**Subject: Project Procurement.**

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**Important Note.**

Paper should be done in MS word.

**Attempt all questions. In your own words.**

# Q.No.1: Write detail note on KP Procurement Act 2012. (20)

Ans. Definitions.In this Act, unless there is anything repugnant in the subject or context,- "Authority" means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority established under section 4; "bidder" means a contractor, supplier, vendor or consultant who offers his services for procurement of goods works, or services in response to bid solicitation by a procuring entity; "best evaluated bid" means,- in case for procurement of goods and services, the highest ranking fair bid in accordance with the evaluation criteria set forth in the bid solicitation documents; in case of procurement of works, the lowest responsive evaluated bid will be the 'best evaluated bid'; "bidding" means the formal procurement procedure under which sealed bids are invited, received, examined and evaluated for the purpose of awarding a contract; "bidding documents" means the data, information and representations submitted by the bidder on the bid solicitation documents advertised and made available by the procuring entity; "bid solicitation documents" means the documents prepared by the procuring entity on the format of standard bidding documents for solicitation of bids; "Board" means the Board of Directors of the Authority; "Chairperson" means the Chairperson of the Board; "consultant" means a person, a firm, a company or an organization undertaking supply of services; "contract' means a contract as defined in the Contract Act, 1872; "goods" means articles and objects of every kind and description including raw materials, intermediate inputs, finished goods, products, equipments, computers, machinery, spare-parts and commodities in solid, liquid or gaseousform, electrical, mechanical as well as incidental services such as installation, transport or vehicles, maintenance and similar obligations related to the supply of goods, if the value of these services does not exceed the value of such goods; "Government" means the Government of the Khyber Pakhtunkhwa; "Managing Director" means the Managing Director of the Authority; "mis-procurement" means public procurement in contravention of any of the provision of this Act or any other law in respect of or relating to public procurement, including any rules, regulations, orders or instructions made in this behalf and for the time being in force; "prescribed" means prescribed by rules made under this Act; "procurement object" means goods, works or services to be procured by a procuring entity through public procurement process; "procuring entity" means- a Department or any Office of Government including a project unit; or any Board, Commission, Council or other bodies established by or under a provincial law; or semi-autonomous or autonomous bodies which are owned or controlled by Government; "province" means the Khyber Pakhtunkhwa; "public procurement" means acquisition, temporary or permanent or on lease, of goods or services, or undertaking of works by contractual means, financed wholly or partly out of Fund by any procuring entity; "regulations" mean regulations made under this Act;[1]Ins: "responsive" means conformity of a bid/technical proposal submitted by the prospective bidders to the statement of requirements in terms of section 24 of this Act; "rules" means the rules made under this Act; "services" means any object of procurement which does not constitute procurement of works or goods and includes consulting services; "standard bidding documents" means the format/forms approved and notified by the Authority for submission of proposals and bids by the bidders in a public procurement process; and "works" means any constructional work consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, such as site preparation, excavation, installation of equipment or materials and decoration, finishing and includes allied services such as mapping, satellite photography, seismic investigations and similar activities, if the value of the services does not exceed that of the works themselves.Words, expressions and terms not specifically defined in this Act and the rules will have the same meanings as attributed to them in the relevant trade and industry practices.3. All public procurement will be conducted in such a manner as provided in this Act, rules and regulations made under this Act and will promote the principles of transparency, economy, value for money, accountability and swift grievance handling.4. Establishment of the Authority.Soon after the commencement of this Act, Government will by notification in the official Gazette establish an Authority to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority with its headquarters at Peshawar.The Authority will as soon as possible establish its own secretariat and may set up its regional offices in such place or places in the Khyber Pakhtunkhwa, as it may deem appropriate.The Authority will be a body corporate, having perpetual succession and a common seal, with power to acquire and hold property and to enter into contracts, and may by the said name sue and be sued, and will exercise all powers necessary for the purposes under this Act.5. Powers and Functions of the Authority.- The Authority will perform functions and exercise powers as follows: hear and dispose of appeals against the orders of procuring entity; 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; will assist the major procuring entities to engineer/re-engineer their business procedures and design their Procurement Manuals in compliance with this Act; 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; KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 20TH SEPTEMBER, 2012. 