shall establish a list of specialists for the purpose of reviewing a tenderer's complaint and recommending corrective action to a procuring entity, with respect to any breach of its obligations under these Regulations. The specialists shall be appointed on such terms and conditions as the Government may from time to time decide.

3.1.1.18 Suspension of Procurement Proceedings

The timely submission of a complaint shall not suspend the Procurement proceedings, except that if a procuring entity knows that a complaint is proceeding and during this proceeding it receives approval to issue the Notification of Award, it shall not do so until such time as either:

the tenderer accepts the decision of the administrative authority at any stage; or

¹ The Public Procurement Regulations 2003.
Government of People's Republic of Bangladesh.

the tenderer does not proceed within 7 days to a Review Panel.

Upon CPTU receiving from a tenderer the request to process its complaint through a Review Panel, and CPTU having been satisfied that the fee has been properly provided, the CPTU shall advise the procuring entity to continue the suspension of the Notification of Award until such time as the findings of the Review Panel have been announced.

Any decision by a procuring entity or by the Review Panel and the grounds and circumstances thereof shall be made part of the record of the Procurement proceedings.

3.1.1.19 Independent Procurement Review

At the end of each fiscal year the head of a procuring entity of each procuring entity with a Procurement volume more than Taka as specified in that year, shall undertake post review of its Procurement operations using independent consultants.

The scope of the Independent Review shall cover compliance with these Regulations in addition to assessment of value for money considerations.

The review shall cover not less than the minimum number of contracts as specified.

The CPTU shall issue detailed procedures for the functioning of the Review Panel.

The CPTU shall not be involved in the resolution of the complaint but shall provide logistic support to the Review Panel in the discharge of its functions.

3.1.2 Public Procurement Regime of Sri Lanka

THE Government of Sri Lanka has placed the highest priority to ensure that development efforts across all sectors are evenly balanced and distributed to all cross sectors of the society, in order to meet the overall national development and enhance the quality of life of its citizens. To achieve the desired results it is imperative to ensure speed, transparency and integrity in all the development spheres and in regard to which the procurement function of goods, works and services plays a critical role. It is in this context that the National Procurement Agency has been established under Presidential directive.

3.1.2.1 Government Procurement Guidelines - 2006

The Government Procurement Guidelines -2006 are issued with the approval of the Cabinet of Ministers in order to enhance the transparency of Government procurement process to minimize delays and to obtain financially the most advantageous and qualitatively the best services and supplies for the nation¹.

3.1.2.2 PROCUREMENT METHODS

(A) International Competitive Bidding (ICB)

ICB shall be used:

when the capacity of the domestic contractors, suppliers and service providers are limited and the advantage of ICB is evident;

for Foreign Funded Projects, when the Foreign Funding Agency agreement requires the PE to resort to ICB procedures;

however, in the case of Works contracts in view of the development of domestic construction industry, the possibility of slicing the contract and following “slice and package approach” to suit domestic contractors may be considered.

All other conditions including currencies, taxes and other statutory levies, except domestic preference consideration, shall be applicable equally to foreign and domestic bidders.

(B) International Publicity

¹ Procurement Regime of Sri Lanka

The PE is required to give international publicity to the procurement notice in various media to ensure maximum competition. PE is required to

- advertise in one widely circulated national newspaper;
- relevant websites where possible;
- internationally, such as in UNDB and Development Gateway's dg Market; and
- transmit such invitations to embassies and trade representatives of countries from where suppliers and contractors are likely to participate, and post them in the relevant websites.

(C) National Competitive Bidding (NCB)

NCB is the competitive bidding procedure that shall be generally applicable for most GoSL funded projects.

When NCB is used the procurement notice¹:

- should be advertised at least in one widely circulated national newspaper, NPA website and other relevant websites where possible;
- any supplier, service provider or contractor who desires to obtain the bidding document should be allowed to purchase same, provided the bidder is prepared to pay any specified fees;
- the contractors/suppliers/service providers should be allowed to purchase the bidding document up to a day prior to the bid closing date; and
- in the case of contract for Works, to be eligible for contract award, the domestic contractors shall have a valid and appropriate registration at the time of submitting the Bid, under the National Registration System of ICTAD. However, ICTAD registration should not be an eligibility criterion for purchasing the bidding document or submitting a Bid.

NCB in Foreign Funded Project shall be used:

- with the agreement of the Foreign Funding Agency; (b) by allowing foreign contractors or suppliers to bid on same terms with the domestic contractors or suppliers;
- by not giving preference to the state owned agencies or approved societies etc;
- and

¹ Procurement Regime of Sri Lanka

by considering registration in appropriate category under the national registration system of ICTAD, as equivalent to the experience and qualification criteria described in the bidding document.

(D) Limited / Restricted International Competitive Bidding (LIB) and Limited/Restricted National Competitive Bidding (LNB)

These procedures are followed when the invitation to bid is directly addressed to a pre-selected list of international or national suppliers or contractors. The procedure is chosen when only a few sources are available.

All procedures followed under ICB or NCB apply except the requirements for advertising and domestic preference¹.

(E) Shopping

Shopping is an appropriate procurement method for procuring:

- readily available off the shelf Goods of small value;
- small value commodities for which specifications are standard; and
- small value Works or Services

The selection is based on comparison of price Quotations obtained from several invited bidders.

These Procurements are confined to limits.

Requests for quotations shall be addressed to individuals/firms borne in a register of suppliers/contractors and shall indicate:

- the description and quantity of the Goods;
- time and place of delivery, and
- warranties

The comparison of Quotations shall follow NCB principles wherever applicable.

The terms of the accepted offer shall be incorporated in a purchase order.

3.1.2.3 Direct Contracting

Direct contracting is a means of Procurement of Goods or Services or Works from a single supplier source.

¹ Procurement Regime of Sri Lanka

the advantages of another make or source of equipment shall have been considered;

the required equipment is proprietary and obtainable only from one source such as proprietary software, text books, spare parts, defence items; and

the process design requires the purchase of critical items from a particular supplier as a condition of a performance guarantee.

3.1.2.4 Repeat Orders

Orders placed with the original supplier over a short period of time for the supply of the same Goods shall be considered as repeat orders.

Repeat orders for the Procurement of Goods may be authorized only in exceptional circumstances up to a limit of fifty percent (50 %) of the original contract value, provided that not more than a six month period has lapsed from the date of award of the original contract and the PE certifies that¹ –

the necessity for additional requirement was not foreseen and identified at the time the original invitation to Bid was issued;

it is not economical to follow the bidding procedure again;

price of the Goods have not dropped since the original order; and

appropriate PC has no objection to such repeat order.

Prior to the placement of repeat orders, the PC shall use its best endeavours to negotiate with the supplier to obtain more favourable terms and conditions.

However, if the PC is of the view that the prices of particular items display a downward trend, repeat orders should not be authorized.

The lowest Bid price is selected as the winner provided the Bid is substantially responsive otherwise;

The bidding period may be reduced to three (03) days in the case of limited bidding by invitation and seven (07) days when open advertisement is used;

The concessions given to the suppliers and the contractors in respect to the advance payment/interim payments will be determined by NPA and details will be included in updated circulars as and when required ;

¹ Procurement Regime of Sri Lanka

Lump sum contracts shall be used wherever possible, with milestone payments identified at intermediate levels;

Purchases from government institutions must be given preference.

3.1.2.5 Community participation in Procurement

In the interest of project sustainability, or to achieve certain specific social objectives, such as creating employment opportunities in an identified geographical area, it is desirable to call for the participation of local community based organizations (CBO).

3.1.2.6 Direct Contracting for GOSL funded Projects

Subject to the above Guidelines and on the recommendation of a committee comprising two members nominated by the Head of Department and the Divisional Secretary of the location, the PE may entrust Works to approved societies, subject to the conditions specified in the Procurement Manual¹.

3.1.2.7 Direct Contracting for communities under Foreign Funded Projects

Direct contracting to community organizations may be awarded under a Foreign Funded Project, provided the procedures for same are stipulated in such Foreign Funding Agency Agreement.

3.1.2.8 Two Stage Bidding

In the first stage un-priced technical proposals on the basis of a conceptual design or performance specifications shall be invited. Subject to clarifications on technical and commercial issues and adjustments, if any, amended bidding documents shall be prepared.

During the second stage there shall be an invitation for final technical proposals and priced Bids.

3.1.2.9 Two Envelope System

Two envelope system may be used when the PC determines in circumstances such as—

- (i) “turnkey”, “design and build” or “supply and installation” contracts, and

¹ Procurement Regime of Sri Lanka

(ii) where alternate types of technical proposals are possible.

In the two envelope system, bidders are required to submit their technical and financial proposals simultaneously, but in two separate envelopes.

technical proposals are to be opened first and reviewed to determine their response to specifications and the financial proposal shall be opened in public.

3.1.2.10 Pre-qualification of Bidders

Pre-qualification is generally required in circumstances where the high cost of preparing detailed bids are involved

This method ensures that invitations to bid are extended only to those who have adequate capabilities and resources¹.

Pre-qualification should be carried out by giving wide publicity and calling for information on a given format.

A clear statement of the scope of the contract and the criteria for selection should be sent to all firms who have expressed an interest in being considered for pre-qualification.

All applicants who fulfill the pre-qualification requirements specified shall be pre-qualified.

Pre-qualification shall not be used as a tool with a motive to limit competition among qualified bidders.

Pre-qualification Criteria

Pre-qualification shall be based exclusively upon the capability of and resources available with the prospective bidders to perform the particular contract satisfactorily, taking into account their –

experience and past performance on similar contracts;

resources available in regard to personnel, equipment ; and construction or manufacturing facilities; and

the financial resources at their disposal.

¹ Procurement Regime of Sri Lanka

3.1.2.11 BIDDING DOCUMENTS

Initiation of Drafting Bidding Documents

The PE should initiate the drafting of bidding documents including technical specifications, drawings, etc.

The PE should commence the aforementioned task prior to the appointment of the TEC.

Contents of Bidding Documents

The bidding documents shall contain all relevant information necessary for a prospective bidder to prepare a bid for the Goods or Services or Works to be offered in response to the invitation to bid (or quote). The contents of the bidding document should be unambiguous.

The detail and complexity of these documents may vary with the size and nature of the proposed Procurement¹.

Standard Bidding Document (SBD)

PEs shall use the appropriate specimen SBDs approved by NPA, with minimum changes, if necessary, to address contract specific issues.

Whenever the SBDs consists of different sections, i.e. instruction to bidders, bid data, general conditions of contract, contract data and special conditions of contract, any such changes shall be introduced only through bid or contract data sheets, or through special conditions of contract, and not by modifying the instructions to bidders and general conditions of contract.

Where no relevant SBDs have been issued, the PE may use other documents with the concurrence of NPA.

