

C O N F I D E N T I A L

Not to be released for publication in the press before presentation to the Assembly

PROVINCIAL ASSEMBLY OF THE PUNJAB

REPORT OF THE STANDING COMMITTEE ON SERVICES AND GENERAL ADMINISTRATION REGARDING THE PUNJAB PROCUREMENT REGULATORY AUTHORITY (AMENDMENT) BILL 2015 (BILL NO.7 OF 2016)

The Punjab Procurement Regulatory Authority (Amendment) Bill 2015 (Bill No.7 of 2016) was referred to the Standing Committee on Services and General Administration on 1st February 2016. The Committee considered the Bill in its meetings held on 8 and 15 February 2016.

2. The following were present:—

- | | | |
|----|---|--------------------------|
| 1. | Bao Akhtar Ali, MPA (PP-144) | Chairman |
| 2. | Ch Ali Asghar Manda, Advocate, MPA (PP-165)/
Parliamentary Secretary for S&GAD
(attended on 15 February 2016) | <i>ex-officio</i> Member |
| 3. | Mr Muhammad Naeem Safdar Ansari, MPA (PP-177)
(attended on 8 February 2016) | Member |
| 4. | Mrs Gulnaz Shahzadi, MPA (W-329)
(attended on 15 February 2016) | Member |
| 5. | Mrs Shabeena Zikria Butt, MPA (W-326)
(attended on 15 February 2016) | Member |
| 6. | Mr Muhammad Umar Jaffar, MPA (PP-293)
(attended on 15 February 2016) | Member |
| 7. | Dr Salah-ud-Din Khan, MPA (PP-44) | Member |

3. Mr Zaman Wattoo, Additional Secretary (I&C), Services and General Administration Department and Mr Mohsin Abbas Syed, Director, Law and Parliamentary Affairs Department represented their Departments. Hafiz Muhammad Shafiq Adil, Special Secretary, Provincial Assembly of the Punjab functioned as Secretary to the Committee.

4. Dr Arshad Mahmood, Managing Director, the Punjab Procurement Regulatory Authority apprised the Committee about the aims and objects of the Bill. He said that it was necessary to amend the Punjab Procurement Regulatory Authority Act 2009 (VIII of 2009) to exclude the private sector organizations from the definition 'procuring agency'; to limit the scope of 'services'; to refine the exemption clause; and to deal with other matters. He requested the Committee that the Bill, as introduced, may be recommended for the passage by the Assembly.

5. The Committee after hearing the Members, having the view point of the Administrative Department & Law and Parliamentary Affairs Department and discussing various points, unanimously decided to recommend that the Bill may be passed by the Assembly subject to the following amendments:-

AMENDMENTS IN THE BILL

(1) CLAUSE 1

in sub clause (1), the expression "2015" be substituted by the expression "2016".

(2) CLAUSE 4

in the marginal heading the words "Amendment in" be substituted by the words "Substitution of".

6. A copy of the Bill as introduced in the Assembly is at Annexure-A and a copy of the Bill as recommended by the Standing Committee on Services and General Administration is at Annexure-B.

Lahore
15 February 2016

(BAO AKHTAR ALI)
Chairman
Standing Committee on Services and General Administration

Lahore
15 February 2016

Mumtaz Hussain Babar
18/2/2016
(RAI MUMTAZ HUSSAIN BABAR)
Secretary

ANNEXURE - A

(BILL AS INTRODUCED IN THE ASSEMBLY)

PROVINCIAL ASSEMBLY OF THE PUNJAB

Bill No. 7 of 2016

**THE PUNJAB PROCUREMENT REGULATORY AUTHORITY
(AMENDMENT) BILL 2015**

A
Bill

to amend the Punjab Procurement Regulatory Authority Act 2009.

It is necessary to amend the Punjab Procurement Regulatory Authority Act 2009 (*VIII of 2009*) to exclude the private sector organizations from the definition 'procuring agency'; to limit the scope of 'services'; to refine the exemption clause; and to deal with other matters.

