**Project Procurement Management**

**Midterm Assignment**

**Student ID : 16412**

**Q No 1: Write detail note on KP Procurement act.**

The Government of Khyber Pakhtunkhwa (KP) has enacted KP Public Procurement Regulatory Authority (KPPPRA) Act 2012 to provide for legal and regulatory framework for public procurement and govern other related matters. The KPPPRA has also formulated the KPPPRA Rules 2014 which require that all public procurement shall be conducted with a view to promoting transparency, economy, and value for money, accountability and swift grievance redressal.

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

1. General principles of public procurement. All public procurement shall be directed in such a manner as provided in this Act, rules and regulations made under this Act and shall promote the principles of transparency, economy, value for money, accountability and swift grievance handling.
2. Establishment of the Authority.
   1. Soon after the commencement of this Act, Government shall by announcement in the official Gazette establish an Authority to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority with its headquarters at Peshawar.
   2. The Authority shall as soon as possible create its own secretariat and may set up its regional offices in such place or places in the Khyber Pakhtunkhwa, as it may deem appropriate.
   3. The Authority shall be a body corporate, having perpetual succession and a common seal, with power to obtain and hold property and to enter into contracts, and may by the said name sue and be sued, and shall exercise all powers necessary for the purposes under this Act.+
3. Powers and Functions of the Authority.---The Authority shall perform functions and exercise powers as follows:
   1. hear and dispose of appeals against the orders of procuring entity;
   2. formulate standard bidding documents, separately for procurement of Goods, Works and services, for all procuring entities to emulate as the format for bid solicitation documents for submission of proposals and bids by the bidders in a public procurement process;
   3. shall assist the major procuring entities to engineer/re-engineer their business procedures and design their Procurement Manuals in compliance with this Act;
   4. ensure that all the procuring entities organize and maintain a system for the publication of or posting on departmental official website of data on Public Procurement opportunities, awards and any other relevant information;
   5. ensure that all procuring entities organize and manage database and web site which shall warehouse information and publications on public procurement;
   6. conduct performance review based on pre-determined indicators and benchmarks through third party authentication by State Bank of Pakistan certified category ‘A’ chartered accountant firm;
   7. organize and manage capacity-building of procurement workers in all the procuring entities in the Province;
   8. Conduct research and take measures to further principles of public procurement enunciated in ;(
   9. this Act commend to the Government, measures necessary to improve the quality of public procurement in the Province;
   10. recommend to the Government, measures necessary to enhance transparency and ensure accountability in the public procurement process in the Province;
   11. (advise Government on all matters pertaining to public procurement;
   12. (lay down codes of ethics and procedures for procurement, inspection and quality of goods, services and works;
   13. perform such other functions and exercise such powers as may be necessary to further objectives of this Act and perform such other functions as assigned by the Government from time to time[4
4. Management.—The general directions and administration of the Authority and its affairs shall vest in the Board, which shall exercise all powers and do all acts, which may be exercised or done by the Authority, in accordance with the provisions of this Act.
5. Board of Directors.
   1. Government shall constitute a Board of Directors for the management and administration of the Authority consisting of,
      1. Secretary to the Government, Chairperson. Finance Department ;
      2. Secretary to the Government Member. Planning & Development Department or his nominee not below the rank of an Additional Secretary KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 20THSEPTEMBER, 2012.
      3. Secretary to the Government, Member.[Communication and Works][5]Sub: Department or his nominee not below the rank of an Additional Secretary;
      4. Secretary to the Government, Member. Irrigation Department or his nominee not below the rank of an Additional Secretary ;
      5. Secretary to the Government of Public Member Health Engineering Department or his nominee not below the rank of an Additional Secretary;
      6. Secretary to the Government, Member. Health Department or his nominee not below the rank of an Additional Secretary ;(f-i)[Secretary to Government, Member. Law, Parliamentary Affairs and Human Rights Department or his nominee, not below the rank of an Additional Secretary;][6]Ins:
      7. Three persons from the private sector Members. i.e. from trade and industry, academia, civil society and professional associates;
      8. Managing Director of the Authority; Member/Secretary.
   2. Government shall notify the terms and conditions for appointment of non-official members of the Board.
   3. The non-official members shall be appointed by Government for a period of three years.
   4. Six members shall constitute the quorum for convening meeting of the Board.
   5. The meeting of the Board shall be presided over by the Chairperson and in his absence by one of the ex-officio Members to be nominated by the Chairperson in this behalf.
   6. All decisions in the meeting shall be taken by majority of votes. Each member, including the Chairman, shall have one vote, but in the event of tie of votes, the Chairman shall have a second or casting vote
