



# **THE NWFP PUBLIC PROCUREMENT GRIEVANCE REDRESSAL RULES 2008**

## **FINAL MECHANISM**

**Consultancy Services for  
Revision of the Procurement Law, Rules, Manuals and  
Standard Bidding Documents, and Development of a  
Complaint Redressal Mechanism in NWFP**



### **Submitted to:**

SAC Reforms Monitoring Unit,  
Finance Department, NWFP, Peshawar.

### **Submitted by:**

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8<sup>th</sup> March 2008

EXTRA ORDINARY ISSUE

REGISTERED NO.



**GOVERNMENT GAZETTE**  
**North-West Frontier Province**

PUBLISHED BY AUTHORITY  
PESHAWAR, <DAY>, <DATE>, <YEAR>

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**GOVERNMENT OF THE NORTH-WEST  
FRONTIER PROVINCE,  
FINANCE DEPARTMENT**

**NOTIFICATION**  
**<DATE>**

No. LEGIS: ---:-

**THE NORTH-WEST FRONTIER PROVINCE PUBLIC  
PROCUREMENT GRIEVANCES REDRESSAL RULES 2008.**

In exercise of the powers conferred by sections 29 and 34 of the North-West Frontier Province Public Procurement Ordinance, 2008 (NWFP Ordinance No. ---- of 2008), the Government of the North-West Frontier Province is pleased to make the following rules:-

**1. SHORT TITLE, EXTENT AND COMMENCEMENT**

- (1) These Rules shall be called the **North-West Frontier Province Public Procurement Grievance Redressal Rules, 2008**, and abbreviated as GR Rules.
- (2) These Rules extend to the entire North-West Frontier Province (NWFP).
- (3) These rules provide for grievance redressal, in public procurement of goods, works and services, and for institutional arrangements, thereof.
- (4) These rules shall come into force at once.

**2. DEFINITIONS**

- (1) In these GR Rules, unless there is anything repugnant in the subject or context,-

- (a) “Authority” means the North-West Frontier Province Public Procurement Regulatory Authority established under section 4 of the Ordinance;
- (b) “bidder” means, a contractor, supplier, vendor or consultant who offers his services for procurement of works, goods or services in response to bid solicitation by a procuring entity;
- (c) “best evaluated bid” means the highest ranking bid in accordance with the evaluation criteria set forth in the bid solicitation documents for procurement of goods and services. For procurement of works, the lowest responsive evaluated bid will be the ‘best evaluated bid’.
- (d) “bidding” means the part of procurement process under which sealed bids are invited, received, examined and evaluated for the purpose of awarding a contract;
- (e) “Chief Officer Grievance Redressal”, hereinafter referred as ‘Chief Officer GR’, means the head of the organization that is Secretary of the administrative department or Chairman / MD / CEO of an autonomous or semi autonomous organization under the administrative control of Government;
- (f) “consultant” means a person, a firm, company or an organization undertaking supply of services;
- (g) “contract” means a contract as defined in the Contract Act, 1872;
- (h) “contractor” mean a person, a firm, company or an organization undertaking supply of goods or works;
- (i) “goods” means articles and objects of every kind and description including raw materials, intermediate inputs, finished goods, products, equipment, computers, machinery, spares and commodities in solid, liquid or gaseous form, 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;
- (j) “ Government” means the Government of the North–West Frontier Province;
- (k) “grievances redressal process” means representation through a complaint as provided in GR Rule 4 and also includes appeals as provided in GR Rule 5;
- (l) “ Managing Director “ means the Managing Director of the Authority;
- (m) “ mis-procurement” means public procurement in contravention of any provision of the Ordinance 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;
- (n) “Ordinance” means the North West Frontier Province Public Procurement Ordinance 2008;

- (o) “performance of contract” refers to the performance of the provisions of contract between a procuring entity and a consultant / contractor and includes execution and implementation;
  - (p) “procuring entity” means-
    - (i) a Department or any Office of Government including a project unit, or
    - (ii) any Board, Commission, Council or other bodies established by or under a provincial law, or
    - (iii) semi autonomous or autonomous bodies which are owned or controlled by Government;
  - (q) “Public Fund” means the following:
    - (i) Provincial Consolidated Fund;
    - (ii) foreign assistance;
    - (iii) all moneys standing in the Public Account; and
    - (iv) funds of enterprises wholly or partly owned or managed or controlled by Government;
  - (r) “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 Public Fund by any procuring entity;
  - (s) “services” means any object of procurement which does not constitute procurement of works or goods and includes consulting services ;
  - (t) “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
  - (u) “works” means any construction work consisting of erection, assembly, repair, renovation or demolition of a building or structure or part thereof, 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.
- (2) All other words and expressions used in these rules but not defined shall have the same meanings as assigned to them in the Ordinance.
  - (3) Words, expressions and terms not specifically defined in the Ordinance and the rules there-under shall carry the same meanings as attributed to them in relevant trade and industry practices.