All such documents must be vetted and approved by the TEC and the PC, respectively, who shall take the entire responsibility for the contents of such documents.

In the case of Procurements funded by a Foreign Funding Agency, the PEs may use the SBDs mandated by such agencies.

3.1.2.12 Bid Security

¹ Procurement Regime of Sri Lanka

A Bid security in the prescribed format must be submitted by all the bidders participating in ICB, LIB, NCB or LNB bidding process.

The Bid security is obtained to ensure the following:

that the bidder will not withdraw or modify the Bid during the period of validity;

that the bidder will agree to an adjusted bid price after the correction of arithmetical errors, pursuant to the criteria described in the bidding documents;

that the bidder will sign the contract if the contract is awarded within the validity period of the bid; and

that the bidder will submit a performance security prior to the deadline specified in the bidding documents¹.

3.1.2.13 Dispute Resolution

All disputes arising out of contract agreements shall be governed in accordance with the provisions of the Arbitration Act No. 11 of 1995 of Sri Lanka, as amended.

A reference must be made in the bidding documents, that settlement of disputes would be by way of arbitration and a detailed arbitration clause should be included in the contract to such effect.

For Foreign Funded Projects dispute resolution provisions recommended by the Foreign Funding Agency shall be complied with.

Subject to the provisions of the Arbitration Act, the Rules of Arbitration of the International Chamber of Commerce (ICC) or the United Nations Commission on International Trade Law (UNCITRAL) or any other set of acceptable rules are recommended for usage.

The venue of arbitration shall be in Sri Lanka, for GoSL funded projects. The venue of arbitration for Foreign Funded Projects would be determined in accordance with the requirements of the Foreign Funding Agency.

3.1.2.14 INVITATION TO BID AND CLOSING/OPENING OF BIDS

¹ Procurement Regime of Sri Lanka

Issuance of Bidding Documents

1.

The bidding documents should be made available during business hours, by mail or in person to any bidder, (including pre-qualified bidder subject to Guidelines, on the payment of the prescribed fees, if any, at least up to one day prior to deadline of submission of bids.

In the instances where pre-qualification of bidders are carried out, the bidding documents shall be issued only to the pre-qualified bidders.

2.

The bidding documents should be made available for inspection, free of charge, for any prospective bidder who wishes to do so.

The bidding document may be sold at different locations.

3. The prescribed fee (if any) for purchase of bidding documents should not be fixed so high as to discourage the bidders.

4. The PE shall keep a record pertaining to the issuance of the bid documents.

Bidding Period

bidding period shall commence from the date on which the bidding documents are available for purchase by potential bidders¹.

The period shall end with the deadline for bid submission.

The bidding period shall be reasonably adequate to prepare the bids.

Public Bid Opening

Responsibility of opening of Bids is vested with the PC. The PC may delegate such authority to a "Bid Opening Committee" which shall comprise of a minimum of two members approved by the PC.

Bids shall be opened in the presence of the bidders or their representative/s who wish to attend, soon after the closing of Bids.

Any Bid received on or before the deadline for submission of Bids shall not be rejected at the Bid opening.

Only the Bids marked as "Original" shall be opened at the Bid opening. The "Copy" shall not be opened.

¹ Procurement Regime of Sri Lanka

If any envelope is marked "Withdrawal" of bid is received on or before the deadline for submission, that letter should be opened first. If the Bid Opening Committee is satisfied beyond doubt with the contents of the letter, the bidder's original Bid should not be opened. If in doubt the original bid should be opened with other bids. Any envelope marked "modification" should be opened with the original bid.

The Bid Opening Committee shall read out the following to those present:

the names of each bidder and the bid amount in the form of bid. If not available the total of the price schedule or schedule of requirements;
whether or not a bid security/bid security declaration is submitted;
any discounts offered; and
any other relevant information at the Bid Opening Committee's discretion.

The proceedings of the bid opening shall be recorded in the prescribed format and should be signed by all members of the Bid Opening Committee.

The original Bids together with the minutes pertaining to bid opening shall be handed over to the Chairperson of the TEC¹.

3.1.2.15 BID EVALUATION

Meetings of Technical Evaluation Committees (TEC)

Upon the receipt of Bids, the Chairperson of the TEC shall convene a meeting for the purpose of attending to matters relating to the evaluation of Bids.

Confidentiality

After bid opening, information relating to substance, clarification, examination and evaluation of Bids and recommendations concerning awards shall not be communicated to bidders nor to any other person, (unless they are formally involved in the process), until after the date on which the award of contract is formally notified to the successful Bidder.

Services of Consultant/s for Evaluation of Bids

If the evaluation of Bids is entrusted to consultant/s, it shall be made under the supervision and guidance of TEC.

¹ Procurement Regime of Sri Lanka

Consultants shall not form part of a TEC.

The TEC shall submit to the PC its own formal report along with the consultants' report.

3.1.2.16 AWARD OF CONTRACT

Recommendation/Determination of Contract Award

After the PC has carefully examined the TEC report and has sought any required clarifications from the TEC, the PC may exercise any of the following options:

if it agrees with the findings of the TEC the Chairperson of the PC shall:

in the case of CAPC may make a recommendation of contract award to the Secretary to the Line Ministry; and

in all other cases convey the determination of contract award to the Secretary to the Line Ministry in the case of MPC, to the Head of Department in the case of DPC and RPC, and to the Project Director in the case of PPC; or

request the TEC to resubmit the report after due consideration to the observations made by the PC; in such situations if PC agrees with the subsequent report submitted by TEC, the decision should be conveyed in accordance with Guideline. Or

if the PC continues to dispute on any specific matter in the TEC report, the disputed matter shall be discussed with all members of the TEC in order to arrive at a consensus. Thereafter, if the members of the PC are unable to reach a unanimous decision on such disputed matter, then the majority decision of the PC shall prevail and the decision should be conveyed in accordance with Guideline. However, any member may submit adissenting report¹.

3.1.2.17 Publication of Contract Award

The PE should publish promptly in its website (if available), the NPA website and/or any other appropriate media, the following particulars in regard to contracts on which awards have been made:

- description of the items/Works for which bids were invited;
- total number of bids received;
- name of the successful bidder;

¹ Procurement Regime of Sri Lanka

amount at which the contract was awarded;

in the case of a contract awarded to a foreign principal who has a local agent, the name of the local agent.

If the contract value exceeds SLR 250,000,000 (Sri Lanka Rupees Two Hundred and Fifty Million), publication of contract awards in at least one widely circulated national news paper, the NPA website and government gazette is mandatory.

3.1.3 Government Procurement regime of India

General Financial Rules (GFRs) are a compendium of general provisions to be followed by all offices of Government of India while dealing with matters of a financial nature.

India's policies on government procurement are based on general principles laid down as general financial rules of the ministry of finance.

Although there is no separate legislation for government procurement, government purchases are subject to be dealt accordingly to the general financial rules 2005 which are as follows¹.

3.1.3.1 WORKS

Original works means all new constructions, additions and alterations to existing works, special repairs to newly purchased or previously abandoned buildings or structures, including remodeling or replacement.

Repair works means works undertaken to maintain building and fixtures.

Administrative control of works includes:

- assumption of full responsibility for construction, maintenance and upkeep;
- proper utilization of buildings and allied works;
- provision of funds for execution of these functions.

a) Powers to sanction works:

The powers delegated to various subordinate authorities to accord administrative approval, sanction expenditure and re-appropriate funds for works are regulated by the Delegation of Financial Powers Rules, 1978, and other orders contained in the respective departmental regulations.

A Ministry or Department at its discretion may directly execute repair works estimated to cost upto Rupees ten Lakhs after following due procedure.

A Ministry or Department may, at its discretion, assign repair works estimated to cost above Rupees ten Lakhs and up to Rupees thirty Lakhs to any Public Works Organization, which includes State Public Works Divisions, other Central Government organizations authorized to carry out civil or electrical works such as Central Public Works Department (CPWD), Military Engineering Service (MES),

¹ Procurement Regime of India

Border Roads Organisation etc. or Public Sector Undertakings set up by the Central or State Government to carryout civil or electrical works.

All original works costing upto Rupees ten Lakhs may be assigned by the Ministry or Department concerned to a Public Works Organizations.

All original works estimated to cost above Rupees ten Lakhs and repair works estimated to cost above Rupees thirty Lakhs may be got executed through a Public Works Organizations¹.

Work under the administrative control of the Public Works Departments:

Works not specifically allotted to any Ministry or Department shall be included in the Grants for Civil Works to be administered by Central Public Works Department. No such work may be financed partly from funds provided in departmental budget and partly from the budget for civil works as mentioned above.

3.1.3.2 General Rules :

Subject to the observance of these general rules, the initiation, authorization and execution of works allotted to a particular Ministry or Department shall be regulated by detailed rules and orders contained in the respective departmental regulations and by other special orders applicable to them.

No works shall be commenced or liability incurred in connection with it until:

administrative approval has been obtained from the appropriate authority in each case;

sanction to incur expenditure has been obtained from the competent authority;

a properly detailed design has been sanctioned;

estimates containing the detailed specifications and quantities of various items have been prepared on the basis of the Schedule of Rates maintained by CPWD or other Public Works Organisations and sanctioned;

funds to cover the charge during the year have been provided by competent authority;

tenders invited and processed in accordance with rules;

a Work Order issued.

¹ Procurement Regime of India

Any development of a project considered necessary while a work is in progress, which is not contingent on the execution of work as first sanctioned, shall have to be covered by a supplementary estimate.

For purpose of approval and sanctions, a group of works which forms one project, shall be considered as one work. The necessity for obtaining approval or sanction of higher authority to a project which consists of such a group of work should not be avoided because of the fact that the cost of each particular work in the project is within the powers of such approval or sanction of a lower authority. This provision, however, shall not apply in case of works of similar nature which are independent of each other¹.

Any anticipated or actual savings from a sanctioned estimate for a definite project, shall not, without special authority, be applied to carry out additional work not contemplated in the original project.

3.1.3.3 Procedure for Execution of Works:

The broad procedure to be followed by a Ministry or Department for execution of works under its own arrangements shall be as under:-

- (i) the detailed procedure relating to expenditure on such works shall be prescribed by departmental regulations framed in consultation with the Accounts Officer, generally based on the procedures and the principles underlying the financial and accounting rules prescribed for similar works carried out by the Central Public Works Department (CPWD);
- (ii) preparation of detailed design and estimates shall precede any sanction for works;
- (iii) no work shall be undertaken before Issue of Administrative Approval and Expenditure Sanction by the competent Authority on the basis of estimates framed;
- (iv) open tenders will be called for works costing Rupees five lakhs to Rupees ten lakhs;
- (v) limited tenders will be called for works costing less than Rupees five lakhs;
- (vi) execution of Contract Agreement or Award of work should be done before commencement of the work;

¹ Procurement Regime of India

(vii) final payment for work shall be made only on the personal certificate of the officer-in-charge of execution of the work in the format given below:

“I, Executing Officer of (Name of the Work), am personally satisfied that the work has been executed as per the specifications laid down in the Contract Agreement and the workmanship is up to the standards followed in the Industry.”