5 ensure that all procuring entities organize and manage database and web site which will warehouse information and publications on public procurement; conduct performance review based on pre-determined indicators and benchmarks through third party validation by State Bank of Pakistan certified category 'A' chartered accountant firm; organize and manage capacity-building of procurement personnel in all the procuring entities in the Province; conduct research and take measures to further principles of public procurement enunciated in this Act; recommend to the Government, measures necessary to improve the quality of public procurement in the Province; recommend to the Government, measures necessary to enhance transparency and ensure accountability in the public procurement process in the Province; advise Government on all matters pertaining to public procurement;[del][2] lay down codes of ethics and procedures for procurement, inspection and quality of goods, services and works; and[3]Ins: 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]Re-num: 6. The general directions and administration of the Authority and its affairs will vest in the Board, which will exercise all powers and do all acts, which may be exercised or done by the Authority, in accordance with the provisions of this Act.7. Board of Directors.Government will constitute a Board of Directors for the management and administration of the Authority consisting of,- Secretary to the Government, Chairperson. Planning & Development Department or his nominee not below the rank of an Additional Secretary; Secretary to the Government, Member.[Communication and Works][5]Sub: Department or his nominee not below the rank of an Additional Secretary; Secretary to the Government, Member. Irrigation Department or his nominee not below the rank of an Additional Secretary; Secretary to the Government of Public Member Health Engineering Department or his nominee not below the rank of an Additional Secretary; Secretary to the Government, Member. Law, Parliamentary Affairs and Human Rights Department or his nominee, not below the rank of an Additional Secretary;][6]Ins: three persons from the private sector Members.i.e.from trade and industry, academia, civil society and professional associates; Managing Director of the Authority; Member/Secretary.Government will notify the terms and conditions for appointment of non-official members of the Board.The non-official members will be appointed by Government for a period of three years.Six members will constitute the quorum for convening meeting of the Board.The meeting of the Board will 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.All decisions in the meeting will be taken by majority of votes. Managing Director.Government will appoint the Managing Director of theAuthority for a period of three years on such terms and conditions as it may determine and may extend his appointment for a second term: Provided that the entire period of appointment will not exceed six years.The Managing Director will 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 will be appointed as Managing Director who has been: convicted by a court of law; or removed from any service on a charge of misconduct.The Managing Director will be the Chief Executive and the Principal Accounting Officer of the Authority.In the performance of his functions, the Managing Director will work within the framework of the general policy and guidelines laid down by the Board.8-A. 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[7]Ins: 9. Establishment of the Authority Fund.There will be a Fund to be known as Khyber Pakhtunkhwa Public Procurement Regulatory Authority Fund, hereinafter referred to as Authority Fund, which will vest in the Authority and will 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.The Authority Fund will consist of all the money received by the Authority.10. Custody and investment of the Authority Fund.The Board may keep the Authority Fund in any Scheduled Bank, as may be approved by it.Nothing in sub-section will 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 , or placing them in fixed deposit with a Bank approved by the Board or in such other manner as may be approved by it.11. The Board will maintain complete and accurate books of accounts of its actual expenses and receipts in such form as the Government, in consultation with the Local Audit Department determined.12. The Authority will cause to carry out the audit of its accounts by Auditor General of Pakistan provided that provision will be made for an internal audit of the finances ofthe Authority.13. Appointment of officers, advisors etc.- The Authority may, from time to time and subject to resources, appoint such officers, servants, advisers, consultants, referees and experts as it may consider necessary for performance of its functions. The Authority will notify the procedure for appointments and fixation of terms and conditions after approval of the Board of Directors.14. Responsibility of procuring entity.- Each Procuring Entity will 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- 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 will be recorded in writing. Government may seek comments of the Authority, if so required; 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; 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 will be recorded in writing; and Government will notify the exemption and publish the same for public consumption in the print[8]Sub: media.