

BALUCHISTAN PROVINCIAL ASSEMBLY SECRETARIAT

NOTIFICATION

Dated Quetta, the 5th September,
2013.

No. PAB/Legis: V (04)/ 2013-2511. The Balochistan Public Procurement Regulatory Authority(Amendment) Bill, 2013, Bill No. IV of 2013, having been passed by the Provincial Assembly of Balochistan on 30th August, 2013 and assented to by the Governor, Balochistan on 4th September, 2013 is hereby published as an Act of the Provincial Assembly.

THE BALUCHISTAN PUBLIC PROCUREMENT REGULATORY AUTHORITY

(AMMENDMENT ACT NO. IV OF 2013)

(First published after having received the assent of the governor Balochistan in the Balochistan Gazette (Extra-ordinary) dated 05th September, 2013.

AN ACT

further to amend the Balochistan Procurement Regulatory Authority Act, 2009 (Act No. VIII of 2009).

Preamble-----

WHEREAS, it is expedient to amend the Balochistan Public Procurement Regulatory Authority Act, 2009 (Act No. VIII of 2009), for the purpose hereinafter appearing;

to provide for the establishment of Balochistan Public Procurement Regulatory Authority for regulating procurement of goods, services and works in the public sector and for matters connected therewith or ancillary there to;

It is hereby enacted as follows:-

CHAPTER - I PRELIMINARY

1. Short title, extent and commencement :- (1) This Act may be called the Balochistan Public Procurement Regulatory Authority (*Amendment*) Act 2013.

(2) It shall come into force at once.

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

- (a) "Authority" means the Balochistan 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) "Chief Secretary" means the Chief Secretary of Balochistan;
- (e) "Fund" means the fund established under Section 8;
- (f) "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;
- (g) "Government" means the Government of Balochistan;
- (g-a) "Managing Director" means the Managing Director of the authority Appointed under Section 7-A of this Act;"**
- (h) "Member" means a member of the Authority;
- (i) "Mis-procurement" means public procurement in contravention of any provision of this Act, any rules, regulations, orders or instruction made thereunder or any other law in respect of or relating to public procurement;

- (j) "Prescribed" means prescribed by rules made under this Act;
- (k) "Procuring agency" means,-
 - (i) any department, attached department or any office of the Government; and
 - (ii) any authority, corporation, body or organization established by or under a Provincial law or which is owned or controlled by the Government;
- (l) "Public Fund" means the Provincial Consolidated Fund and the Public Account of the Province and includes funds of enterprise which are owned or controlled by the Provincial Government;
- (m) "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 Provincial Government;
- (n) "Regulations" means regulations made under this Act;
- (o) "Rules" means rules made under this Act;
- (p) "Service" means any object of procurement other than goods or works; and
- (q) "Works" means any construction work consisting of erection, assembly, repair, renovation or demolition of a building or structure of 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, FUNCTION AND POWERS

3. Establishment of Authority.- (1) An authority is hereby established to be called the Balochistan Public Procurement Regulatory Authority for carrying out the purposes of this Act.

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

(3) The Headquarter of the authority shall be at Quetta and it may establish its offices at such other place or places in Balochistan as it may consider appropriate.

4. Power of the Government to issue directives.- The Provincial 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 Act, 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 power 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 the public procurement;

(b) monitor the implementation of and evaluate laws, rules, regulations, policies and procedures in respect of, or relating to inspection or quality of goods, services and works and recommend reformulation thereof or revision therein as it deems necessary;

(c) recommend to the Government revisions in or formulation of new laws, rules and policies in respect of or related to the public procurement;

(d) make regulations and lay down codes of ethics and procedures for the 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 the procuring agencies and make

recommendations for improvements in their institutional setup;

(g) provide and coordinate assistance to the procuring agencies for developing and improving their institutional framework and the public procurement activities;

"(g-a) develop, promote and support the capacity building of personnel of procuring agencies."