### **3. GRIEVANCE REDRESSAL MECHANISM**

- (1) A two-tier grievance redressal mechanism shall be established in accordance with the Ordinance as follows:
  - (a) at the Procuring Entity level and
  - (b) at the NWFP Public Procurement Regulatory Authority.

- (2) The GR Rules shall provide for a mechanism and procedures for grievance redressal to be notified within 90 days of the promulgation of the Ordinance.

#### **4. GRIEVANCE HANDLING AT THE PROCURING ENTITY**

- (1) A bidder aggrieved by an act of the Procuring Entity in a particular procurement process, may file a complaint in writing to the head of Procuring Entity in accordance with the prescribed procedures.
- (2) A complaint to be valid shall pertain to mis-procurement or violation of Ordinance by a Procuring Entity.
- (3) No anonymous complaint shall be processed.
- (4) A complaint may also be made if the evaluation of bids or award of contract is based on incorrect presentation in the bid, expression of interest, proposals or any other representation furnished to the Procuring Entity.
- (5) A complaint may be made after the announcement of the bid evaluation or the consequent determination of the best evaluated bid but shall be made prior to the award of contract;  
***Provided*** that the Procuring Entity shall ensure that the award of contract is made according to the period stipulated in section 25 of the Ordinance.
- (6) The redressal of such complaints shall be carried out in an efficient and equitable manner in accordance with the procedures specified hereunder.
- (7) The Procuring Entity shall constitute a Grievance Redressal Committee (GR Committee) comprising odd number of members, with powers and authorizations as provided in these rules, to address the complaints of bidders that may be made prior to the coming into force of the particular procurement contract. The odd number of the committee members shall be determined by the Chief Officer GR in relation to the value and complexity of the contracts.
- (8) The Chairman of the GR Committee will be senior to the bid evaluator while members of the GR Committee will be senior or equivalent in rank.
- (9) The mere fact of lodging of a complaint shall not warrant suspension of the procurement process.
- (10) The GR Committee may, on the basis of preliminary assessment of the evidence, advise the Head of the Procuring Entity to stay award of the contract till the decision of the GR Committee;  
***Provided that such advice shall be given in exceptional cases if there is ample and convincing evidence on record or made available by the complainant/bidder.***
- (11) The GR Committee shall investigate and decide upon the complaint within ten days.
- (12) The Chief Officer GR of the Procuring Entity shall ensure implementation of the decision of the Committee.
- (13) Decision at the Procuring Entity in accordance with sub-rules (11) and (12) shall be conveyed to the complainant/bidder through a verbal and written order giving detailed reasons for the same. However, the

announcement of the order shall be followed by the written order in not more than 5 days.

- (14) A consultant / contractor performing a contract may also file a complaint against any specific non-adherence or violation of a contractual provision by the procuring entity including non-payment within the stipulated period or deliberate / non-deliberate delay caused by the procuring entity hindering / hampering the consultant / contractor in performance of a contract.
- (15) All provisions of this rule shall apply to the redressal of complaints under sub-rule (14) of rule 4.

**5. GRIEVANCE HANDLING AT THE NWFP PUBLIC PROCUREMENT REGULATORY AUTHORITY**

- (1) A bidder may lodge an appeal with the Managing Director of the Authority against a decision of the Procuring Entity within fifteen days of the impugned decision.
- (2) An unsuccessful bidder may file a complaint directly with the Managing Director of the Authority against the award of a contract by a Procuring Entity within fifteen days of the award of the contract.
- (3) Complaint/appeal as above may be lodged on any of the ground(s) mentioned in GR Rule 4 or if there is a violation of any provision of the Ordinance or if there is mis-procurement or if any grievance arises during performance of a contract.
- (4) A complaint/appeal may also be lodged / filed if the evaluation of bids or award of contract is based on incorrect presentation in the bid, expression of interest, proposals or any other representation furnished to the Procuring Entity.
- (5) On a decision of the procuring entity to debar a contractor or a consultant, the appeal can be lodged / filed with the MD of the authority which shall refer the same to the referee or a group of referee as may be the case, and whose decision either to uphold the debarment or to set it aside, shall be communicated by the MD, right after the same has been received by him, in the manner prescribed in these Rules for complaints / appeals.
- (6) A complaint/appeal on any ground mentioned in GR Rule 4 and this rule shall be lodged / filed on payment of fee which shall not exceed 0.1 % of the value of the contract.
- (7) No anonymous complaint/appeal shall be entertained.

