



# KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, THURSDAY, 5<sup>TH</sup> OCTOBER, 2017

GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

## NOTIFICATION

Dated Peshawar, the 15<sup>th</sup> May, 2017

**NO. SO(FR)/FD/9-7/2011/Vol-II.** In exercise of the powers conferred by section 36 of the Khyber Pakhtunkhwa Public Procurement Act, 2012 (Khyber Pakhtunkhwa Act No. XI of 2012), read with section 35 thereof, the Government of Khyber Pakhtunkhwa is pleased to make the following rules, namely:-

### **THE KHYBER PAKHTUNKHWA PUBLIC PROCUREMENT GRIEVANCE REDRESSAL RULES, 2017.**

1. **Short title and commencement.**---(1) These rules may be called the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017.

(2) These rules shall come into force at once.

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

- (a) "Act" means the Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012 (Khyber Pakhtunkhwa Act No. XI of 2012);
- (b) "aggrieved bidder" means a bidder aggrieved by any act or omission of the procuring entity including a prospective bidder, who is otherwise eligible for contesting in the bid process, but due to certain reasons, he has precluded to participate, in the bidding process;
- (c) "appeal" means an appeal made by the aggrieved bidder to the Authority against the decision of the procuring entity;
- (d) "complaint" means a written application, made by the aggrieved bidder to the procuring entity for seeking relief or rectification regarding procuring process;

- (e) "Grievance Redressal Committee" means a Committee, constituted under sub-rule (1) of rule 5 of these rules;
- (f) "Grievance Redressal Officer" means Head of procuring entity or Administrative Secretary, as the case may be, with whom the complaint is made; and
- (g) "procurement rules" means the Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014.

(2) Words and expressions used but not defined in these rules shall have the same meanings as assigned to them in the Act and the procurement rules.

**3. Filing of complaint.**---(1) For the purpose of clause (a) of sub-section (1) of section 35 of the Act, an aggrieved bidder, on the grounds mentioned in rule 4 below, may file a complaint in writing with the procuring entity, clearly stating the specific grounds on which he feels aggrieved, and the relief or the rectification sought by him. The complaint shall be accompanied with certified copies of documents, including affidavits, if any, relied upon.

Provided that-

- (i) after declaration of a bidder, as successful on announcement of bids evaluation report, a complaint may be filed only by a person or firm who has participated in the procurement proceedings;
- (ii) in cases, the technical bids are evaluated by the procuring entity before opening of the financial bids, a complaint related to financial bids may be filed only by a person or firm whose technical bid is found responsive; and
- (iii) a complaint against execution of the contract may be filed only by a person or firm, who is a party to the contract.

(2) Where an aggrieved bidder, for reasons beyond his control, is not in a position to furnish a duly certified copy of the order complained against or where the complaint is based on a statement of a decision, action or omission of the procuring entity, the complaint shall be accompanied by an affidavit of the aggrieved bidder to that effect.

(3) A complaint, against any decision, action or omission in the procurement process till the announcement of final results of the bids evaluation under rule 45 of the procurement rules, may be made, at any time prior to award of the contract, within ten (10) days of making it public in terms of rule 46 of the procurement rules and pertaining to execution of the contract until closure of the contract in terms of rule 51 of the procurement rules:

Provided that no complaint shall lie against selection of a procurement method and decision to reject all tenders, quotations or proposals, as specified under the Act and procurement rules, respectively.

(4) All complaints presented to or received by the procuring entity, shall be duly acknowledged for receipt.

(5) Anonymous or pseudonymous complaints or those received after the limitation period, mentioned in sub-rule (3) above, shall not be entertained and filed without any processing.

**4. Grounds of complaint.**---Subject to the provisions of the Act and the procurement rules, a complaint may be instituted on the following grounds:

- (a) mis-procurement by the procuring entity;
- (b) violation of merit in any order of the procuring entity, pertaining to enlistment and pre-registration, short-listing, pre-qualification, qualification, post-qualification, disqualification and debarment or blacklisting;
- (c) challenging that the evaluation of bids or award of the contract is based on incorrect presentation in the bid, expression of interest, proposals or any other documents furnished to the procuring entity;
- (d) irregularity in the award of contract or its content;
- (e) violation of confidentiality by the procuring entity; and
- (f) any specific non-adherence or violation of the contractual provisions by the procuring entity, including non-payment within the stipulated period, delay caused by the procuring entity that is hindering the bidder in execution of the contract and delay in discharge of securities.