[The procuring entity may, wholly or partly, conduct the bidding process through electronic means"..][9][Add:] 14A. Except as otherwise provided for in this Act and the rules, all procurement will be conducted so as to maximize competition and to achieve value for money: Provided that the exception will be made only for acquisition of services for reasons to be recorded in writing by the procuring entity.15. Confidentiality.A procuring entity will not, except when required to do so by an order of a Court, disclose any information if the disclosure would: cause a breach of this law or any other law; or impede law enforcement; or prejudice legitimate commercial interests of the parties; or inhibit fair competition; or not be in public interest.A procuring entity will 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 will be prescribed.16. 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 will continue to remain and be valid, binding and operative.18. Preference and reservation.If an agreement in terms of section 17 provides for preference to national vendors, the procuring entity will 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.Each procuring entity will 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.If participation is restricted on the basis of nationality, the procuring entity will record in the procurement proceedings a statement of grounds and circumstances relied upon.19. This Act, the rules made thereunder, guidelines, forms, bidding documents and/or decisions of Government or procuring entity relating to procurement will 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.prescribed; and preserve, maintain and safeguard all relevant documents issued and received as will be set out in the rules.The records of the procurement process of the procuring entity will be open to internal and external audit or to procurement post-review in the prescribed manner or for scrutiny or inspection by Government or in accordance with any law.21. Communication.All communications between a procuring entity and the bidder or vendor of procurement object will be in writing.Forms of communication as well as the name of the focal person will be specified in solicitation documents.22. Procurement planning.Each procuring entity will plan its procurements with due consideration to transparency, economy, efficiency and timelines, and will ensure equal opportunities to all prospective bidders.All procurement requirements must be documented and approved by the procuring entity prior to commencement of procurement proceedings.In specified circumstances, a procuring entity may proceed with the procurement proceedings except for award of contract when the availability of funding in the full amount over the required period remains to be confirmed/approved by the competent authority: Provided that the project has been approved or has received anticipatory approval from the competent authority/forum or is otherwise within the competence of the procuring entity and budget provision exists.23. Bid Solicitation documents.A procuring entity will adopt standard bidding documents designed under this Act and insert/add specifications into the standard bidding documents for each procurement.Bid solicitation documents will specify in detail the terms and conditions, including a statement of general conditions of contract, which will apply to the resultant contract.The general conditions of contract will not be modified.Each procuring entity will solicit bids based on performance or functional specifications and not on restrictive or proprietary specifications of a particular brand.A procuring entity may introduce special conditions of contract to elaborate and qualify the general conditions of contract, where applicable, furnishing detailed justification and reasons thereof, in the bid solicitation documents Enlistment and Pre-Registration.- For the enlistment and pre-registration, the following conditions should be adopted, namely: enlistment and pre-registration will be carried in a manner as may be prescribed; [provincial enlistment and pre-registration will be undertaken by a committee, which will be chaired, steered, represented and coordinated by Communication and Works Department, with representation from Irrigation Department, Public Health Engineering Department, Local Government, Elections and Rural Development Department and any other Members, as co-opted"..][10]Sub: 27. Best practices and industry standards. Procuring entities will at all times use industry standards defined and codified by internationally recognized trade associations and professional bodies in the appropriate fields in international bidding where available and local bidding where laid down.28. Procurement process and evaluation. For the procurement process and evaluation,- the procurement system would allow a single stage single envelope, a single stage, two envelopes, a two stage single envelope and two stage two envelopes procedures depending on the nature of the procurement or as laid down in procurement rules made under this Act; the rules will prescribe the threshold and method for single source single quotation, request for quotations and open competitive procurement; the methodology of evaluation will be determined by the type, value and complexity of the procurement as may be prescribed by the Authority; all bid solicitation documents will fully and comprehensively detail the evaluation methodology and criteria relevant to the particular procurement; contract will be awarded to the bidder whose bid is responsive and is determined as the best evaluated bid ascertained on the basis of methodology and criteria mentioned in clause above and in the definition; and no evaluation criteria other than those stipulated in the solicitation documents will be taken into account.29. Disqualification and debarment of bidders.The procuring entity will disqualify a bidder if it finds at any time that the information submitted concerning qualifications of the bidder was false, or materially inaccurate or incomplete.A procuring entity may debar a bidder from taking any further part in a procurement proceeding or in future procurement proceedings if the bidder- forms part of a cartel/ring with a view to discourage fair competition in the bidding process; or has failed to complete his earlier contract, within a period of three years of the initiation of procurement proceeding, on ground that his approved bid was or has become unprofitable or would result in his suffering of loss; or offers or attempts to offer inducement of any sort; such baring actions will be duly publicized and communicated to the Authority.30. Rejection of bids.