For original works and repair works entrusted to a 'Public Works Organization', the administrative approval and expenditure sanction shall be accorded and funds allotted by the concerned authority under these rules and in accordance with the Delegation of Financial Power Rules 1978. The Public Works Organization shall then execute the work entrusted to it in accordance with the rules and procedures prescribed in that organization.

3.1.3.4 Review of Projects:

After a project costing Rupees ten crores or above is approved, the Administrative Ministry or Department will set up a Review Committee consisting of a representative each from the Administrative Ministry, Finance (Internal Finance Wing) and the Executing Agency to review the progress of the work. The Review Committee shall have the powers to accept variation within 10% of the approved estimates. For works costing less than Rupees ten crores, it will be at the discretion of the Administrative Ministry / Department to set up a Review Committee on the above lines¹.

3.1.3.5 PROCUREMENT OF GOODS AND SERVICES

a) PROCUREMENT OF GOODS

Definition of Goods : The term 'goods' used in this chapter includes all articles, material, commodities, livestock, furniture, fixtures, raw material, spares, instruments, machinery, equipment, industrial plant etc. purchased or otherwise acquired for the use of Government but excludes books, publications, periodicals, etc. for a library.

Fundamental principles of public buying: Every authority delegated with the financial powers of procuring goods in public interest shall have the responsibility and accountability to bring efficiency, economy, transparency in matters relating to public

¹ Procurement Regime of India

procurement and for fair and equitable treatment of suppliers and promotion of competition in public procurement.

The procedure to be followed in making public procurement must conform to the

Procurement of goods required on mobilization: Procurement of goods required on mobilization and/or during the continuance of Military operations shall be regulated by special rules and orders issued by the Government on this behalf from time to time.

Powers for procurement of goods: The Ministries or Departments have been delegated full powers to make their own arrangements for procurement of goods. In case however, a Ministry or Department does not have the required expertise, it may project its indent to the Central Purchase Organization (e.g. DGS&D) with the approval of competent authority. The indent form to be utilized for this purpose will be as per the standard form evolved by the Central Purchase Organization¹.

b) Registration of Suppliers:

With a view to establishing reliable sources for procurement of goods commonly required for Government use, the Central Purchase Organization (e.g. DGS&D) will prepare and maintain item-wise lists of eligible and capable suppliers. Such approved suppliers will be known as "Registered Suppliers". All Ministries or Departments may utilize these lists as and when necessary. Such registered suppliers are prima facie eligible for consideration for procurement of goods through Limited Tender Enquiry. They are also ordinarily exempted from furnishing bid security along with their bids. A Head of Department may also register suppliers of goods which are specifically required by that Department or Office.

Reserved Items: The Central Government, through administrative instructions, has reserved all items of handspun and hand woven textiles (khadi goods) for exclusive purchase from Khadi Village Industries Commission (KVIC). It has also reserved all items of handloom textiles required by Central Government departments for exclusive purchase from KVIC and/or the notified handloom units of ACASH (Association of Corporations and Apex Societies of Handlooms).

Purchase of goods without quotation : Purchase of goods upto the value of Rs. 15,000/- (Rupees Fifteen Thousand) only on each occasion may be made without

¹ Procurement Regime of India

inviting quotations or bids on the basis of a certificate to be recorded by the competent authority in the following format.

"I, _____, am personally satisfied that these goods purchased are of the requisite quality and specification and have been purchased from a reliable supplier at a reasonable price."

Purchase of goods by purchase committee : Purchase of goods costing above Rs. 15,000/- (Rupees Fifteen Thousand) only and up to Rs. 1,00,000/- (Rupees One lakh) only on each occasion may be made on the recommendations of a duly constituted Local Purchase Committee consisting of three members of an appropriate level as decided by the Head of the Department. The committee will survey the market to ascertain the reasonableness of rate, quality and specifications and identify the appropriate supplier. Before recommending placement of the purchase order, the members of the committee will jointly record a certificate as under.

"Certified that we _____, members of the purchase committee are jointly and individually satisfied that the goods recommended for purchase are of the requisite specification and quality, priced at the prevailing market rate and the supplier recommended is reliable and competent to supply the goods in question. "

Purchase of goods directly under rate contract¹:

(1) In case a Ministry or Department directly procures Central Purchase Organization (e.g. DGS&D) rate contracted goods from suppliers, the prices to be paid for such goods shall not exceed those stipulated in the rate contract and the other salient terms and conditions of the purchase should be in line with those specified in the rate contract. The Ministry or Department shall make its own arrangement for inspection and testing of such goods where required.

(2) The Central Purchase Organization (e.g. DGS&D) should host the specifications, prices and other salient details of different rate contracted items, appropriately updated, on the web site for use by the procuring Ministry or Department.

c) Purchase of goods by obtaining bids:

¹ Procurement Regime of India

Except in cases covered under Rule 145, 146 and 147(1), Ministries or Departments shall procure goods under the powers referred to in Rule 140 above by following the standard method of obtaining bids in :

- (i) Advertised Tender Enquiry;
- (ii) Limited Tender Enquiry;
- (iii) Single Tender Enquiry.

d) Limited Tender Enquiry

This method may be adopted when estimated value of the goods to be procured is up to Rupees Twenty-five Lakhs. Copies of the bidding document should be sent directly by speed post/registered post/courier/e-mail to firms which are borne on the list of registered suppliers for the goods in question as referred under Rule 142 above. The number of supplier firms in Limited Tender Enquiry should be more than three. Further, web based publicity should be given for limited tenders. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis¹.

e) Two bid system:

For purchasing high value plant, machinery etc. of a complex and technical nature, bids may be obtained in two parts as under:-

- (a) Technical bid consisting of all technical details along with commercial terms and conditions; and
- (b) Financial bid indicating item-wise price for the items mentioned in the technical bid.

The technical bid and the financial bid should be sealed by the bidder in separate covers duly super scribed and both these sealed covers are to be put in a bigger cover which should also be sealed and duly super scribed. The technical bids are to be opened by the purchasing Ministry or Department at the first instance and evaluated by a competent committee or authority. At the second stage financial bids of only the technically acceptable offers should be opened for further evaluation and ranking before awarding the contract.

f) Late Bids:

¹ Procurement Regime of India

In the case of advertised tender enquiry or limited tender enquiry, late bids (i.e. bids received after the specified date and time for receipt of bids) should not be considered.

G) Single Tender Enquiry

Procurement from a single source may be resorted to in the following circumstances:

- (i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.
- (ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.
- (iii) For standardization of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm.

h) Bid Security:

To safeguard against a bidder's withdrawing or altering its bid during the bid validity period in the case of advertised or limited tender enquiry, Bid Security (also known as Earnest Money) is to be obtained from the bidders except those who are registered with the Central Purchase Organization, National Small Industries Corporation (NSIC) or the concerned Ministry or Department. The bidders should be asked to furnish bid security along with their bids. Amount of bid security should ordinarily range between two percent to five percent of the estimated value of the goods to be procured. The exact amount of bid security, should be determined accordingly by the Ministry or Department and indicated in the bidding documents. ial bank, Bank Guarantee from a Commercial bank in an acceptable form safeguarding the purchasers interest in all respects¹.

Advance payment to supplier:

Ordinarily, payments for services rendered or supplies made should be released only after the services have been rendered or supplies made.

3.1.3.6 PROCUREMENT OF SERVICES

The Ministries or Departments may hire external professionals, consultancy firms or consultants (referred to as consultant hereinafter) for a specific job, which is well

¹ Procurement Regime of India

defined in terms of content and time frame for its completion or outsource certain services.

3.1.3.7 Identification of Work / Services required to be performed by Consultants:

Engagement of consultants may be resorted to in situations requiring high quality services for which the concerned Ministry/ Department does not have requisite expertise. Approval of the competent authority should be obtained before engaging consultant(s).

3.1.3.8 Preparation of scope of the required work / service:

The Ministries / Departments should prepare in simple and concise language the requirement, objectives and the scope of the assignment. The eligibility and pre-qualification criteria to be met by the consultants should also be clearly identified at this stage.

3.1.3.9 .Estimating reasonable expenditure:

Ministry or Department proposing to engage consultant(s) should estimate reasonable expenditure for the same by ascertaining the prevalent market conditions and consulting other organizations engaged in similar activities¹.

3.1.3.10 Receipt and opening of proposals:

Proposals should ordinarily be asked for from consultants in 'Two-bid' system with technical and financial bids sealed separately. The bidder should put these two sealed envelops in a bigger envelop duly sealed and submit the same to the Ministry or Department by the specified date and time at the specified place. On receipt, the technical proposals should be opened first by the Ministry or Department at the specified date, time and place.

3.1.3.11 Evaluation of Technical Bids:

Technical bids should be analyzed and evaluated by a Consultancy Evaluation Committee (CEC) constituted by the Ministry or Department. The CEC shall record in detail the reasons for acceptance or rejection of the technical proposals analysed and evaluated by it.

Evaluation of Financial Bids of the technically qualified bidders:

¹ Procurement Regime of India

The Ministry or Department shall open the financial bids of only those bidders who have been declared technically qualified by the Consultancy Evaluation Committee for further analysis or evaluation and ranking and selecting the successful bidder for placement of the consultancy contract.

3.1.3.12 Consultancy by nomination:

Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department.

3.1.3.13 OUTSOURCING OF SERVICES

a) Outsourcing of Services:

A Ministry or Department may outsource certain services in the interest of economy and efficiency and it may prescribe detailed instructions and procedures for this purpose without, however, contravening the following basic guidelines¹.

b) Identification of likely contractors:

The Ministry or Department should prepare a list of likely and potential contractors on the basis of formal or informal enquiries from other Ministries or Departments and Organizations involved in similar activities, scrutiny of 'Yellow pages', and trade journals, if available, web site etc.

c) Preparation of Tender enquiry:

Ministry or Department should prepare a tender enquiry containing, inter alia:

- (i) The details of the work or service to be performed by the contractor;
- (ii) The facilities and the inputs which will be provided to the contractor by the Ministry or Department;
- (iii) Eligibility and qualification criteria to be met by the contractor for performing the required work / service; and
- (iv) The statutory and contractual obligations to be complied with by the contractor.

d) Outsourcing by Choice:

Should it become necessary, in an exceptional situation to outsource a job to a specifically chosen contractor, the Competent Authority in the Ministry or

¹ Procurement Regime of India

Department may do so in consultation with the Financial Adviser. In such cases the detailed justification, the circumstances leading to the outsourcing by choice and the special interest or purpose it shall serve shall form an integral part of the proposal.

e) Monitoring the Contract:

The Ministry or Department should be involved throughout in the conduct of the contract and continuously monitor the performance of the contractor.