**5. Grievance handling at the level of procuring entity.**---(1) The disposal of the complaints, at the level of the procuring entity, shall be carried out by the Grievance Redressal Officer himself or by the Grievance Redressal Committee, to be constituted by the Grievance Redressal Officer.

(2) The Grievance Redressal Committee shall be headed by the Grievance Redressal Officer, who shall be assisted by such number of members, within the procuring entity, as Grievance Redressal Officer may deem fit:

Provided that, in case, constitution of Grievance Redressal Committee within the procuring entity is not practicable due to non-availability of suitable members or otherwise, the Grievance Redressal Officer may designate any other suitable officer, from outside the procuring entity, as a member, after due consultation with his parent department.

(3) The decision of the Grievance Redressal Committee shall be deemed as the decision of the procuring entity.

**6. Procedure for disposal of complaint.**---(1) The Grievance Redressal Officer or the Grievance Redressal Committee, as the case may be, shall, on receipt of a complaint, examine the same and if it is found to be received after the limitation period or if it appears of frivolous or trivial nature or pertains to procurement amounting to rupees one hundred thousand (100,000) or below, may, after providing an opportunity of hearing to the aggrieved bidder, dispose of it on its merit through a written order, within three (3) days. A complaint shall be of frivolous or trivial nature, if it is based on invalid grounds or arithmetical or clerical mistakes.

(2) The Grievance Redressal Officer or Grievance Redressal Committee, as the case may be, shall summon the aggrieved bidder to appear before it at a specified venue, date and time for hearing. The aggrieved bidder shall be entitled to attend the proceedings in person or through authorized representative and heard at least once during the proceedings.

(3) The Grievance Redressal Officer or Grievance Redressal Committee, as the case may be, may call for the relevant records and other

documents for examination and that must be produced by the concerned person within stipulated time period. In case of failure to produce the same, the Grievance Redressal Committee may draw appropriate inference and proceed with the case.

(4) The The Grievance Redressal Officer or Grievance Redressal Committee, as the case may be, shall, after examining the complaint, relevant records and documents and hearing the aggrieved bidder, decide the case on its merit, through consensus or majority votes, within five (5) days.

(5) The The Grievance Redressal Officer or Grievance Redressal Committee, as the case may be, shall, if upholds the complaint as a whole or in part, provide specific relief to the aggrieved bidder or order rectification or annulment of the procurement process, as the case may be.

(6) The decision, on the complaint, shall be recorded in writing along with reasons and conveyed to the aggrieved bidder within three (3) days of its finalization.

(7) The Grievance Redressal Officer shall ensure implementation of the decision without any delay.

**7. Appeal handling at the level of Authority.**---(1) For the purpose of clause (b) of sub-section (1) of section 35 of the Act, an aggrieved bidder may file an appeal, against the decision of the procuring entity, with the Authority on the following circumstances:

- (a) where the procuring entity fails to decide the matter without merit;
- (b) where the procuring entity fails to communicate its decision to aggrieved bidder; or
- (c) where the procuring entity fails to decide the complaint within stipulated time period.

(2) A non-refundable fee for filing of the appeal, at the rates and in the form to be notified by the Authority from time to time, shall be deposited in favor of the Authority, on submission of the appeal.

(3) A memorandum of appeal shall be presented on the format and in the manner as specified in the guidelines issued by the Authority from time to time.

**8. Technical assistants.**---(1) For the purpose of disposing of appeals by the Authority or the Managing Director, as the case may be, the Authority or the Managing Director shall be assisted by such number of technical assistants as may be required.

(2) The Managing Director, after due evaluation, short lists the names of the technical assistants and such list shall be referred to the Authority for approval.

(3) The list so approved by the Authority shall be valid for a period of three (3) years which may be extended for another three (3) years by the Authority.

(4) The technical assistants shall be entitled for such remuneration as may be specified by the Authority for time to time.

**9. Appointment of Registrar of Appeals.**---The Authority or the Managing Director, as so authorized by the Authority, may designate an officer of Authority, as Registrar of Appeals for carrying out the functions under these rules.

**10. Procedure for disposal of appeal.**---(1) The Managing Director shall refer the memorandum of appeal to the Registrar of Appeals for acknowledgement and preliminary scrutiny. The Registrar of Appeals shall conduct preliminary scrutiny of the appeal and take other actions as per provisions of these rules and the guidelines issued by the Authority from time to time, within a period of three to five (3-5) working days after receiving the same.