- A Procuring Entity may reject any or all bids communicating the reasons for rejection in writing to the Authority at any time prior to the award of a contract.31. Award of Contract. The procuring entity will award contract on the following conditions, namely: the contract will be awarded on the basis of the best evaluated bid; the best evaluated bid will be determined on the basis of total conformity to the evaluation criteria which may include quality or cost or both; the procedure to determine the best evaluated bid under different methods of procurement and consequent award of contract will be prescribed by the rules made under this Act; the award of contract will be made as per timeframe prescribed in the rules made under this Act; a procuring entity will complete evaluation of bids and award of contract within the initial period of bid validity to avoid the necessity of extensions; an extension of bid validity, where inevitable, will be requested only in exceptional circumstances as may be prescribed and will always be sought in writing from all bidders before the expiration date; and all contracts will be confirmed through a written agreement signed by the successful bidder and the procuring entity, except as otherwise provided for in the rules.32. Changes in bidders circumstances. Any changes in the circumstances of the bidder during the procurement proceedings that could materially affect the capacity to execute the contract will be immediately brought to the attention of the procuring entity by the bidder, otherbidders or any other stakeholder.33. Methods of procurement.The procuring entities will resort to open competitive bidding as the preferred method of procurement.The selection of the procurement procedure will be made in accordance with the rules, and will be approved by the concerned procuring entity prior to commencement of any procurement proceedings: Provided that the procuring entities may exceptionally use other methods, including negotiations, in the following eventualities in accordance with the rules to cater for: procurements of small value through petty purchase or through request for quotations; and procurements through direct contracting in an emergency caused by nature or governments, for urgent requirements caused by unforeseeable events, single repeat order not exceeding fifteen percent of the original procurement, for considerations of intellectual property, if price is fixed by a Government in the country or procurement from another procuring entity/public sector organization within Pakistan.34. Procurement Committees.- Procuring entities may constitute procuring Committees for procurement of goods, works and services.35. Grievance Redressal Mechanism.Any bidder aggrieved by any act of the procuring entity may follow the two tier grievance redressal mechanism in the following manner: file a complaint in writing to the head of procuring entity in accordance with prescribed procedure; and file an appeal to the Authority against the decision of the procuring entity within fifteen days in accordance with the prescribed procedure.The decision of the Authority on appeal will be final.[Unless and until the two tier grievance redressal mechanism, provided in sub-section , is exhausted, no Court or any other authority will take cognizance of the same and grant any injunction"..][11] [Add:] 35-A. Power to make regulations. The Authority may make regulations, not inconsistent to this Act or rules, for carrying out the purposes of this Act[12]Ins: 35-B. Indemnity. No suit, prosecution, or other legal proceedings will lie against the Authority, the Board, the Chairperson Managing Director, officer, servants, advisers or consultants of the Authority in respect of anything done or intended to be done in good faith. under this Act or rules and regulations[13]Ins: 35-C.[Bar of Jurisdiction. No Civil Court will have jurisdiction to entertain any proceedings, grant any injunction or make any order in relation to any matter, order and proceedings, carried out by procuring entity and authority against anything done, intended or purported to be done, in good faith, under this Act"..][14] Ins: 36. Power to make rules. Government may make rules for carrying out the purposes of this Act.37. Repeal.- The Khyber Pakhtunkhwa Public Procurement of Goods, Works, Services and Consulting Services Ordinance, 2002 (Khyber Pakhtunkhwa Ord.No. XVIII of 2002) is hereby repealed.Not with standing the repeal of Khyber Pakhtunkhwa Procurement of Goods, Works, Services and Consulting services Ordinance, 2002 , any public procurement initiated under the repealed law, shall, if not inconsistent with the provisions of this Act will be executed and dealt with in accordance with the provisions of repealed law.38. Removal of Difficulties. If any difficulty arises in giving effect to any of the provisions of this Act, Government may, by notification in the official Gazette, make such provision as may appear to it necessary for the purpose of removing the difficulty

Q.No.2: Through light on the problems in procurement specified to education sector in Pakistan? (10)