Chapter 4 -- Public Procurement law reforms in Pakistan

4.1 Public Debt (amendment) ordinance 2002

In 2002 Government of Pakistan Promulgated Public Debt (amendment) Ordinance 2002, and this Ordinance amended the Public debt Act 1944, On 14th day of Oct, 1999, in pursuance of the proclamation of the emergency, 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 Islamic Republic of Pakistan promulgated the said Ordinance.

This Ordinance contained only two sections, first one about short title, extent and commencement and second about amendment of section no 14, Act XVIII of 1944. It is mentioned in section (1) That this Ordinance shall come into force at once except in Islamabad capital territory, and in Islamabad it shall come into force accordingly to the notification of the Federal Government.

The said Ordinance as well amended the section 14 of sub section (1) which is about the recording of the evidence, which states,

For the purpose of making any order which it is empowered to make under this Act, the Bank may request a District Magistrate or in an Acceding State or a non-Acceding State the Political Agent to record or to have recorded the whole or any part of such evidence as any person whose evidence the Bank requires may produce. A District Magistrate so requested may himself record, or may direct any Magistrate of the first class subordinate to him or any Magistrate of the second class subordinate to him and empowered in this behalf by general or special order of the Provincial Government to "record the evidence", and shall forward a copy thereof to the Bank.

For the purpose of making a vesting order under this Act the Bank may direct one of its officers to record the evidence of any person whose evidence the Bank requires or may receive evidence upon affidavit.

A Magistrate or an officer of the Bank acting in pursuance of this section may administer an oath to any witness examined by him.

And accordingly the sec 2 of Public amended ordinance 2002 (a) for the word "District Magistrate", occurring twice, the words "Session judge" shall be substituted; and

(b) for the words “ Provincial Government” the word “High Court” shall be substituted¹.

4.2 Public Procurement Regulatory Authority Ordinance

2002

In may 2002 GOP Promulgated Public Procurement Regulatory Authority Ordinance for regulating Public Procurement of goods, services and works in the public sector, and this Ordinance extends to the whole of Pakistan.

According to Public Procurement Regulatory Authority Ordinance, the Public Procurement Regulatory Authority would be established for carrying out the purposes of this Ordinance and the head quarter of the Authority shall be at Islamabad. The Federal Government as and when considers necessary shall issue directives to Authority on matters of policy and such directives shall be binding on the Authority. The Authority may take such measures and exercise such powers as may be necessary for improving the governance, management, transparency, accountability and quality of Public Procurement of goods, services and works in the public sector. The Authority may monitor application of laws, rules, regulations, policies and procedure in respect, of or relating to. Monitor implementation of and evaluate laws, rules, regulations, policies and procedures in respect of, or relating to, inspection or quality of goods, services and recommend to the Federal Government revisions in or formulation of new laws, rules and policies in respect of or related to the Public Procurement etc. And the general direction and administration of the Authority and its affairs shall vest in a Board which may exercise all powers, performs all functions and do all acts and things which may be exercised, performed or done by the Authority. The managing director shall act as a secretary to the Board. The meeting of the Board shall be held at such times, places and in such manner as may be prescribed by the regulation. The meeting of the Board shall be presided over by the chairman or, in his absence the member elected by the chairman, shall preside at the meeting of the board. All orders, determination and decision of the Board shall be taken in writing and shall be signed by the managing director. For the financial matters of the Authority a fund shall be placed comprising;

Such sums as the Federal Government may, from time to time, allocate to it in the annual budget.

¹ Public Debt (amendment) ordinance 2002

Grants.

Income from investment by the Authority and all other sums or properties which may in any manner payable to, or vest in, the Authority in any manner.

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

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 the 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.

The authority may invest its surplus funds in accordance with the instructions of the Federal Government, and the account of the Authority shall be audited every year by the Auditor General of Pakistan.

The Authority may call for any information required by it for carrying out the purposes of this Ordinance, from any person or from any institution in Public Procurement activities and any such person or institution shall provide the required information called by the Authority.

The Authority shall furnish to the Federal Government such information with respect to the policies and procedures. It is pursuing or purposes to pursue in the performance of any of its function under this Ordinance as the Federal Government may from time to time require.

And 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 the Ordinance during that financial year and release to the public after it has been seen by the cabinet¹.

¹ Public Procurement Regulatory Authority Ordinance 2002

4.3 Public Procurement Rules 2004

In exercise of the powers conferred by section 26 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Federal Government make the said rules.

These rules may be called the Public Procurement Rules, 2004.

They shall come into force at once.

Save as otherwise provided, these rules shall apply to all procurements made by all procuring agencies of the Federal Government whether within or outside Pakistan. 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.

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.

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.

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.

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

Procurements over forty thousand rupees and up to the limit of one 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.

All procurement opportunities over one 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.

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

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.

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.

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.

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 prequalification.

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.

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 therefore in writing. They shall form part of the records of that procurement proceeding.

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.

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.

Subject to some provision of the rules the procuring agencies shall engage in open competitive bidding if the cost of the object to be procured is more than forty thousand rupees.

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.

A procuring agency shall specify the manner and method of submission and receipt of bids in an unambiguous and clear manner in the bidding documents.

The procuring agency may require the bidders to furnish a bid security not exceeding five per cent of the bid price.

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.

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. 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.

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 misprocurement.

All bids shall be evaluated in accordance with the evaluation criteria and other terms and conditions set forth in the prescribed bidding documents. No evaluation criteria shall be used for evaluation of bids that had not been specified in the bidding documents.

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.

If the procuring agency has rejected all bids it may call for a re-bidding.

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.

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.

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

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.

single stage – two envelope procedure.-

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

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.

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.

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.

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

Petty purchases.

Request for quotations

Direct Contracting

Negotiating tendering.

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.

A procurement contract shall come into force:-

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 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 time¹.

¹ Public Procurement Rules 2004

Chapter 5 – Review Comments on prevailing Public Procurement Laws in Pakistan

5.1 Review Comments On Public Procurement Regulatory

Authority Ordinance

In order to regulate or streamline Procurement Government of Pakistan promulgated the Public Procurement Regulatory Authority Ordinance 2002 and formulated the rules by using the sec 26(Power of the federal Government to make rules) for carrying out the purpose of said ordinance. Although it essentially covers the Procurement of goods and services in Government, however the perusal reveals that the substantial and material elements of important nature are conspicuously missing.

Considering the significance and pertinence of my thesis I feel that it is imperative to review the sections of Public Procurement Regulatory Authority Ordinance and Public Procurement rules and highlight those issues which require rethinking and consideration in the light of my analysis.

The main object/ aim of this exercise is to provide an intellectual support to policy makers in order to strengthen the Procurement regime and legislative environment. So the comments on review able sections (accordingly to my perception) of Public Procurement Regulatory Ordinance 2002 and Public Procurement rules are as follows.

5.1.1 Review comments on Preamble

The preamble of the Ordinance shows that the Ordinance is for the purpose of to provide for the establishment of Public Procurement regulatory authority for regulating Public Procurement of goods, services and works in public sector , so the basic purpose of the Ordinance is, the establishment of Regulatory Authority but the sole establishment does not fulfill the required purpose , the preamble should contain, the objective to regulate Procurement of goods, construction and services so as to promote the objective of;

- a. Maximizing economy and efficiency in Procurement.
- b. Providing for the fair and equitable treatment of all suppliers and contractors.
- c. Promoting the integrity of, and fairness and public confidence in the Procurement process.

- d. Promoting competition among suppliers and the contractors for the supply of goods, construction or services to be procured.
- e. Achieving transparency, efficiency and accountability in the procedure relating to the Procurement

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

NOW THEREFORE, in pursuance of the proclamation of the emergency of the fourteenth day of Oct, 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 Islamic Republic of Pakistan is pleased to promulgate the following Ordinance;¹”

(emphasis added)

5.1.2 Review comments on Sec(1) Short title , extent and commencement

As its extension is concerned to the whole of Pakistan, it may extend to the extent of AJK as well, because GOP has exclusive legislative and executive powers in respect of, *inter alia* , the external affairs of AJK including Foreign trade and Foreign Aid(sec 31(3) read with the section 19 (a) and sec 56) of the AJK Constitution.

And in AJK Council which is headed by its chairman (i.e the PM of Pakistan in his ex- officio capacity) in exclusive power to make laws with respect to any matter in the council legislative list, although the AJK has separate Constitution and separate territory but the above mentioned explanation shows the active involvement of GOP in matters of AJK and ancillary matters,

So the Government of Pakistan should extend the jurisdiction of the said Ordinance to the extent of AJK for the more appropriateness of Procurement , even in some big projects there was active involvement of both the Governments at the same time, for

¹ Preamble of Public Procurement Regulatory Authority Ordinance 2002.

instance in Mangla dam project etc. And at the same time by extending the jurisdiction defense and military Procurement may be exempted.

"This Ordinance may be called may be called the Public Procurement Regulatory Authority Ordinance 2002.

It extends to the whole of Pakistan.

It shall come in to force at once¹"

5.1.3 Review comments on Sec (2) Definitions

Ordinance 2002 is about the sections, and it defines the different terms for instance, Authority, Board, Chairperson, Fund, Goods, Managing director, Member, Mis-procurement, Procuring agency, Public fund, Public Procurement, Regulations, Rules, Service, and Works etc.

The above mentioned terms are not defined properly for instance, the definition of Authority is, the Public Procurement Regulatory Authority established under sec 3, And the definition of board means the board constituted under section 6, so the very same way the other terms are defined, although the definitions must be of the self explanatory in nature and should be properly explained in words in connotation with the Ordinance.

(a) "Authority" means Public Procurement Regulatory Authority established under sec3

"Board" means the board constituted under section 6,

"Chairperson" means the Chairperson of the Board;

"Fund" means the funds establish under section 9,

"goods" means articles and objects of every kinds and description including raw materials, product, 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 these goods;

"Managing Director" means the Managing Director appointed under section 8;

"Member" means a member of the Authority;

¹ Sec(1) Short title , extent and commencement (Public Procurement Regulatory Authority Ordinance 2002)

“Misprocurement; means public procurement in contravention of any provision of this Ordinance, any rules, regulation, orders or instructions made there under or any other law in respect of, or relating to, public procurement;

“Prescribed” means prescribed by rules made under this Ordinance;

“Procuring agency” means (i) any ministry , division, department , or any office of the Federal Government (ii) any authority, corporation, body or organization, establish by or under a Federal law or which is owned or controlled by the Federal Government.

