

# AZAD GOVERNMENT OF THE STATE OF JAMMU & KASHMIR

Law, Justice, Parliamentary Affairs and Human Rights Department

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“Muzaffarabad”

Dated: 21.03.2017

No. LD/Legis-Act/128-143/2017. The following Act of Assembly received the assent of the President on the 16<sup>th</sup> day of March 2017, is hereby published for general information.

## [Act VIII of 2017]

**An**

**Act**

to provide for the establishment of the Public Procurement Regulatory Authority in the Azad Jammu and Kashmir;

**Whereas**, it is expedient to provide for the establishment of the Public Procurement Regulatory Authority for regulating procurement of goods, services and works in the public sector and for matters connected therewith:

It is hereby enacted as follows:-

1. **Short title, Extent and Commencement.**— (1) This Act may be called the Azad Jammu and Kashmir Public Procurement Regulatory Authority Act, 2017.
  - (2) It extends to the whole of the Azad Jammu and Kashmir.
  - (3) It shall come into force at once.
2. **Definitions.**— In this Act,-
  - (a) “Authority” means the Azad Jammu and Kashmir Public Procurement Regulatory Authority established under Section 3;
  - (b) “Board” means the Board of Management constituted under Section 6;
  - (c) “Chairperson” means the Chairperson of the Board;
  - (d) “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official, bidder or contractor in the procurement process or in contract execution to the detriment of the procuring agency, or misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agency of the benefits of free and open competition and any request for, or solicitation of anything of value by any public official in the course of the exercise of his duty; it may include any of the following:

- (i) coercive practice by impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence the actions of a party to achieve a wrongful gain or to cause a wrongful loss to another party;
  - (ii) collusive practice by arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring agency to establish prices at artificial, non-competitive levels for any wrongful gain;
  - (iii) offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the acts of another party for wrongful gain;
  - (iv) any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (v) obstructive practice by harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit process;
- (e) “Fund” means the Public Procurement Fund;
  - (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 Azad Government of the State of Jammu and Kashmir;
  - (h) “Managing Director” means the Managing Director of the Board;
  - (i) “Member” means a member of the Board;

- (j) “Mis-procurement” means public procurement in contravention of any provision of the Act, rules, regulations, orders or instructions made there under or any other law in respect of, or relating to the public procurement;
- (k) “Prescribed” means prescribed by the rules made under this Act;
- (l) “Procuring Agency” means:
  - (i) a department, attached department of the Government;
  - (ii) an autonomous body or a special institution of the Government;
  - (iii) a court or tribunal financed by the Azad Jammu and Kashmir Consolidated Fund;
  - (iv) Azad Jammu and Kashmir Legislative Assembly;
  - (v) a local government;
  - (vi) a body corporate owned or controlled by the Government or a local government; or
  - (vii) a private organization financed by the Government or a local government where such finance is not less than five million rupees and constitutes not less than fifty percent of the expenditure of the organization in the financial year;
- (m) “Public Procurement” means procurement of goods, works or services by a procuring agency wholly or partly financed out of the Azad Jammu and Kashmir Consolidated Fund or the Public Account of the State or funds of a procuring agency;
- (n) “Regulations” means regulations made under this Act;
- (o) “Rules” means rules made under the Act;
- (p) “Services” includes physical, maintenance, professional, intellectual, consultancy or advisory services but does not include appointment of an individual to a post or office, advertisement, arbitration, conciliation or mediation services, services of an advocate in a court case or any other services specifically excluded under the rules;
- (q) “State” means the State of Azad Jammu and Kashmir; and
- (r) “Works” means a construction work adding consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, such as site preparation, excavation, installation of equipment or materials and decoration, finishing and includes incidental services such as drilling, mapping, satellite photography, seismic investigations and similar activities, if the value of those services does not exceed that of the works themselves.

3. **Establishment of Authority.**– (1) The Government shall, by notification, establish an Authority to be called the Azad Jammu and Kashmir Public Procurement Regulatory Authority for carrying out the purposes of this Act.
- (2) The Authority shall be a body corporate, having perpetual succession and common seal with power to enter into contract; and it may sue or be sued by the said name.
4. **Directions by the Government.**– The Government may issue directive to the Authority on a matter of policy and the directive shall be binding on the Authority.
5. **Functions and powers of the Authority.**– (1) The Authority may take measures and exercise powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement.
- (2) Subject to 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 revisions 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 public procurement;
  - (d) make regulations and lay down codes of ethics and procedures for public procurement, inspection or quality of goods, services and works;
  - (e) establish performance indicators for procurement performance of the Procuring Agencies and monitor compliance with these indicators through independent third party evaluation and make recommendations for improvement of procurement performance of the Procuring Agencies;
  - (f) issue guidance and instructions regarding the interpretation and implementation of this Act, rules and regulations;
  - (g) provide assistance and coordinate with the Procuring Agencies for developing and improving their institutional framework and public procurement activities;
  - (h) prepare standard documents to be used in connection with public procurement;
  - (i) present an annual report to the Government regarding the overall functioning of the public procurement system, including recommendations on measures to be taken by the Government to enhance the quality of procurement work;

- (j) call a functionary of a Procuring Agency to provide assistance in its functions and call for information from a Procuring Agency pursuant of its objectives and functions;
- (k) develop, promote and support training and professional development policy of officials and other persons engaged in public procurement; and
- (l) perform other function as may be assigned to it by the Government.