6. Managing Director.—
   1. Government shall employ the Managing Director of the Authority for a period of three years on such terms and conditions as it may govern and may extend his appointment for a second term: Provided that the entire period of appointment shall not exceed six years.
   2. The Managing Director shall be a senior civil servant of BS-20 or a reputed professional with fifteen years post-qualification experience, preferably in public procurement. However, no such person shall be appointed as Managing Director who has been:
      1. Convicted by a court of law; or
      2. Removed from any service on a charge of misconduct.
   3. The Managing Director shall be the Chief Executive and the Principal Accounting Officer of the Authority.(4)In the performance of his functions, the Managing Director shall work within the framework of the general policy and guidelines laid down by the Board.
7. Delegation of powers.—The Authority may, subject to such conditions and limitations as it may deem appropriate, delegate any of its functions or powers, as the case may be, to the Managing Director.
8. Establishment of the Authority Fund.—
   1. There shall be a Fund to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority Fund, hereinafter referred to as Authority Fund, which shall vest in the Authority and shall be utilized by the Authority to meet charges and expenses in connection with the affairs of the Authority under this Act including salaries and other remunerations of the non-official members and employees of the Board.
   2. The Authority Fund shall consist of all the money received by the Authority.
9. Custody and investment of the Authority Fund.—
   1. The Board may keep the Authority Fund in any Scheduled Bank, as may be approved by it.
   2. Nothing in sub-section (1) shall be deemed to preclude the Board from investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Trust Act, 1882 (Act No. II of 1882), or placing them in fixed deposit with a Bank approved by the Board or in such other manner as may be approved by it.
10. Maintenance of accounts.—The Board shall maintain complete and accurate books of accounts of its actual expenses and receipts in such form as the Government, in consultation with the Local Audit Department determined.
11. Audit.—The Authority shall cause to carry out the audit of its accounts by Auditor General of Pakistan provided that provision shall be made for an internal audit of the finances of the Authority.
12. Appointment of officers, advisors etc.---The Authority may, from time to time and subject to resources, appoint such officers, servants, advisers, consultants, referees and experts as it may consider necessary for performance of its functions. The Authority shall notify the procedure for appointments and fixation of terms and conditions after approval of the Board of Directors.
13. Responsibility of procuring entity.---
    1. Each Procuring Entity shall be responsible for carrying out public procurement subject to the provisions of this Act, and the rules, the administrative instructions and the standard bidding documents made there-under: Provided that-
       1. Government on a specific request of the procuring entity or in public interest may exempt a procuring entity from some or all of the provisions of this Act for which reasons shall be recorded in writing. Government may seek comments of the Authority, if so required;
       2. for District Governments, the procuring entity may route a justifiable case for exemption to the Government by the District Coordination Officer, through Secretary Local Government Department;
       3. Government may exempt the procurement of an object or a class of objects, in national/public interest, from some or all provisions of this Act, for which reasons shall be recorded in writing; and
    2. Government shall notify the exemption and publish the same for public consumption in the print [8] Sub: media.
    3. The procuring entity may, wholly or partly, conduct the bidding process through electronic means.
14. Confidentiality.—
    1. A procuring entity shall not, except when required to dose by an order of a Court, disclose any information if the disclosure would:
       1. cause a breach of this law or any other law; or
       2. impede law enforcement; or
       3. prejudice legitimate commercial interests of the parties; or
       4. inhibit fair competition; or
       5. Note in public interest.
    2. A procuring entity shall not disclose any information relating to the contents of offers, pre-qualification submissions and actual content of bids, proposals or quotations other than in a summary form setting out the evaluation and comparison of tenders, proposals or quotations received before award of the contract. The format/forms for announcement of bids evaluation and determination of the best evaluated bid shall be prescribed.
15. Ethics.—
    1. All procurements shall be carried out in accordance with such Code of Ethics as may be prescribed.
    2. Public officials as well as experts, engaged to deliver specific services in public procurement proceedings including evaluation of bids, shall be required to sign a Code of Ethical Conduct as may be prescribed.
    3. All vendor of goods, works or services shall be required to sign a declaration of compliance with such Code of Conduct as may be prescribed.
16. International Obligations.—Notwithstanding anything contained in this Act, the international obligations of Government arising out of bilateral or multilateral Agreements including Treaties, financing agreements, or agreements by Government shall continue to remain and be valid, binding and operative.
17. Preference and reservation.
    1. If an agreement in terms of section 17 provides for preference to national vendors, the procuring entity shall ensure that such preference is unambiguously stated in the standard bidding documents and announcements for the procurement including advertisement and terms of reference and tender documents.