“Public Fund” means the Federal consolidated fund and the public account of the Federation and includes funds of the enterprises which are owned or controlled by the Federal Government

“Public Procurement” means acquisition of the goods, services or construction of any works financed wholly or partly out of the public funds, unless excluded by the Federal Government.

“Regulations” means regulations made under this ordinance.

“Rules” means rules made under this Ordinance.

“Service” means any object of procurement other than goods or works; and

“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 material and decoration, finishing and includes incidental services such as drilling, mapping, satellite, photography, seismic investigations and similar activities, if the value of “ good means articles and objects of every kind and description including raw materials , products, equipment, machinery, spare and commodities in any form” so the word used object of every kind is of general nature it can be specified for instance object in solid, liquid or gaseous form and electricity etc. According to the definition the goods includes services incidental to installation, transport, maintenance and similar obligations related to the supply of the goods if the value of these services does not exceed the value of such goods.¹”

(Emphasis added)

¹ Sec(2) Definitions, (Public Procurement Regulatory Authority Ordinance 2002)

5.1.4 Review comments on Sec 2 (e). Goods

The definition of goods itself is not complete definition the word used in the definition the object of every kind is of general nature it can be specified for instance object in solid, liquid and gaseous form and electricity etc. According to the definition the goods 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.

So basically the services and the goods are purely separate issues the services may not include goods, it is necessary to define the services and goods separately, although it has defined separately under sec 2(o) but not defined properly, by covering all the aspects of services.

Goods “ Means article of every kind and description including raw material, product, 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 goods¹”

5.1.5 Review comments on Sec 2(h) “Mis-procurement”

According to the definition misprocurement means Public Procurement in contravention of this ordinance.....etc. so the definition discusses about the contravention of this ordinance but what about not fulfilling the requirement? What about beyond the usage of this Ordinance? The definition of Procurement is silent about it , and its lacuna or flaw in the definition, So all the aspect of the definition should be discussed necessarily, without discussing all these aspect the definition cannot be said the complete definition.

Misprocurement “ Means Public Procurement in contravention of any provision of this Ordinance, any rules regulations, orders, instructions made

¹ Sec 2(e) Goods, (Public Procurement Regulatory Authority Ordinance 2002)

there under and or any other law in respect of, or relating to, public Procurement.¹”

(Emphasis added)

5.1.6 Review comments on Sec 2 (j) “Procuring agency”

Before defining the definition of Procuring Agency, it is necessary to define what is procuring? And procuring agency is a word of general nature which includes:

“i) Any Ministry, Division, Department or any office of the Federal government,

(ii) Any Authority, Corporation, Body or Organization established by or under the law or which is owned or controlled by the Federal Government²”

So the definition of procuring agency cannot be confined to the extent of Federal Government, the definition should include Provincial and the District Governments as well.

5.1.6 Review comments on Sec 2 (k) “Public Fund”

The word public fund is of general nature it cannot be restrained or confined to the Federal Government .If the said definition would be confined to the extent of Federal Government or enterprises which are owned or controlled by Federal Government then what about the public and the private partnership for instance, SNGPL, SSC, OGDCL, PSO, and PTCL etc. for instance Government privatize 25% to 26% shares of PTCL, so according to the definition PTCL doesn't come under the purview of above mentioned definition.

One more issue of which is of discussion able nature here is about the Foreign Funds, which are used by the Federal Government as well, so the definition of public fund should not be exhaustive in nature but for the completion of public fund definition, all aspect such like above mentioned should be added.

¹ Sec 2(h) MisProcurement, (Public Procurement Regulatory Authority Ordinance 2002)

² Sec 2(j) Procuring Agency, (Public Procurement Regulatory Authority Ordinance 2002)

Public Fund “Means the Federal consolidated fund and the public account of the extent of Federation and includes funds of the enterprises which are owned and controlled by the Federal Government¹”

(Emphasis added)

5.1.7 Review comments on Sec 2(l) “Public Procurement.”

The definition of the Public Procurement is not the complete definition according to the definition the Public Procurement means acquisition of goods etc. but it does not cover all the aspect of Public Procurement, by covering all the aspect of Public Procurement the definition should be added the following words after “unless otherwise excluded by the Federal Government and it is the process to obtain materials, supplies and the contracts at the best price reasonably available through open and fair competition by using the public fund.

In addition to all in Public Procurement Regulatory Authority Ordinance 2002 it was necessary to define “Procurement” before defining Public Procurement, because without defining the Procurement the Public Procurement cannot be defined properly, so in Ordinance the following definition of procurement can be added.

Procurement is the entire process or function associated with the buying of the goods, and services to support the business operation. It is the acquisition at the best possible cost of ownership, in the right quantity, at the right time, in the right place for the direct benefit or use of Governments, corporations or public companies etc. It includes key step of procurement like planning , analysis, strategic, sourcing, purchasing, order management and ongoing supplier performance management.

It can also be used more narrowly to refer exclusively to the purchasing aspect of the buying process.

Public Procurement “Means acquisition of goods, services or construction of any work financed wholly or partially out of public funds, unless excluded otherwise by the Federal Government²”

¹ Sec 2(k) Public Fund, (Public Procurement Regulatory Authority Ordinance 2002)

² Sec 2(i) Public Procurement, (Public Procurement Regulatory Authority Ordinance 2002)

5.1.8 Review comments on Sec 2 (o) “Services”

So the service may be defined separately by covering all of its aspect for instance, the following easy definition of services may be considered,

“Services is everything that you cannot drop on your foot.... retail stores, banking, hotels, insurance, energy, telecommunication, maintenance and repair, construction, toxic waste processing, mining, tourism, food preparation, restaurants, laundry, cleaning and transport (trains, passenger and cargo airlines, ships trucking) also included are essential public services such as education, hospital, social security, libraries, mail delivery, police and prisons, water and sewage systems and more. Almost no human activity from birth to death remains outside these services.

If the same like definition cannot be added, then the definition of services in GAT’S (General Agreement on Trade and Services) is a proper definition, which can be considered as well by defining the services in Public Procurement Regulatory Authority Ordinance 2002. In short whatever the definition of services would be it must be harmonize to the definition and those parameters and hypothetical situation given by GATS by defining the services because Pakistan is as well the signatory of WTO and if the definition would be contradictory then the result would be the contradiction in Private and Public International law.

In addition to all one more suggestion is that in sec(2) which is about the definitions it should includes as well the definition of Government Procurement because the Government Procurement and the Public Procurement are the words which are normally using in the very same sense and considers that both the words are substitutive words.

Services “Means any object of Procurement other than goods or works.

This is not the complete definition of services, services must be defined properly, the definition of services cannot be confined to the extent that what ever is other than works or good that is service¹”

¹ Sec 2(o) Services, (Public Procurement Regulatory Authority Ordinance 2002)

5.1.9 Review comments on Sec (3) “ Establishment of Authority”

In sec(3) the word “there is hereby” has used which is in fact grammatically not correct word which may create ambiguity, while reading and interpretation, its impact can be wrong so in spite of there is hereby harmonious word should be used.

Sec (3) deals about the establishment of Authority, sec (4) deals powers of the Federal Government to issue directives and sec (5) deals functions and powers of the Authority.

And it is fact that according to the Ordinance that the sole purpose of this Ordinance is to establish an Authority whereas the objective of the Authority was required to be defined as well, within these three sections. In sec (3) while defining the establishment of said authority the objective of the authority is not defined anywhere which may be defined in these words “It is hereby established an Authority to be called Public Procurement Regulatory Authority for regulating the Procurement of goods, services and works in the public sector and for matters connected therewith or ancillary there to.

Establishment of Authority “

There is hereby established an authority to be called the public procurement regulatory authority for carrying out the purposes of this ordinance.

The Authority shall be a body corporate , having perpetual succession and common seal, with powers subject to the provisions of this ordinance, to acquire and hold property, both movable and immovable, and sue and be sued by the name assigned to it by subsection (1)

The head quarter 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.¹”

5.1.10 Review comments on (Sec 4) Power of the Federal

Government to issue directives

Sec (4) gives the explanation about the powers of Federal Government to issue directives to Authority , so the basic purpose of the Authority is to regulate those

¹ Sec 3 Establishment of Authority, (Public Procurement Regulatory Authority Ordinance 2002)

Procurements which are financed wholly or partially out of public funds so in a sense the basic purpose of establishment is to regulate the funds of Federal Government relevant to Public Procurement and its an autonomous and independent entity so if the Federal Government would issue directives and these directives would be binding on Authority then its independency and autonomous entity would be doubtful. So to maintain its independent entity factor, the authority should be free from the doubt of sword which is in the form of directives from the Federal Government.

Power of the Federal Government to issue the directives "The Federal Government may, as and when consider necessary, issue directives to the Authority on the matters of policy, and such directives shall be binding on the Authority"

(Emphasis added)

5.1.11 Review comments on Sec (5) Function and Powers of the Authority

Sec(5) deals to the Powers and Functions of the Authority while keenly observing the section it seems that the Authority may recommend to Federal Government.....

The Authority may make regulations

The Authority may monitor Public Procurement practices.....

And may perform any function assigned to it by the Federal Government.....

It seems that Authority can regulate the function but it has no Powers because the section is totally silent about, that in case of absurdity which type of Powers and the Preventive measures the Authority would use.

It has no Penal clause in it nor it has Arbitrary clause even practically its role is not more than an advisory committee, so for its better functioning there should be Penal clause which can be used by the Authority in case of Absurdity.

Here one more self generated argument can be given that even the Authority has no Penal clause but the Authority may refer such like cases to FIA or now a days

¹ Sec 4, Power of Federal Government to issue directives, (Public Procurement Regulatory Authority Ordinance 2002)

National Accountability Bureau but current situation is this that the “*Public Procurement Regulatory Authority was establish in may 2002 and from that time its working, but till now not even a single case is on record which was referred by the Authority to above mentioned agencies*”. It clearly shows that rather the society has cleaned from the bad fishes or second view is this that there is flaw in the Ordinance which is not taking seriously.

“Power and function of the Authority. Subject to other Provision of this Ordinance, the Authority may take such measures and exercise such powers as may be necessary for improving the governance, management, transparency, accountability, and quality of public procurement of goods, services and works in the public sector.

Without prejudice to the generality of the powers conferred by sub section (1) the authority may....