6. **Board**.– (1) The management and administration of the Authority shall vest in the Board.

(2) The Board shall consist of:-

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| (a) Chief Secretary   | Chairperson      |
| (b) Additional Chief Secretary (Gen.)   | Member           |
| (c) Additional Chief Secretary (Dev.)   | Member           |
| (d) Secretary Finance   | Member           |
| (e) Secretary Services and General Administration   | Member           |
| (f) Secretary Law   | Member           |
| (g) Secretary Communication and Works   | Member           |
| (h) Managing Director   | Secretary/Member |
| (i) Two Members of Azad Jammu and Kashmir Legislative Assembly to be nominated by the Government. |                  |
| (h) One Member from Chamber of Commerce and Industry.   |                  |

(3) A casual vacancy in the Board shall be filled through nomination by appropriate authority for the residue of the term of the outgoing Member.

(4) The existing of a vacancy in the constitution of the Board shall not invalidate an act or proceedings of the Board.

7. **Meeting of the Board**.– (1) The meetings of the Board shall be presided over by the Chairperson or in his absence by a member nominated by the Chairperson.

(2) Six Members shall constitute the quorum for a meeting of the Board.

(3) An *ex-officio* Member may nominate an officer, not below the rank of an Additional Secretary, to attend the meeting.

(4) The Board shall take decision by a simple majority of the Members present and voting.

(5) The Managing Director shall record the minutes of the meeting.

8. **Managing Director**.– (1) The Government shall appoint an *ex-officio* Managing Director of the Board for a period of three years on the terms and conditions as it may determine.

(2) The Government shall not vary, alter or modify the terms and conditions of service of the Managing Director during his term of office.

- (3) The Managing Director shall be responsible for day to day administration of the Authority.
- (4) The Managing Director shall be eligible for re-appointment but his total tenure shall not exceed six years.
- (5) The Government shall not appoint a person as the *ex-officio* Managing Director, if he,—
- a) has been convicted of an offence involving moral turpitude;
  - b) has been removed from a service for misconduct;
  - c) has been adjudged as un-discharged insolvent;
  - d) is incapable of discharging his duties by reasons of physical or mental incapacity in the opinion of a Medical Board constituted by the Government; or
  - e) has a conflict of interest with the Authority.
- (6) The Managing Director shall not have a direct or indirect financial interest or connection with a Company engaged in public procurement activity during the term of his office and for a period of one year thereafter.
- (7) The Managing Director shall,—
- 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 may be determined by the Board;
  - 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
  - f) act on behalf of the Authority, in any emergency, subject to the obligation to report the action to the Board at its next meeting and to seek ratification of his action.

- 9. Appointment and remuneration of the third party evaluation firms.**— (1) The Authority may appoint a firm for conducting a third party evaluation of public procurement contracts of a Procuring Agency against payment of appropriate remuneration.
- (2) Subject to sub-section (3), the criteria for the selection and appointment of a firm for third party evaluation shall be prescribed.
- (3) A firm that submitted bid for the award of a public procurement contract of a Procuring Agency shall not be eligible for appointment as evaluator of the contracts of the Procuring Agency.
- (4) The firm shall submit its evaluation report to the Authority.

10. **Training**.– The Authority shall formulate training policies and launch training programmes for the relevant personnel of the Procuring Agencies.
11. **Maintenance of website**.– (1) The Authority shall maintain a website for the procurement activities.
- (2) The Procuring Agency shall update the procurement activities on the website in the prescribed manner.
12. **Fund**.– (1) The Authority shall establish a Fund to be known as the Public Procurement Fund.
- (2) The sources of income of the Fund shall be,–
- a) grants made by the Government;
  - b) donations, endowments and grants from any individual or organization except from those dealing with public procurement;
  - c) income from investment by the Authority; and
  - d) all other sums or properties which may in any manner become payable to, or vest in the Authority.
- (3) The Authority shall keep, maintain and spend the Fund in the prescribed manner.
- (4) The Authority shall exercise prudence in all financial transactions.
- (5) The Authority shall spend the Fund for the purpose of,–
- a) paying an expenditure lawfully incurred by the Authority, relating to remuneration of its Members, employees, advisers 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 by the Authority in the performance of its functions or exercise of its powers;
  - c) purchasing or hiring equipment, machinery and any other work and undertakings in the performance of its functions or exercise of its powers;
  - d) payment of a financial obligation; and
  - e) payment of an expense for carrying out the provisions of this Act.
13. **Power to obtain finances and receive grants**.– The Authority may, with the approval of the Government, accept grants from entities both domestic and international, including multilateral agencies, except those connected with public procurements, for meeting its obligations or performing its functions.
14. **Investment**.– The Authority may invest its surplus funds in the prescribed manner.