    2. Each procuring entity shall permit prospective bidders to participate in procurement proceedings without regard to nationality, except where a procuring entity decides to limit such participation to national providers or participation of any nationality is forbidden by any law or by any instruction/policy of the Federal Government or other Provincial Government.
    3. If participation is restricted on the basis of nationality, the procuring entity shall record in the procurement proceedings a statement of grounds and circumstances relied upon.
18. Public Accessibility.—This Act, the rules made thereunder, guidelines, forms, bidding documents and/or decisions of Government or procuring entity relating to procurement shall be placed on a web-site of the Authority in addition to the website of the procuring entity or the Government, as the case may be, and which will also provide copies of these documents to the public at a fee not exceeding the cost of printing/reproduction of the documents
19. Records.—
    1. The procuring entity shall:
       1. maintain detailed records of all procurement proceedings in the manner as prescribed; and
       2. Preserve, maintain and safeguard all relevant documents issued and received as shall be set out in the rules.
    2. The records of the procurement process of the procuring entity shall be open to internal and external audit or to procurement post-review in the prescribed manner or for scrutiny or inspection by Government or in accordance with any law.
20. Communication.—
    1. All communications between a procuring entity and the bidder or vendor of procurement object shall be in writing.
    2. Forms of communication as well as the name of the focal person shall be specified in solicitation documents.
21. Procurement planning.—
    1. Each procuring entity shall plan its procurements with due consideration to transparency, economy, efficiency and timelines, and shall ensure equal opportunities to all prospective bidders.
    2. All procurement requirements must be documented and approved by the procuring entity prior to commencement of procurement proceedings.
    3. In specified circumstances, a procuring entity may proceed with the procurement proceedings except for award of contract when the availability of funding in the full amount over the required period remains to be confirmed/approved by the competent authority:
22. Bid Solicitation documents.—
    1. A procuring entity shall adopt standard bidding documents planned under this Act and insert/add specifications into the standard bidding documents for each procurement.
    2. Bid solicitation documents shall specify in detail the terms and conditions, including a statement of general conditions of contract, which shall apply to the resultant contract.
    3. The general conditions of contract shall not be modified.
    4. Each procuring entity shall solicit bids based on performance or functional specifications and not on preventive or proprietary specifications of a particular brand.
    5. A procuring entity may introduce special conditions of contract to extravagant and qualify the general conditions of contract, where applicable, furnishing detailed justification and reasons thereof, in the bid solicitation documents.
    6. Bid solicitation documents shall invariably include an unmistakable statement giving an accurate and complete description of the procurement objects to pursue the principles of public procurement enunciated in section 3 of this Act.
    7. Statement of requirements shall be in the form of technical specifications, terms of reference, scope of work, briefs or its equivalent as appropriate
    8. Bid solicitation documents shall be made available to the bidders from the date of their issuance to the closing date on submission of required fee by the prospective bidder whether in person or, if so requested, through mail.
    9. At any time prior to the deadline for submission of bids, the procuring entity may, on its own initiative or in response to a request for clarification by a bidder, modify the bid solicitation documents by issuing an addendum or corrigendum.
    10. If the procuring entity considers necessary, it may extend the closing date, after recording reasons in writing, to enable bidders to take the addendum or corrigendum, as the case may be, fully into account in preparing their bids.
    11. No change in the substance of bids, including changes in price, shall be sought, offered or permitted after the date and time of bid closing, except as otherwise provided for in the rules.
23. Submission of bids.—
    1. A procuring entity shall require the bidders to submit sealed written bids or in such other manner, as may be prescribed.
    2. The method for submission of bids shall be determined by the type, complexity and evaluation method of the procurement in accordance with the rules.
    3. All announcements pertaining to public procurement shall specify the last date for submission of bids as well as the public bid opening which shall be the same.
    4. The bidding period shall be reasonable to allow bidders to prepare and submit their bids and shall not be reduced.
    5. A bidder may withdraw his bid at any time before the deadline for submission of bids, unless otherwise specified.
    6. To avoid delays, the procuring entity may hold a pre-bid conference with the prospective bidders if the procurement is of complex nature and high value.
24. Minimum qualification of bidders.—A procuring entity shall require all bidders to meet minimum requirement criteria to participate in public procurement to affirm/ensure that the bidder,-
    1. He has the legal capacity to enter into the contract;
    2. He has the prescribed technical proficiency, equipment/plant and/ or relevant certified experience;
    3. He is neither insolvent nor bankrupt;
    4. He is not in the process of winding up nor his/her properties are under the control