Answer. The education industry has procurement needs just like any other. They need to ensure all educational institutions in their district have the computers, textbooks, and other materials they need to be successful for their staff and students. Oftentimes, however, like other businesses operating in the public sector, they face a number of challenges that prevent them from having a flexible and efficient procurement process. Lots of Regulation to Comply With Outside the United States, public procurement law is regulated through the EU Directives and the Treat on the Functioning of the European Union. In Northern Ireland in particular, these are implemented through the UK procurement regulations that are applicable to all public entities. Procurement in education has to comply with this legislation and all its directives, along with the NI Public Procurement Policy, including policies around getting the best value for the money, using a procurement center, and awarding contracts to the most economically advantageous tender. That said, there is no additional guidance or law surrounding education industry specific procurement. In the United States, there are both state and federal guidelines to maintain compliance with, so this issue is not limited to Ireland or European countries. And though higher education institutions generally have more available funds than public bodies in the K12 sectors, they still need to stay within the necessary procurement thresholds, so they too, have regulations to comply with that complicate the process for them as well. Too Many Cooks in the Kitchen Procurement in education is carried out by multiple education bodies, leading to a fragmented approach that not only makes it overall less efficient, but less organized and generally more chaotic. For instance, controlled schools are handled by Education and Library Boards otherwise known as Centers of Procurement Expertise , which are responsible for procuring goods and services, as well as maintenance work. Any grant-aided schools outside the controlled sector have their goods and services procured by Trustees or the Board of Governors of each school. The ELBs handle the maintenance work for any maintained schools. And to further complicate matters, any volunteer grammars and grant-maintained integrated schools handle their own maintenance arrangements. Any arms length bodies, such as the Council for Catholic Maintained Schools, the Northern Ireland Council for Integrated Education, and The Council for the Curriculum Examinations and Assessment, have access to ELB good and services contracts, but the majority still make their own procurement arrangements. Government procurement can do their part to help schools by allowing procurement officers a bit more flexibility in what and how they buy what they need. With fewer people involved in the process, there's less potential for roadblocks and complications. Designating a procurement officer at the school level with a set amount of purchasing power who goes to a central office for approval for the entire county or district, which is then submitted to the state, reduces the number of people or agencies that need to be involved, while still ensuring the schools get what they need when they need it. Lack of Strong Procurement Strategy and Procedure It's difficult to take a coordinated approach to education procurement because of the five CoPEs in various locations throughout the country. There are numerous issues within the supply chain because each procurement center operates individually, so there is not much coordination between all of them. There is a rather complex approvals process, and it takes a long time to procure good and services and complete orders.such as the difference between music and arts departments compared to science or math departments, having such a fragment procurement approach creates unnecessary strain on staff and students". This is due in part, to the fact, that regulations require everyone to purchase products and award contracts to the lowest bidder so they get the lowest price for high value, but not necessarily the best quality goods, that could end up being cheaper over the long term. As such, it may mean many schools do not get the specific products the departments want or need but instead something similar, or something that functions as a low-quality substitute, at best. It may mean taking cues from other highly regulated industries to develop better, stronger, procurement strategies and procedures across the board. Schools, and especially higher-education facilities, need to be particularly transparent in all of the procurement process. Not Enough Skilled and Experienced Procurement Staff Members Likely at least partly related to the fact that few jobs in education or public service type industries pay well enough to live comfortably, the education industry in particular lacks the total number of highly-qualified and experienced procurement professionals they need to effectively get the procurement process developed and executed as efficiently as possible. Before they can expect real improvement, it's critical to look at professional development opportunities to strengthen the knowledge and expertise of current staff, in addition to recruiting additional staff members. If procurement professionals in the education sector, and other public sector bodies, could come together to develop better procurement practices that still remain in compliance with any applicable legal regulations, they may find they will be able to save themselves a lot of money. Streamlining the entire tendering process, for instance, could shorten the procurement lifecycle and lead to better supply management. The good news is that because educational bodies are required to follow government guidelines for procurement, there is plenty of guidance that exists, making it easier for education procurement to achieve good practices that will save time and money in the future