Be it enacted by Provincial Assembly of the Punjab as follows:

1. Short title and commencement.— (1) This Act may be cited as the Punjab Procurement Regulatory Authority (Amendment) Act 2015.

(2) It shall come into force at once.

2. Amendment in section 2 of Act VIII of 2009.— In the Punjab Procurement Regulatory Authority Act 2009 (*VIII of 2009*), for brevity cited as 'the said Act', in section 2:

(a) for clause (d), the following shall be substituted:

"(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, noncompetitive 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;";
- (b) for clause (l), the following shall be substituted:
- (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 Provincial Consolidated Fund;
 - (iv) Provincial Assembly of the Punjab;
 - (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;";
- (c) clause (m) shall be omitted;
- (d) for clause (n), the following shall be substituted:
- (n) "public procurement" means procurement of goods, works or services by a procuring agency wholly or partly financed out of the Provincial Consolidated Fund or the Public Account of the Province or funds of a procuring agency;"; and
- (e) for clause (q), the following shall be substituted:

"(q) "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;"

3. Insertion of section 17A in Act VIII of 2009.— In the said Act, after section 17, the following section 17A shall be inserted:

"17A. 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."

4. Amendment in section 23 of Act VIII of 2009.— In the said Act, for section 23, the following shall be substituted:

"23. 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 the Act in any public procurement by specifying alternate mode of the public procurement.

(3) The notification under subsection (2) shall immediately be published in the official Gazette and on the websites of the Government and the Authority."

5. Repeal.— The Punjab Procurement Regulatory Authority (Amendment) Ordinance, 2015 (III of 2016) is hereby repealed.

MINISTER INCHARGE

Lahore:
1st February 2016

RAI MUMTAZ HUSSAIN BABAR
Secretary

ANNEXURE B

**(BILL AS RECOMMENDED BY STANDING COMMITTEE ON
SERVICES AND GENERAL ADMINISTRATION)**

A
Bill

to amend the Punjab Procurement Regulatory Authority Act 2009.

It is necessary to amend the Punjab Procurement Regulatory Authority Act 2009 (*VIII of 2009*) to exclude the private sector organizations from the definition 'procuring agency'; to limit the scope of 'services'; to refine the exemption clause; and to deal with other matters.

Be it enacted by Provincial Assembly of the Punjab as follows:

1. Short title and commencement.— (1) This Act may be cited as the Punjab Procurement Regulatory Authority (Amendment) Act 2016.

(2) It shall come into force at once.

2. Amendment in section 2 of Act VIII of 2009.— In the Punjab Procurement Regulatory Authority Act 2009 (*VIII of 2009*), for brevity cited as 'the said Act', in section 2:

(a) for clause (d), the following shall be substituted:

"(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 (including or not including 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, noncompetitive 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;”;
- (b) for clause (l), the following shall be substituted:
 “(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 Provincial Consolidated Fund;
 (iv) Provincial Assembly of the Punjab;
 (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;”;
- (c) clause (m) shall be omitted;
- (d) for clause (n), the following shall be substituted:
 “(n) “public procurement” means procurement of goods, works or services by a procuring agency wholly or partly financed out of the Provincial Consolidated Fund or the Public Account of the Province or funds of a procuring agency;”;
- (e) for clause (q), the following shall be substituted:
 “(q) “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;”.

3. Insertion of section 17A in Act VIII of 2009.— In the said Act, after section 17, the following section 17A shall be inserted:

“17A. 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."

4. Substitution of section 23 of Act VIII of 2009.— In the said Act, for section 23, the following shall be substituted:

"23. 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 the Act in any public procurement by specifying alternate mode of the public procurement.

(3) The notification under subsection (2) shall immediately be published in the official Gazette and on the websites of the Government and the Authority."

5. Repeal.— The Punjab Procurement Regulatory Authority (Amendment) Ordinance, 2015 (III of 2016) is hereby repealed.