"(g-b) maintenance of website which may enable the procuring agencies to upload and disseminate the information of their procurement activities as prescribed;

(h) submit reports to the Government in respect of the public procurement activities of the procuring agencies;

(i) call any functionary of the procuring agencies to provide assistance in its functions and call for any information from such agencies in pursuance of its objectives and functions;

(j) exercise in respect of the authority, such other management, administrative and financial powers as deemed appropriate; and

(k) perform any other function assigned to it by the Government, incidental or consequential to any of the aforesaid functions.

(3) If any misprocurement by any procuring agency comes into the notice of the Authority, it may call for assistance of the Auditor General of Pakistan to ascertain the gravity of such misprocurement, and may involve Provincial Anti-Corruption Department for investigation and fixation of criminal liability upon the employees of such procuring agency under any law for the time being in force".

CHAPTER-III MANAGEMENT AND ADMINISTRATION

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

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

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|------|---|----------------------|
| (1) | <i>the Chief Secretary Balochistan
Chairperson</i> | |
| (2) | <i>the Additional Chief Secretary (Dev)
Planning & Development Department</i> | <i>Member</i> |
| (3) | <i>two members of Provincial Assembly
one each from the treasury and opposition
benches to be nominated by the Speaker</i> | <i>Member</i> |
| (4) | <i>Secretary Finance</i> | <i>Member</i> |
| (5) | <i>Secretary, Law & Parliamentary Affairs
Department</i> | <i>Member</i> |
| (6) | <i>Secretary, Communication & Works
Department</i> | <i>Member</i> |
| (7) | <i>Secretary, Industries & Commerce
Department</i> | <i>Member</i> |
| (8) | <i>Secretary, Irrigation & Power Department</i> | <i>Member</i> |
| (9) | <i>Secretary, Information Technology
Department</i> | <i>Member</i> |
| (10) | <i>a representative of the Auditor General
of Pakistan.</i> | <i>Member</i> |
| (11) | <i>a nominee of the Chamber of Commerce</i> | <i>Member</i> |
| (12) | <i>a nominee of Pakistan Engineering Council</i> | <i>Member</i> |
| (13) | <i>a renowned Professional from Management
and Finance sector by the Government</i> | <i>Member</i> |
| (14) | <i>two members from Civil Society nominated
by the Government</i> | <i>Member</i> |
| (15) | <i>Managing Director</i> | <i>Member</i> |

"(3) The Managing Director shall also act as the Secretary of the Board".

(4) An official member may nominate his representative not below the rank of an Additional Secretary or an officer of equivalent grade to attend meeting of the Board on his behalf.

(5) The member appointed from the private sector shall hold office for such a period and shall be entitled to such terms and conditions as the Authority may determine.

"(6) A member from the private sector may be writing in his hand addressed to the Chairman, resign from his office".

(7) A causal vacancy of a private sector member shall be filled by appointment of another member from the private sector, for the remaining term of his predecessor".

7. Meeting of the Board.- (1) *The meeting of the Board shall be presided over by the Chairperson of the Board.*

(2) Ten members shall constitute a quorum for a meeting requiring a decision by the Board including the chairperson.

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

(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 member 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 circulated by Member/Secretary.

"7A. Managing Director-(1) *The Government shall select and appoint a full-time Managing Director as Chief Executive Officer of the Authority for such period and on such terms and conditions as the Government may determine.*

(2) The Managing Director shall be appointed for three years and he will 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 Medical Board appointed by the Government, or*

(e) *falls to disclose any conflict of interest at or within the time provided for such disclosure by or under this Act or contravene any of the provisions of this Act.*

(f) *the Managing Director may, at any time, resign from his office by writing under his hand addressed to the Government.*

(g) *the Managing Director shall be paid such salary and allowances as the Provincial Government may determine but his salary and allowances shall not be varied to his disadvantages during his term of office.*

(h) *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 expiry 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;

Provided further that 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;