Monitor application of the laws, rules, regulations, policies and procedure in respect of or relating to, procurement;

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 formulation thereof or revision therein as it deems necessary;

Recommend to the Federal Government revisions in or formulation of new laws, rules and policies in respect of or related to public procurement;

Make regulations and lay down codes of ethics and procedure of public procurement, inspection or quality of goods, services and works;

Monitor public procurement practices and make recommendations to improve governance, transparency, accountability and quality of public procurement;

Monitor overall performance of procuring agencies and make recommendations for improvement in their institutional setup;

Provide and coordinate assistance to procuring agencies for developing and improving their institutional framework and public procurement activities;

Submit reports to the Government in respect of public procurement activities of procuring agencies;

Call any functionary of procuring agencies to provide assistance in its function and call for ay information from such agencies in pursuance of its objectives and function; and

Perform any other function assigned to it by the Federal Government or that is incidental or consequential to any of the aforesaid functions¹”

(Emphasis added)

5.1.12 Review comments on Sec (6) Board

Firstly the tenure of the managing director is three years which may extend to six years, so the time duration of the designation of the managing director should be six year, it should not be left on the sweat discretion of the Federal Govt.

As mentioned in above sub sec (6) the managing director shall not involve.....

So if the managing director would involve himself then what are the preventive measure and penalties rather he would be removed from service or as punishment the fine would be impose on him.

The exception of sub sec (6) provided that where the managing director.....

So why there is discrimination between the managing director who is a Government servant and the managing director who is from Private Sector.

There should not be discrimination between them, even the suggestion can be given that the managing director from private sector would be recommended by the public representative And there is dissemination of information to the public/citizen/consumer, if the Regulatory Authority established for the regulation of public funds relevant to Public Procurement but public cannot access to information then the purpose of the said Ordinance would go toward the futility.

“Board, 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.

The board shall consist the following members, namely:

| | |
|---|---------------------|
| <u>(1) Secretary Finance Division</u> | <u>Chairperson.</u> |
| <u>(2) Secretary, Ministry of Industries and Production</u> | <u>Member</u> |
| <u>(3) Secretary, Defense Production Division</u> | <u>Member</u> |
| <u>(4) Secretary, Ministry of Water and Power.</u> | <u>Member</u> |

¹ Sec (5), Functions and Powers of Authority, (Public Procurement Regulatory Authority Ordinance 2002)

(5) Secretary, Ministry of Housing and Works. Member

(6) Secretary, Ministry of Communication. Member

(7) Three members from Private Sector to be nominated by the Federal Government.

(8) Managing Director Member.

(3) *The managing director shall act as a secretary to the board.*

(4) *A member appointed from the private sector shall hold office for the 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 address to the Federal Government, resign his office.*

(6) *A casual vacancy in the office of a private Sector shall be filled by appointment of another member from the private sector for the residue of the terms of his predecessor¹”*

(Emphasis added)

5.1.14 Review comments on Sec (8) Managing Director

Firstly the tenure of the managing director is three years which may extend to six years, so the time duration of the designation of the managing director should be six years, it should not be left on the sweat discretion of the Federal government.

As mentioned in the section the managing director would not involve.....if the managing director would involve himself then what are the preventive measures and penalties rather he would be removed from the service or as punishment the fine would be imposed on him.

The exception of sub sec (6) provided that where the managing director.....

So why there is discrimination between the managing director who is a government servant and the managing director who is from the private sector.

There should be non discrimination between them, even the suggestion can be given that the managing director from the private sector would be recommended by the public representative.

Managing director “The Federal Government shall select and appoint whole time managing director to serve as a member of the board and shall be responsible for

¹ Sec (6) Board, (Public Procurement Regulatory Authority Ordinance 2002)

day to day administration of the Authority for such period and for such terms and conditions as the Federal Government may determine.

The managing director shall be appointed for three years and he shall be illegible for reappointment but his total tenure shall in no case be exceeding six years.

No person shall appoint or continue as managing director, if he

Has been convicted of an offence involving moral turpitude;

Has been removed from service for misconduct;

Has been adjudicated as insolvent;

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

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 Provision of this Ordinance.

The managing director may, at any time, resign his office by writing under his hand addressed to the Federal Government.

The managing director shall be paid such salary and allowances as the Federal Government may determine but his salary and the allowances shall not be varied to his disadvantage during his term of the office.

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 the one year thereof enter into employment or accept any advisory or consult relationship in any person engaged in public procurement activity.

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

(7) *The managing director shall have Power and Responsibility to*

Exercise administrative control over the personnel of the Authority;

Exercise, in respect of the Authority, such other management, administrative and financial powers as deemed appropriate by the Authority;

Submit the annual budget proposals of the Authority to the board;
Prepare the annual report of the Authority for the board and the Federal Government;
Exercise such powers as the board may delegate to him; and
Act on behalf of the Authority, in any emergency, subject to the obligation to the report such action to the board at its net meeting and to seek the board's ratification of any action to taken¹”

(Emphasis added)

5.1.15 Review comments on Sec (9) Funds

Sub sec (c) sec 2 discusses about the income from investment from the Authority, this sub section should be deleted because if the Authority would be allowed to generate the income from income which is itself invested by the Authority then the true purpose of the Authority may go in doubtful and the Authority would become regulatory Authority cum business entity.

So the Authority should be independent and financial autonomy is imperative

“Funds” There is hereby established a fund to be known as the Public Procurement Regulatory Authority Fund which shall vest in the Authority and shall be utilized by the Authority to meet the charges in connection with its function under this Ordinance.

To the credit of the public procurement authority, a fund shall be placed comprising....

Such sums as the Federal Government may, from time to time, allocate to it in the Federal budget,

Grants;

Income from investment by the Authority; and

All other sums or properties which may in any manner become payable to, or vest in, the authority in respect of any matter.

The authority, while performing its functions and exercising its powers under the Ordinance, shall exercise highest sense of prudence as far as expenditures are concerned²”

(Emphasis added)

¹ Sec (8), Managing Director, (Public Procurement Regulatory Authority Ordinance 2002)

² Sec (9), Funds, (Public Procurement Regulatory Authority Ordinance 2002)

5.1.16 Review comments on Sec (26) and Sec(27)

Power of the Federal Government to make rules and the power of the authority to make regulations

Although the Federal Government has power to make rules and Authority has power to make regulations but those rules and regulations should be harmonize to the rules and regulations of other countries and the guide lines can be taken from the WTO Procurement Guidelines and Procurement related Conventions and International Conferences on Government Procurements.

“Power of the Federal Government to make the regulations”

“The Federal Government may, by notification in the official gazette, make rules for carrying out the purposes of this Ordinance¹”

(Emphasis added)

And “ Power of the Authority to make regulations ” “The Authority may make regulations, not inconsistent with the Provisions of this Ordinance and the rules made there under, for carrying out the purposes of this Ordinance²”

(Emphasis added)

5.2 Review Comments On Public Procurement Rules 2004

5.2.1 Review comments on Sec 2 (C) Competitive Bidding

According to the definition whatever the procedure which leads to the award of contract is to be said competitive bidding, the procedure may be lawful and as well unlawful no distinction is made herewith. So for the appropriateness of the definition the word “lawful procedure” should be mentioned. The competitiveness itself has different types for instance, Open tendering procedure, Limited tendering procedure, and the Selective tendering procedure. The limited tendering procedure is that one procedure in which a procuring entity does not issue an advance notice of invitation to tender and invites tenders only from the supplier or suppliers that the entity identifies

¹ Sec (26) Power of Federal Government to make rules, (Public Procurement Regulatory Authority Ordinance 2002)

² Sec (27) Power of Authority to make regulations, (Public Procurement Regulatory Authority Ordinance 2002)

through an internal non competitive selection process .The opening tender procedure means those procedures in which the procuring entity permits all interested suppliers to participate in a Procurement competition .And the Selective tendering procedure means those procedure in which the procuring entity requires each supplier to be qualified before such supplier may participate in the tendering process; and permits interested suppliers to apply for qualification while the tendering process is underway.

Competitive Bidding “Means pro cedure leads to the award of a contract whereby all the interested persons, firms companies or organizations m“M ay bid for the contract and includes both National competitive bidding and International competitive biding¹””

(Emphasis added)

5.2.2 Review comments on Sec2 (f) “Corrupt and Fraudulent Practices”

Corrupt and fraudulent practices both are distinct things so should be defined separately in spite of merging the definitions of both, for instance the corrupt practices means the offering, giving, receiving, or soliciting, directly or indirectly of anything of value to influence the action of public official in the Procurement process or in a contract execution.

And the fraudulent practices means, a misrepresentation or omission of the facts in order to influence the Procurement process or the execution of a contract.

Before defining the fraudulent and corrupt practices the fraud and corruption should be defined because without understanding the definitions of both the words, definition of corrupt and fraudulent practices cannot be complete .So accordingly to the sec (17) of the contract act 1872, the fraud may be defined as follows.

“ Fraud “ means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

¹ Sec 2(c), Competitive Biding, (Public Procurement Rules 2004)

The suggestion, as a fact, of, of that which is not true by one who does not believe it to be true;

The active concealment of the fact by one having knowledge or belief of the fact;

A promise made without any intention of performing it;

Any other acts fitted to deceive;

Any such act or omission as the law specially declares to be the fraudulent.

And the definition of corruption according to the United Nations Convention against Corruption is as follows,

Corruption defined: "Engaging in acts that constitute improper performance of duty(or abuse of a position of Authority), including acts of omission, in expectation of an advantage offered or requested, or following acceptance of an advantage directly or indirectly given, whether for oneself or on behalf of another"

For reducing the corrupt practices the following strategies may be adopted.

Disturbance of corrupt relationship by simplifying the rules, benchmarking of prices, supplementary works.

Rules for the exceptional cases.

Transparency and control of discretionary power by enabling the inspection.

Establishing the codes of conduct and rules of disqualification.

Ensuring competition and technological competence to impede corruption and to ensure the quality as well as to avoid the supply chain corruption.

Allow tenders on the internet.

Control the supply side of corruption.

Lower the role of agents, middleman and the fronts.

Ensure the proper inspection mechanism to detect the corruption.

Education is also widely considered to be effective although its effort may only bear fruits over the long run.

The Second Master Training Seminar on Curbing the Corruption in Public Procurement organized by the ADB and OECD 2004 describes the tools to curb corruption such as,

The design of a sound Procurement procedure in live with the business integrity, management and the implementation of anti-corruption programmes based on the analysis of public reforms and private initiatives.

Introduction of the tools to identify and prevent corruption at key steps of the Public Procurement project cycle. namely:

“Independent Procurement Reviews” used for the ex-post evaluation.

“Documentary Verification of the Procurement Process”, used to conduct, on going checks.

“Risk Profiling of Implementing Agencies” as a tool for ex anti corruption elements identification.