15. **Budget and accounts.**– (1) The Managing Director shall maintain the accounts of the Authority in the prescribed manner.
- (2) The Managing Director shall prepare, 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 and current expenditures and the sums required by the Authority from the Government during the next financial year.
16. **Audit of the Authority.**– (1) The Government shall appoint a firm of chartered accountants for the annual audit of the accounts of the Authority.
- (2) Annual audit report of the accounts of the Authority shall be laid before the Board for approval.
17. **Information.**– (1) The Authority may call for an information required by it for carrying out the purposes of this Act, from a person or an institution concerned with the public procurement and the person or the institution shall provide the requisite information.
- (2) The Authority shall furnish information to the Government, as the Government may require.
18. **Blacklisting.**– (1) A Procuring Agency may, for a specified period and in the prescribed manner, debar a bidder or contractor from participating in any public procurement process of the procuring agency, if the bidder or contractor indulges in corrupt practice or any other prescribed practice.
- (2) The Managing Director may, in the prescribed manner, debar a bidder or contractor from participating in any public procurement process of all or some of the procuring agencies for a specified period.
- (3) Any person, aggrieved from a decision of a Procuring Agency, may within prescribed period prefer a representation before the Managing Director.
- (4) A Procuring Agency or any other person, aggrieved from a decision of the Managing Director, may within prescribed period prefer a representation before the Chairperson whose decision on such representation shall be final.
19. **Annual report.**– (1) The Authority shall, before the end of October, prepare its annual performance report of the preceding financial year which shall include inquiries and investigations made by the Authority during the financial year.
- (2) The Authority shall submit to the Government its annual audit report and the annual performance report.
- (3) The Government shall lay the annual audit report and the annual performance report in the Azad Jammu and Kashmir Legislative Assembly.



20. **Ethical considerations.**— A Procuring Agency shall observe ethical standards and principles of conduct as laid down by the Authority.
21. **Appointment of officers and staff, etc.**— The Authority may appoint such *ex-officio* officers, servants, advisers, consultants and experts, as it may consider necessary for performance of its functions in accordance with the criteria and procedure as may be provided in the Regulations.
22. **Members, officers, etc. to be the public servants.**— The Chairperson, Members, Managing Director, officers, servants, advisers, consultants and experts of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Act or the Rules and Regulations made there under, be deemed to be the public servants within the meaning of Section 21 of the Azad Penal Code, 1860 (XLV of 1860).
23. **Delegation.**— The Board may, by such conditions and limitations as it may deem fit to impose, delegate any of the functions or powers of the Authority to the Managing Director, or one or more Members or any of the officers of the Authority except the power to,—
- (a) approve audited accounts of the Authority;
  - (b) recommend exemption under Section 24; and
  - (c) make, amend or repeal Regulations.
24. **Exemption.**— (1) The Board may, for reasons to be recorded in writing, recommend to the Government to exempt any public procurement from the application of any Rule or Regulation made under this Act.
- (2) The Government may, on the recommendation of the Board and by notification, exempt application of any Rule or Regulation made under this Act in any public procurement by specifying alternate mode of the public procurement.
- (3) The notification under sub-section (2) shall immediately be published in the official Gazette and on the websites of the Government and the Authority.
25. **Indemnity.**— No suit, prosecution or other legal proceedings shall lie against the Authority, the Board, the Chairperson or any member, officer, servants, advisers or consultants of the Authority in respect of anything done in good faith in public interest or intended to be done under this Act, the Rules or the Regulations.
26. **Common seal.**— (1) The Managing Director or such other person, as the Chairperson may authorize, shall keep the common seal of the Authority.

(2) The seal shall be authenticated in the same manner as may be prescribed by Regulations and a document, pertaining to the public procurement, authenticated with the seal of the Authority shall be admissible as evidence of the contents of the document.

27. **Rules**.– The Government may, by notification, make rules for carrying out the purposes of this Act.
28. **Regulations**.– Subject to the provisions of this Act and the Rules, the Authority may make Regulations for giving effect to the provisions of this Act.

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**(Mehr-un-Nisa Qadri)**  
Section Officer (Legislation)