7B. Powers and Responsibilities of Managing Director:-

“The Managing Director shall have powers and responsibilities to:-

- (a) *exercise administrative control over the personnel of the Authority.*
- (b) *exercise, in respect of the Authority such other management, administrative and financial powers as deemed appropriate by the authority;*
- (c) *submit the annual budget proposals of the Authority to the Board;*
- (d) *prepare the annual report of the Authority for the Board and the Government;*
- (e) *exercise such powers as the Board may delegate to him; and act on behalf of the Authority, in any emergency, subject to obligation to report such action to the Board at its next meeting and to seek the Board's ratification of any action so taken;*
- (f) *exercise and perform all such powers and functions as prescribed in Rules and Regulations."*

CHAPTER-IV FINANCIAL PROVISIONS

8. Fund.- (1) A fund shall be established to be known as the Balochistan 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 Act.

(2) To the credit of the Balochistan Public Procurement Authority, a fund shall be placed comprising;

- (a) such sums as the 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, that 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 Act, shall exercise highest level of prudence as far as expenditures are concerned.

9. 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, adviser, and consultants of the Authority, 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 Act;

(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 Act;

(d) repaying any financial accommodation received; and

(e) generally, paying any expenses for carrying into effect the provisions of this Act;

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

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

12. 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 Government by such date and in such form as may be specified by the Government a statement showing the estimated receipts, current expenditure and the sums to be required from the Government during the next financial year.

13. 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 an account of receipt and expenditure.

14. Audit.- The accounts of the Authority shall be audited every year by the "*Auditor General of Pakistan.*"

CHAPTER-V REGULATORY AND OTHER PROVISIONS

15. Information. (1) The Authority may call for any information required by it for carrying out the purposes of this Act, from any person or any institution in the 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 Government such information with respect to policies and procedures it is pursuing or proposes to pursue in the performance of any of its functions under this Act as the Government may require from time to time.

16. Annual report. Within one hundred and twenty (120) 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 Act, during that financial year, and release to the public, after it has been seen by the Cabinet.

CHAPTER- VI MISCELLAN EOUS

17. Appointment of officers and staff, etc.- (1) The Authority may, from time to time and within its resources, appoint such officers, servant, advisors, consultants and experts on contract basis for a period not exceeding two years 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, advisors, consultant and experts and the terms and conditions of their service.

18. Members, officers, etc. to be public servants.- The Chairperson, members, officers, servants, advisor, consultants and experts of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Act 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).

19. Delegation of Powers.- The Authority may, by such conditions and limitations as it may deem fit, delegate any of its functions or powers to *Managing Director* excluding the power to,-

- (a) approve audited accounts;
- (b) recommend exemption under Section 20; and

(c) make or repeal regulation made under this Act.

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

21. 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 / Board.

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

23. Common seal.- (1) The Authority shall have a common seal and such seal shall be kept by the Member/Secretary 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.

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

25. Appeal. (1) Any party aggrieved by any order made by a procuring agency or the Authority in respect of procurement of any goods may, within thirty days of making such order as public, prefer an appeal to the Chief Secretary who shall constitute a committee having no member of the Board, to inquire in the matter to submit its findings and recommendation within fifteen days.

(2) On receipt of the findings and recommendations made by the committee the, Chief Secretary may pass such orders as appear to him to be just and equitable which shall be final and binding.

(3) The Authority may make regulations for disposal of appeals.

25-A. Overriding effect, the provisions of this Act shall have overriding effect notwithstanding anything to the contrary contained in any other Law for the time being in force".

25-B. Indemnity. No suit, prosecution or other legal proceedings shall lie against any member or officer of the Authority or and other person for anything done in good faith in the performance of his duties or functions or exercise of powers under this Act".

26. Removal of difficulties.- If any difficulty arises in giving effect to any of the provisions of this Act, the Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be just and necessary for the purpose of removing the difficulty.

27. Power of the Government to make rules. The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

28. Power of the Authority to make regulations. The Authority may make regulations, not inconsistent with the provisions of this Act and the rules made there under, for carrying out the purposes of this Act.

Secretary
Balochistan Provincial Assembly