Corrupt and fraudulent practices “ includes the offering , giving, receiving or soliciting of any thing of value to influence the action of a procurement official or the supplier or contractor in the procurement process or in contract execution to the detriment of the procuring agencies; or misrepresentation of the facts in order to influence the procurement process or the execution of the contract, collusive practices among the bidders(prior to or after the 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 exercise of his duty¹”

(Emphasis added)

5.2.3 Review comments on Sec2 (j) Repeat orders

It is defined in the definition that what is repeat order but the procedure of repeat order is not mentioned in the rules which should be distinctly mentioned with the essence of fairness and lawfulness, otherwise the repeat order would be used as a tool for the corrupt practices. It is defined in the definition that what is repeat order but the procedure of repeat order is not mentioned in the rules which should be distinctly mentioned with the essence of fairness and lawfulness, otherwise the repeat order would be used as a tool for the corrupt practices.

Repeat order “Means Procurement of the same commodity from the same source without competition and includes the enhancement of the contract²”

¹ Sec2 (f) “Corrupt and Fraudulent Practices” (Public Procurement Rules 2004)

² Sec 2(j) Repeat Orders, (Public Procurement Rules 2004)

(Emphasis added)

5.2.3 Review comments on Sec2 (k) Supplier

In rules no distinction is made at all between the definition of Contractor and the Supplier even the very same definition of Supplier and Contractor has mentioned.

Although both are Separate things contract is a general word, and the supplier is a specific word so every contractor is not a supplier but every Supplier is a Contractor.

So for defining the proper essence of both the words the definition of both the words should be mentioned separately.

Supplier “Means a person, consultant, firm, company or an organization who undertakes to supply Goods, Services or Works¹”

(Emphasis added)

5.2.4 Review comments on Sec (3) Scope and Applicability

The Public Procurement rules 2004 are derived while exercising of the powers conferred by section 26 of the Public Procurement Regulatory Authority Ordinance ,2002 and accordingly to, the Public Procurement Regulatory Authority has the jurisdiction to the extent of whole of Pakistan but the Application and Scope of rules are within and outside Pakistan so there is contradiction between the rules and ordinance on this point .If the rules are deriving while exercising the power given by Ordinance, and the jurisdiction of that Ordinance is to the extent of Pakistan then how the Scope and Applicability of the rules can be beyond to Pakistan.

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 Pakistan²”

(Emphasis added)

5.2.4 Review comments on Sec (5) International and Inter-Governmental Commitments of the Federal Government

¹ Sec 2(k) Supplier, (Public Procurement Rules 2004)

² Sec(3) Scope and Applicability, (Public Procurement Rules 2004)

As far as concern about International Treaty and International Commitment with a State or States that one commitment of the Government would prevail but the prevalent of the Provision of the Financial Institution in case of conflict seems to be the active involvement of such like Institution for instance World Bank and IMF. Basically the reason for the establishment of Public Procurement Regulatory Authority was the report of the World Bank, but here such like above mentioned provisions presence shows that their assistance was not to the extent of country report but they have their own Agendas for implementations, but our Government should consider the factor of Public Policy before mentioning such like Provision in the Ordinance.

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International and inter-governmental commitments of the Federal Government "When ever 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 Financial Institution the provision of such International Treaty or Agreement shall prevail to the extent of such conflict"

(Emphasis added)

5.2.5 Review comments on Sec (12) Methods of Advertisement

¹ Sec (5) International and Inter-Governmental Commitments of the Federal Government (Public Procurement Rules 2004)

By giving the Advertisement in news paper relevant to the Procurement, the said Advertisement should contain information necessary for suppliers to be able to evaluate their interest in participating the Procurement ,and includes at least as far as possible,

The name and address of the calling entity that will award the contract, as well the Procurement method that will be used and whether it would involve negotiation.

A description of the intended Procurement including the nature and the quantity as well as the place of the delivery of the goods to be supplied, the services to be provided or the execution of the public work

Date, place and time at which those interested may read and obtain the comprehensive text of the Tender document, of the Tender conditions as well as additional information on the process.

The place, date, cost, currency form of payment and way to obtain the Tender documentation and Tender conditions.

The language or languages in which the Tender documentations, Tender conditions can be obtained and in which the supplier shall present their proposals.

In case of public work the bond is required.

The place and time period for the submission, opening and consideration of the Tender.

The Tender validity period.

The dead line for fulfilling the contract.

Date to begin and conclude the delivery of the goods object of the tendering procedure.

The origin of the funds that will finance the Tender and

Sometimes it happens that Advertisement has been published, and then any change in the Render document should require the publication of new notice with the same publication as before, and resetting the starting time for the regulatory terms, except when it is absolutely clear that the change does not affect the formulation of the proposals.

By giving the Advertisement in news paper relevant to the Procurement, the said Advertisement should contain information necessary for suppliers to be able to evaluate their interest in participating the Procurement ,and includes at least as far as possible,

The name and address of the calling entity that will award the contract, as well the Procurement method that will be used and whether it would involve negotiation.

A description of the intended Procurement including the nature and the quantity as well as the place of the delivery of the goods to be supplied, the services to be provided or the execution of the public work

Date, place and time at which those interested may read and obtain the comprehensive text of the Tender document, of the Tender conditions as well as additional information on the process.

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Sometimes it happens that Advertisement has been published, and then any change in the Render document should require the publication of new notice with the same publication as before, and resetting the starting time for the regulatory terms, except when it is absolutely clear that the change does not affect the formulation of the proposals.

Methods of advertisement "Procurement over forty thousands rupees and up to the limit of one 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.

All Procurement Opportunities over one million rupees should be advertised on the Authority's web sit as well as in other Print Media or News Paper having

wide circulation. The advertisement in the News Papers shall principally appear in at least two National dailies, one in English and other in Urdu.

In case where the Procuring Agency has its own web site it may also post all Advertisements concerning Procurement on that web site as well.

A Procuring Agency utilizing Electronic Media shall ensure that information posted on the web site is complete for the purposes for which it has posted, and such information shall remain available on that website until the closing date for the submission of the bids¹".

(Emphasis added)

5.2.6 Review comments on Sec (15) Pre-qualification of the Suppliers and the Contractors

The factors which are mentioned above which a Procuring Agency may take into consideration while engaging in pre-qualification is not the complete list of prequalification, the said list should consider all covering aspect of Procurement for instance, the following factors as well can be added for the more appropriation of the list.

That they possess the necessary Professional and Technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience, and reputation, and the personnel, to perform the Procurement contract

That they have legal capacity to enter into the Procurement contract;

That they are not insolvent, in receivership, bankrupt or being wound up, their affairs are not being administered by a Court or Judicial officer, their business activities have not been suspended, and they are not subject of the legal proceedings for any of the forgoing.

That they have fulfilled their obligations to pay taxes and social security contributions.

That they have not, and their directors or officers have not, been convicted of the criminal offence related to their Professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into Procurement contract within a period of.....years (specifies the period of time). Proceeding the

¹ Sec (12) Methods of Advertisement (Public Procurement Rules 2004)

commencement of the Procurement proceedings, or have not been disqualified pursuant to administrated suspension or disbarment proceedings etc.

By adding the said factor in the Pre qualification list it cannot be said the list would get the merit of exhaustiveness but to some extent would complete the aspect of Public Procurement required for the purpose of Procurement

Pre-qualification of Supplier and contractor. "A Procuring Agency, prior to the floating of the Tenders, invitation of the proposals or offer in Procurement Proceedings, may engage in pre-qualification of the 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 the bids. Such Pre-qualification shall solely be based upon the ability of the interested parties to perform that particular work satisfactorily.

A Procuring Agency while engaging in Prequalification may take into the consideration the following factors namely,

Relevant experience and past performance,

Capabilities with respect to personnel, equipment and plant,

Financial position;

Appropriate managerial capability;

And other factor that a Procuring agency may deem relevant, not inconsistent with these rules.¹"

5.2.7 Review comments on Sec (17) Qualification of Suppliers and Contractors And Sec (18) Disqualification of Suppliers and the Contractors.

The list of qualification and the disqualification is not complete list it should be mentioned properly, by adding the following factors the list can be to some extent complete.

The Procuring Entity shall disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications or contractor was false.

¹ Sec (15) Pre-qualification of the Suppliers and the Contractors (Public Procurement Rules 2004)

A Procuring entity may disqualify a supplier or contractor if it finds at any time that the information submitted concerning the qualifications of the supplier or contractor was materially inaccurate or materially incomplete.

In addition to all this the Procuring entity may not disqualify a supplier or contractor on the ground that information submitted concerning the qualifications of the supplier or contractor was inaccurate or incomplete in a non material respect. The supplier or contractor may be disqualified if it fails to remedy such

Qualification of suppliers and contractor "Procuring Agency, at any stage of the Procurement proceedings having credible reasons for or prima facie evidence of any defect in suppliers or contractors, capacities may require the supplier 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 the reasons therefore in writing. They shall form part of records of that Procurement proceedings. deficiencies promptly upon request of the Procuring entity¹".

And Disqualification of supplier and contractor "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 incomplete²".

5.2.8 Review comments on Sec (23) Bidding Documents

Generally the bidding documents should furnish all necessary information for prospective bidder to prepare a bid for the goods and works to be provided. While the detail and complexity of the documents may vary with the size and nature of the proposed bid package and contract, they generally, include invitation to bid, instructions to bidders, form of bid, form of contract, conditions of contract, both general and special, specification and drawings, relevant technical data(including geological and environmental nature), list of goods or bill of quantities, delivery time or schedule of completion and necessary things, such as formats for various securities.

¹ Sec (17) Qualification of Suppliers and Contractors (Public Procurement Rules 2004)

² Sec (18) Disqualification of Suppliers and the Contractors (Public Procurement Rules 2004)

The basis for bid evaluation and the selection of the lowest bid should be clearly outlined in the instructions to bidders and/ or the specifications. If a fee is charged for the bidding documents, it should be reasonable and reflect only the cost of their printing and delivery to the prospective bidders, and shall not be so high as to discourage qualified bidders. The borrowers may use an electronic system to contribute the bidding document, provided that the Procuring Entity is satisfied with the adequacy of the system. If the bidding documents are distribute electronically, the electronic system should be secure to avoid modifications to the bidding documents and shall not restrict the access of bidders to the bidding documents.

Bidding documents. "Procuring Agencies shall formulate precise and unambiguous documents that shall be made available to the bidders immediately after the publication of the invitation of the bid.

For competitive bidding, whether open limited, the bidding documents shall include the following, namely

Invitation to bid;

Instruction to bidders;

Form of bid;

Form of contract;

General or special conditions of contract;

Specifications and drawings or performance criteria(where applicable);

List of goods or bill of quantities(where applicable);

Delivery time or completion schedule;

Qualification criteria;

Bid evaluation criteria;

Format of all securities required (where applicable)

Details of standards (if any) that are to used in assessing the quality of goods, works or services specified; and

Any other detail not inconsistent with these rules that the procuring agency may deem necessary.

Any information, that becomes necessary for biding 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.