**Q No 2: Through light on the problem in procurement specified to education sector in Pakistan?**

Educational procurement is the procurement of civil works, textbooks and purchases by school councils in Pakistan from an accountability perspective. Many government departments and agencies are involved in these procurements with the School Education Department (SED) as the primary client. Other departments such as Planning and Development (P&D), Finance, Audit, Procurement Regulatory Authority and Anti-Corruption Establishment (ACE) also have a part in government's procurement procedures across all sectors involving their approvals, complaint management or general oversight at different stages.

There are two ways to accountability – vertical and horizontal. Vertical accountability is about non-government departments such as non-governmental organizations, citizen groups, media, and donors questioning the state agencies and government on their performance. Horizontal accountability, on the other hand, is about mutual examination by the state institutions internally.

The education procurement process face many problem which are discuss as below.

1. Accountability for provision of text books is undermined by duplication of mandate and institutional conflict. Over the last seven years, two developments have destabilized the role of PTB regarding textbooks. First, all provincial Textbook Boards were forced to outsource manuscript development to private publishers in compliance with National Textbook Guidelines2007 .Accordingly PTB outsourced the manuscript development but retained the authority to review and approve the manuscripts. Secondly, the establishment of PCA further eroded its authority when the responsibility of reviewing and approving manuscripts was entrusted to the newly established PCA. These two developments eroded all key powers and control of PTB and reduced it to the status of a printing house or a supervising agency.
2. Cost of textbook production and printing has increased massively due to color printing, addition of MCQs, and lack of evenness in negotiating rates. His total budget for textbooks has increased from around a billion rupees in 2007-08 to Rs 3.75 billion in 2014-15. A key reason for the increased price is the printing of books in double color or four colors which is according to the PTB specifications. Also the publishers have increased the number of pages by including more multiple choice questions (MCQs) which require more blank spaces. The addition of MCQs is 25according to the government policy of including more objective type questions in the textbooks.
3. Procurement and use of printing paper needs more oversight and transparency. Before the outsourcing of procurement process to private publishers, PTB used to procure and store the paper beforehand. Since 2011-12, the responsibility of paper procurement has been handed over to the publishers who are awarded contracts. Apparently, this decision favored big printing or publishing houses who could afford to buy paper in off-season (February-August) when the prices are low enabling them to get higher profit margins.
4. Unavailability of basic data is a cause of concern about lack of transparency, and requires strong monitoring systems within PTB. As part of data collection for this study, the research team requested PTB to provide details of contracts awarded to each publisher. However, they were informed that PTB had no such information available. Only details of contracts awarded for printing of Practical Notebooks were available
5. Majority of the students get most textbooks in time, but some students do suffer due to postponements every year. Delays occur at other stages of the procurement process as well, including approval of manuscripts and tendering. In particular, PCA is struggling to set up SOPs for review and estimation and time required for review and approval of manuscripts affects the printing and dissemination of textbooks. The time required for PCA to start assessment of manuscripts and approval of the selected manuscripts is around six months. PTB cannot start printing of books according to the new manuscripts in the same academic year.
6. Quality control and compliance with technical parameters especially related to the use of ink and paper need to be strictly enforced. PTB needs to guarantee strict enforcement of technical limits for quality of textbooks. PRA has received many complaints regarding the lack of application of standards and violations of PRA rules and specifications. The most common complaints pertain to the quality of ink and paper used by the publishers. Quality of textbooks is often lower to the samples which are submitted at the time of tendering. The role of PCSIR is critical in this regard to produce accurate verification reports of manuscripts. A strong quality assurance system is needed to ensure compliance with technical parameters
7. Oversight role of SED, audit and public accounts committee is less observable, and needs a sustained strengthening. Three organizations, namely PCA, PTB, and PMIU are answerable to deliver the tasks of manuscript development and approval, printing and distribution respectively. SED, audit, PPRA, ACE and public accounts committee have important oversight role to guarantee honesty, transparency, efficiency and value for money in the procurement of textbooks. There is a need to bolster this role by clarifying the institutional mandate (especially between PCA and PTB), putting in place strong monitoring and evaluation system,