(2) On receipt of the appeal from the Registrar of Appeals, if the same is admitted or admitted subsequently by the Managing Director, the Managing Director shall, keeping in view the value of procurement, nominate a technical assistant or a panel of technical assistants, from the list approved by the Authority, within [ten (10)]<sup>1</sup> days, for hearing of the appeal and giving recommendations to the Authority for its disposal; provided that the nomination may be made in a manner to include the technical assistants with most relevant expertise for the purpose and exclude those having any conflict of interests in the case.

(3) On nomination for hearing a particular appeal, the technical assistant may declare immediately if he has any conflict of interest in the case or is otherwise unable to attend the proceeding in hearing of the appeal, and the Managing Director shall accordingly substitute the nomination order to remove the conflict or inability.

(4) The technical assistants shall, at the outset of the proceeding with the appeal, examine the request for interim relief, if sought by the aggrieved bidder in the memorandum of appeal, or may consider such request at any time during hearing of the appeal, and may issue an order for suspension of the procurement process, including award of the contract, if not already awarded, or execution of the contract till decision of the Authority on the appeal, if it is satisfied that failure to do so is likely to lead to miscarriage of justice. The interlocutory order shall be binding on the procuring entity and complied with in letter and spirit.

(5) The technical assistants shall follow the procedure for issuance of summons and production order, hearing of parties and witnesses, examination of evidence and record, adjournments, arguments and compilation and submission of the report as specified in the guidelines issued by the Authority from time to time.

(6) The aggrieved bidder and the representative from time to time on behalf of the procuring entity shall have the right to be represented and heard in person during hearing of the appeal. It shall be mandatory for both the aggrieved bidder and the representative of the procuring entity, to appear before the technical assistants as and when called, produce documents when so required and submit their responses. In case of failure to do so, unless the technical assistants deem it fit to allow adjournment, the case may be proceeded with ex-parte and finalize the same on the basis of available evidence and records.

(7) Where two or more appeals, arising from the same bidding or procurement process, are instituted, the technical assistants may, on the recommendation of the Registrar of Appeals, consolidate the appeals and hear them as if they were one appeal.

---

<sup>1</sup> The word, brackets and figure “three (3)” be substituted vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449/KPPRA dated 26.01.2018

(8) The appeal shall be heard and recommendation thereon shall be submitted to the Managing Director by the technical assistants within [twenty (20)]<sup>2</sup> days of their nomination in each case.

**11. Withdrawal of appeal.**---(1) An appeal may be withdrawn by a notice, in writing signed by the aggrieved bidder, submitted to the Registrar of Appeals, at any time, before commencement of the hearing or to the technical assistants during the hearing, and upon such notice being received, the appeal shall be deemed to have been withdrawn.

(2) When an appeal is withdrawn, under sub-rule (1), the Registrar of Appeals shall, forthwith, inform all the parties to the appeal of the withdrawal, and also the technical assistants, nominated for the case, if the withdrawal is prior to commencement of the hearing.

(3) The record pertaining to submission, processing and disposal of appeals shall be maintained by the Registrar of Appeals.

**12.** [Deleted]<sup>3</sup>.

**13. Announcement of order.**---(1) The Authority or the Managing Director, as so authorized by it, may, after examining the report so submitted under rule 12 and taking into consideration the whole recourses, shall announce its decision on the appeal, which shall be of binding nature and shall not be called in question in any Court of law.

(2) The decision of the Authority, on the appeal, shall be communicated to the parties by the Registrar of Appeals. After the decision has been issued, the complaint and decision thereon shall be posted by the Authority on its website within three (3) days; provided that no information shall be disclosed, if its disclosure would contravene the provisions of the Khyber Pakhtunkhwa Right to Information Act, 2013 (Khyber Pakhtunkhwa Act No. XXVII of 2013).

(3) The Managing Director may add comments to the report and recommendations for initiation of disciplinary or criminal proceedings against the defaulting employees of the procuring entity, if so warranted, and shall transmit it to the Authority within three (3) days for taking final decision on the same within seven (7) days. If needed, the Authority may seek clarification from the technical assistants on the report before taking final decision on the appeal.

(4) Any action, taken by the procuring entity, against the defaulting employee, in pursuance to sub-rule (2), be informed to the Authority.

**SECRETARY TO  
GOVERNMENT OF THE KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT.**

---

<sup>2</sup> The word, brackets and figure “seven (7)” be substituted vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449/KPPRA dated 26.01.2018

<sup>3</sup> Rule 12 “The technical assistants shall compile a report after hearing of the appeal and submit it to the Managing Director, within seven (7) days of his or their nomination for the case” be deleted vide Finance Department Notification No. SO (FR)/FD/9-7/2017/17449/KPPRA dated 26.01.2018