**6. PROCEDURES FOR HANDLING APPEALS / COMPLAINTS**

- (1) The Managing Director shall refer each such complaint/appeal to a panel of eminent referees and shall designate the panelist(s) to be the referee(s) for a particular complaint/appeal ensuring neutrality, relevance and obviating conflict of interest.
- (2) The Managing Director may nominate one or more referees for each reference on the basis of value and complexity of contracts / cases.

- (3) The disposal of all such complaints/appeals shall be carried out in an efficient and equitable manner within fifteen days.
- (4) The procedure to be followed by a referee shall be prescribed by the Authority. The Authority will issue detailed business procedure for the referees.
- (5) The referees shall be paid market-related compensation for services rendered.
- (6) The referee shall follow laid down procedures and reduce proceedings into writing, in detail.
- (7) The referee shall convey the findings/conclusions and recommendations to the Managing Director giving detailed reasons. The detailed record of proceedings, evidences and relevant documents shall also be forwarded along-with it.
- (8) The complainant / appellant and the concerned Procuring Entity shall have a right to be represented and heard in person during these proceedings.
- (9) The Managing Director will forward the same to the concerned quarters. In case of an appeal against the decision, the MD may seek another opinion from a different referee / set of referees as may be the case, which shall be the final decision of PPRA, to be communicated by the MD. The second recommendation shall be binding upon the MD for confirmation.
- (10) The record of the proceedings of the referees will also be maintained by the Authority.

**7. GRIEVANCE HANDLING AT THE BOARD OF DIRECTORS OF THE AUTHORITY**

- (1) The panel of referees drawn up by the Managing Director will be submitted to the Board of Directors for consideration.
- (2) The Board may approve the panel as recommended by the Managing Director or amend the panel by inclusion or exclusion.
- (3) The Board may appoint a committee comprising three or more Directors of the Board to take decision on its behalf.

**8. BINDING NATURE OF THE DECISIONS**

- (1) The decision of the Authority in accordance with sub sections (4) and (10) of section 29 of the Ordinance and the GR Rules shall be binding upon the Complainant/ Appellant as well as the Procuring Entity.
- (2) It will include compensation to the Complainant/Appellant for the associated costs as well as financial loss, which shall be paid by the Procuring Entity.
- (3) Cancellation of the contract shall be ordered if there has been any violation of the evaluation criteria, invalid evaluation or misrepresentation of facts or credentials in terms of the above provisions.
- (4) Specific relief shall be provided to the Complainant / Appellant for contractual issues during performance of contract or other issues as provided in GR Rules 4 and 5.

- (5) On receiving an unambiguous complaint, if at any time it is determined by the Authority that the consultant/ contractor has engaged in such practices as listed above or in section 30 of the Ordinance in competing for or in securing a contract or in executing a contract, the Authority will recommend to the Procuring Entity to declare the consultant /contractor not to be awarded a contract in future, either indefinitely or for a stated period of time.

## **9. PANEL OF REFEREES**

- (1) The panel of referees shall be drawn up by the Managing Director of the Authority in consultation with major Procuring Entities.
- (2) The Managing Director will ensure that experts/managers of the required disciplines/subjects are included in the panel.
- (3) The panel of referees recommended by the Managing Director will require approval of the Board which may amend the panel by inclusion or exclusion.
- (4) The panel shall comprise eminent management consultants, retired senior civil servants and reputed professionals with fifteen years post-qualification experience including five years experience of public sector management and procurement and expertise in public procurement law.
- (5) The referees shall be appointed on such terms and conditions as the Government may determine from time to time;  
*Provided that market-related compensation is paid for services rendered.*
- (6) The appointment and composition of the panel of referees will be notified and given wide publicity in media.

## **10. RIGHTS OF THE BIDDER, THE COMPLAINANT OR THE APPELLANT**

- (1) The Complainant/Appellant shall have a right to be heard in person at least once during the reference proceedings.
- (2) The Appellant/unsuccesful bidder retains the right to contest the decision of the Authority in the relevant High Court having jurisdiction if the value of the contract exceeds a value as prescribed by Government.
- (3) During the performance of a contract, the consultant/ contractor/ bidder may submit petition the Authority on any dispute that may arise with the Procuring Entity on account of interpretation of the Ordinance or provisions of the bid solicitation documents including payment within the prescribed / stipulated period or any other ground mentioned in GR Rules 4, 5 and 8;  
**Provided that** such petitions will be inadmissible for contracts amounting upto Rs. 100,000 or as maybe notified by Government from time to time.

## **11. AWARENESS AND TRAINING**

- (1) The PPRA and the procuring entities shall widely circulate these GR Rules through electronic and print media.



(2) The PPRA shall be responsible for creating public awareness as a regular feature.

(3) The PPRA shall institute training and take all appropriate steps to create and augment capacity in the PPRA itself and the procuring entities.

***Provided*** that, till the establishment of PPRA, the Finance Department may take necessary steps for dissemination to the public at large and training of the procuring entities.