Procuring agencies shall use standard bidding documents as and when notified by Regulation of 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 the regulations

The Procuring agency shall provide a set of bidding documents to any supplier or contractor, on request and subject to the payment of the price, if any.

Explanation....., for the purpose of this sub-rule price means the cost of printing and providing the documents only¹ ”.

5.3 Conclusion

Academically, Public Procurement has been a neglected area of study even though Governmental entities and Public Procurement practitioners have diligently work to improve Public Procurement practices .Although Public Procurement is perceived as a major function of the Government, and Governmental entities, policy makers and Public Procurement professionals have paid a great deal of attention to Procurement improvements or reform etc.

A strong and well functioning Procurement system would be the one that is governed by a clear legal frame work establishing the rule for transparency, efficiency and mechanism for enforcement, and coupled with an institutional arrangement that ensures consistency in overall policy formulation and implementation.. Public Procurement is the process by which large amounts of public funds are utilized by the

¹ Sec (23) Bidding Documents. (Public Procurement Rules 2004)

public entities to purchase goods and service from the public sector. Vast amount of money are therefore expended through the Public Procurement system. A Procurement system that has loose or inadequate rules and which are also poorly enforced provide opportunities for misuse of the contract award process through corruption and other patronage arrangements.

In order to regulate or streamline the Procurement, the Government of Pakistan promulgated the Public Procurement Regulatory Authority Ordinance 2002 for the reinstatement of Procurement of goods and services. The Authority originated the powers given under section 26 of the Public Procurement Regulatory Ordinance and formulated the Public Procurement Rules 2004 for the appropriate functioning.

However the perusal reveals that the substantial and material elements of Procurement laws are conspicuously missing for instance: the Federal Government has power to issue directives to the Authority, the basic prism and oddity of the Authority is to regulate those Procurements which are financed wholly or partially out of public funds. In a sense the Authority is an autonomous and independent entity and the basic purpose of its establishment is to regulate the funds of Federal Government relevant to Public Procurement. So if the Federal Government would issue directives and those directives would be binding on Authority then its independency and autonomous entity would be mitigated which goes towards the boundaries of preternatural which results the futility. To maintain its independent entity factor, the authority should be free from the doubt of sword which is in the form of directives from the Federal Government.

The board members have the pivot and pithy role and are only the secretaries of different departments, secretary of ministry water and power, secretary ministry of housing and works, secretary defense production division etc. and only three members are from public and they are appointed by the Federal Government. The name of the Authority is Public Procurement Regulatory Authority but the involvement of public representation is not more than knick-knack which misreckon and opacitate its crystalinity , so for its proper and smooth functioning the involvement of public, through their representative means through MNA'S or MPA'S should be there for its

ordination and there should be one representative of public from each province being a member.

As far as **scope and applicability**, the Public Procurement rules 2004 are derived while exercising of the powers conferred by section 26 of the Public Procurement Regulatory Authority Ordinance, 2002 and accordingly the Public Procurement Regulatory Authority has the jurisdiction to the extent of whole of Pakistan but the Application and Scope of rules are within and outside Pakistan so there is contradiction between the rules and ordinance which may result in misinterpretation and meandering the function. If the rules are deriving while exercising the power conferred by the Ordinance, and the jurisdiction of that Ordinance is to the extent of whole of Pakistan then Scope and Applicability of the rules cannot be beyond its jurisdiction.

About **International Treaty and International Commitment** with a State or States, The commitment of the Government would prevail but the prevalent of the Provision of the Financial Institution in case of conflict seems to be the active involvement of such like Institution for instance World Bank and IMF. Basically the reason for the establishment of Public Procurement Regulatory Authority was as well the report of the World Bank, but here such like provisions presence methinks that their assistance was not to the extent of country report but they have their own Agendas for implementations.

However Pakistan is reforming the way in which the Procurement is carried out, is by bringing professionalism for the proper management of Procurement function. Institutions ongoing training Programmes and having a scheme within the public service that enables the Procurement Professionals to gain seniority commensurate to their expertise and experience have been the corner stone of reforms in this area.

Pakistan has loose or inadequate rules which are also poorly enforced provide opportunities for misuse of the contract award process through corruption and other patronage arrangements .Those in the private sector and their collaborators in the public institutions who benefited from such flawed systems have a very deep vested interest in the maintenance of status-quo. Vested interests in such systems can also

manifest themselves in various other ways. They could be for example including local business cartels that may have an interest in maintaining a legal frame work that prohibits competition from foreign supplier etc.

Fundamental reforms to a system in which some or all of those vested interests exists call for dismantling of entrenched practices and institutions (both formal and informal) with a view to injecting transparency and competition to the system and increasing the accountability of public officials. However those wishing to maintain the status quo resist change quiet strongly because such reforms will normally involve the loss of direct economic and / or political benefits.

Another group with a vested interested in maintaining the status quo is often the individuals or entities managing the reform process. Whoever drives the process essentially determines the outcome .However, the Government officials who are in charge of overseeing or managing the flawed system that needs to be the fundamentally reformed are often put in charge of the reform effort or have some control over how the process proceeds. Management of the reform process by those in the bureaucracy who have a stake in the maintenance of the status quo leads to inaction and lack of implementation even there is no discernable public opposition to reforms.

Inability to overcome the resistance of those with vested interest can manifest in many ways for example even where the government may have publicly committed itself to reform endless and circular discussions on what the reform should constitute (including such issues as the type of legal instrument that should be prepared and the manner of administrative arrangements to put in place) are used as a meaning of forestalling progress. As these “discussions” are continued, no actual steps are taken to change the existing structure. In carrying out assessment of existing Procurement systems, one constantly finds that abuse of the Procurement system arises due to “Weak Or Inconsistent Enforcement” of the prevailing rules ,this is clearly reflected by the dissonance between the prevailing(formal) rules (in whichever juridical form these may be) and what actually takes place in practice during the Procurement process. Public entities will go to lengths to create a semblance of formal compliance

with procedural and other requirement while seriously compromising the intent and spirit of such rules.

Ambiguities and gaps in the rules also lead to different interpretations and practices that are mainstreamed and when the problem is framed as one of lack of enforcement, doubt is often expressed as to whether replacing existing rules with a new legal framework will, result in any radical improvements. This can be a different question, because, while the lack of enforcement can partly be traced to the weakness in the rules themselves, a solution will require a multi-faceted approach. It will include for example strengthening the right of bidders to obtain redress when the public entities breach the rules, forcing greater transparency in to the decision making process (including public notification of the contract awards) coupled with other institutional oversight mechanism such as Procurements audits. The challenge lies in achieving proper balance so that mechanisms of enforcement do not become so heavy as to make the system inefficient and costly.

In short despite many Government Procurement reform efforts, it seems that all the following problems as stated by Arthur G. Thomas over 80 years ago are still similar today and will persist forever due to lasting unfavorable public perceptions and the natural Governments.

“Governments have in the past with few exceptions notoriously failed as purchasers (... ..). dealers complain of red tape which hampers them in bidding, in delivering goods and in securing the payment of bills. Government executives themselves complain of delays between the issue of purchase requisitions and the availability of goods for use. Citizens generally are prone to assert that graft and political favoritism taint a large part of government purchasing”.

6. Attachments.

6.1 Public Procurement (Amended Ordinance 2002)

An Ordinance further to amend the Public Debt Act, 1944

[Gazette of Pakistan, Extraordinary, Part I, 18th May, 2002]

F.No.2 (I)/2002-Pub., dated 18-5-2002. - The following Ordinance promulgated by the President is hereby published for general information:-

Whereas it is expedient further to amend the Public Debt Act, 1944 (XVIII of 1944), for the purposes hereinafter appearing; 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:--

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the Public Debt (Amendment) Ordinance, 2002.
(2) It shall come into force at once except in Islamabad Capital Territory where it shall, come into force on such date as the Federal Government may, by notification in the Official Gazette, specify.
2. **Amendment of section 14, Act XVIII of 1944.**--In the Public Debt Act, 1944 (XVIII of 1944), in section 14, in subsection (1),--
 - (a) For the words "District Magistrate", occurring twice, the words "Sessions Judge" shall be substituted; and
 - (b) For the words "Provincial Government" the words "High Court" shall be substituted.

6.2 Public Procurement Regulatory Authority Ordinance 2002

In May 2002 again the above ordinance was amended by Public Procurement Regulatory Authority Ordinance 2002 for the proper functioning of Public Procurement, which is as follows,

Public Procurement Regulatory Authority Ordinance 2002

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 there under 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 provisions 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 of 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
 - (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 recommendations 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;
- (j) Perform any other function assigned to it by the Federal Government or that is incidental or consequential to any of the aforesaid functions.
- (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 and Production | Member |
| (3) Secretary, Defense 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 to 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 a 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 deem 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 the 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

1. 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 the 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 there under, 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 there under 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 there under.

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 a 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 there under.

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 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 there under, for carrying out the purposes of this Ordinance.

While Exercising of the powers conferred by section 26 of the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002), the Federal Government makes following rules for the appropriate functioning of system which are as follows,

6.3 Public Procurement Rules 2004

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 PROVISIONS

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 document; and
- (ii) Having lowest evaluated cost;
- (i) “Ordinance” means the Public Procurement Regulatory Authority Ordinance, 2002 (XXII of 2002)¹;
- (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.

Scope and applicability

Save as otherwise provided, these rules shall apply to all procurements made by all procuring agencies of the Federal Government whether within or outside Pakistan.

5. 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

¹ www.theopenbookstandards.com

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 contractors¹.

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.

¹ grain.org/brl

PROCUREMENT PLANNING

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.

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.

Specifications

Specifications shall allow the widest possible competition and shall not favor 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"¹.

Approval mechanism

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

¹ public debt(amended) ord 2002 and public procurement regulatory authority ord 2002

PROCUREMENT ADVERTISEMENTS

12. Methods of advertisement

- (1) Procurements over forty thousand rupees and up to the limit of one 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.
- (2) All procurement opportunities over one 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 working days for national competitive bidding and thirty working 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 web site, 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 forty thousand rupees. However under following circumstances deviation from the requirement is permissible with the prior approval of the Authority,-

- (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 prequalification.
- (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 therefore in writing. They shall form part of the records of that procurement proceeding.

18. Disqualification 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 blacklist 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 forty thousand rupees.

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 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 per cent 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.

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.

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 misprocurement.

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 agencies 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 or manufacturing plant

ACCEPTANCE OF BIDS AND AWARD OF PROCUREMENT CONTRACTS

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.

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.

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.

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 ten 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 forty thousand rupees;
- (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 for, which may authorize procurement of proprietary object after due diligence; and

- (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 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 for vested with necessary authority to declare an emergency; and

- (vi) 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.

- (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.

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.

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 over all 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, 3333333333 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.

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.

Misprocurement

Any unauthorized breach of these rules shall amount to misprocurement.

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.