

EXTRAORDINARY

REGISTERED NO. P.III

GOVERNMENT

GAZETTE



KHYBER PAKHTUNKHWA

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**Government of Khyber Pakhtunkhwa,
Khyber Pakhtunkhwa Public Procurement Regulatory Authority**

NOTIFICATION

Dated Peshawar, the Nov 30, 2017

No. KPPRA/M&E/Estt:/1-9/2017: In pursuance of Rule 2(g) of Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014 and Rule 5, 6, 7 & 10 of the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017, the Authority with the approval of Board of Directors of KPPRA, hereby notify the following Guidelines for Grievance Redressal in Public Procurement:

Guidelines for Grievance Redressal in Public Procurement

1. Government of Khyber Pakhtunkhwa has put in place a comprehensive system for public procurement through enactment of Khyber Pakhtunkhwa Public Procurement Regulatory Authority Act, 2012, framing of Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014 and notifying Standard Bidding Documents to get Value for Money by employing principles of economy, efficiency, timeliness, fairness, competitiveness, equal opportunities for all, transparency, accountability and swift grievance handling. The Khyber Pakhtunkhwa Public Procurement Regulatory Authority has been established to function as regulatory, advisory and appellate body for grievance redressal in public procurement. Section-35 of the Act provides for a two-tier Grievance Redressal Mechanism: first, filing a complaint to the Head of the Procuring Entity and second, filing an appeal to the Authority against the decision of the Procuring Entity within fifteen (15) days, in the prescribed manner, with the stipulation that the decision of the Authority on the appeal shall be final. The Khyber Pakhtunkhwa Public Procurement of Goods, Works and Services Rules, 2014

define “Grievance Redressal Mechanism” as to mean the regulations/guidelines providing for grievance redressal process, and specifically mention the right of appeal of the bidder against his disqualification, and complaint to the Administrative Secretary against his debarment/blacklisting by the Procuring Entity, in the prescribed manner. The provincial government has further framed Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017, hereinafter referred to as ‘GR Rules’, for carrying out the provisions of the Act. These rules obligate the Authority to issue guidelines and procedure for implementation and operation of the rules. Accordingly, the following guidelines are issued on the subject.

Filing of complaint and its processing and disposal at the level of Procuring Entity:-

2. **Procedure at the level of Procuring Entity:** A complaint pertaining to public procurement may be filed by the complainant with Grievance Redressal Officer of the Procuring Entity in accordance with provisions of Rule-3 of the GR Rules. The complaint shall be restricted to the grounds mentioned in Rule-4 of the said Rules. The Procuring Entity shall process and dispose of the complaint in accordance with Rule-5 of the said Rules.

Lodging of appeal and its processing and disposal at the level of Authority:-

3. **Submission of appeal:** An appeal pertaining to public procurement may be lodged with the Managing Director, KPPRA on behalf of the Authority on the grounds specified in sub-rule (1) of Rule-7 of the GR Rules and shall be accompanied by proof of payment of fee referred to in sub-rule (2) of the said rule.
4. **Memorandum of appeal:** A memorandum of appeal shall be presented in the **Form No.1** and shall state:
 - (i) the name and address of the appellant;
 - (ii) the name and address of the necessary respondents;
 - (iii) the grounds of appeal under distinct heads in concise manner, but without any argument or narrative; and
 - (iv) prayer, and interim relief if any.
5. **Procedure of filing of appeal:** The following procedure shall be followed for filing of appeal:
 - (a) A memorandum of appeal may be presented to the Managing Director by the appellant in person or his representative duly authorized by him in the **Form No.2**, during office hours, or may be sent by the appellant by a registered post or courier service to that office.
 - (b) The appellant shall sign and put his thumb impression on the memorandum of appeal.

- (c) A memorandum of appeal sent by post or courier shall be deemed to have been presented to the Authority on the date of its receipt in the office.
 - (d) The Managing Director shall, on the day of receipt, refer the memorandum of appeal to the Registrar of Appeals who shall endorse on the same the date on which it has been presented or is deemed to have been presented and shall sign the endorsement thereof.
6. **Number of copies of memorandum of appeal to be presented:** The appellant shall submit the following number of copies of the memorandum of appeal to the Managing Director:
- (i) initially one copy for preliminary scrutiny and record; and on admission of the appeal;
 - (ii) a copy each for the Technical Assistant(s); and
 - (iii) a copy each for the respondents in the appeal.
7. **Documents to be attached with memorandum of appeal:** The memorandum of appeal shall be accompanied by the following documents:
- (i) A certified or photostat copy of the order of the Procuring Entity by which the appellant is aggrieved in the first instance and has made a complaint against.
 - (ii) A certified or photo-stat copy of the complaint made to the Procuring Entity.
 - (iii) A certified or photo-stat copy of the order passed by the Procuring Entity on the complaint, if any.
 - (iv) An affidavit to assert the relevant facts or statements, where the appellant, for reasons beyond his control, is not in a position to furnish a certified or photostat copy of the order of the Procuring Entity or where the appeal is based on a statement of a decision, action or omission of the Procuring Entity.
 - (v) Copies of the documents on which the appellant wishes to rely.
 - (vi) Proof of having deposited the prescribed fee for filing of the appeal.
8. **Preliminary scrutiny:** The Registrar of Appeals shall, after acknowledgement of the appeal, conduct preliminary scrutiny of the appeal in the following manner:
- (a) He shall determine whether the appeal is:
 - (i) in the prescribed form and accompanied by the documents mentioned at clause No.7 above;
 - (ii) affixed with signature and thumb impression of the appellant;

- (iii) based on grounds on which appeal can lie under the GR Rules;
 - (iv) within the limitation period, as prescribed under section 35 of the KPPRA Act, 2012 or whether the appellant has given sufficient cause for not preferring the appeal within the limitation period;
 - (v) making only the relevant and necessary persons as respondents;
 - (vi) within the appellate jurisdiction of the Authority; and
 - (vii) in compliance with other relevant points affecting admissibility of the appeal.
- (b) He shall hear the appellant or his authorized representative in case it is contemplated to recommend the appeal for rejection, and finalize his recommendation in the case.
- (c) On the basis of the preliminary scrutiny, the Registrar of Appeals shall proceed as follows:
- (i) fix the appeal for hearing; or
 - (ii) permit the appellant to resubmit the memorandum of appeal or produce necessary document and thereafter send the appeal for hearing; or
 - (iii) recommend to the Managing Director that the appeal, before its admission may be rejected on the grounds specified by him.
- (d) The Registrar of Appeals shall promptly submit the appeal along with result of the preliminary scrutiny to the Managing Director.
- (e) In case, the appeal is recommended for rejection, the Managing Director shall examine the case and decide about the rejection or admission of the appeal along with recording the reasons thereof.
- (f) The decision of the Managing Director about the rejection or admission of the appeal shall be final, and conveyed to the appellant by the Registrar of Appeals.

9. Nomination of Technical Assistant or Panel of Technical Assistants for the appeal:

Nomination of a Technical Assistant or a panel of Technical Assistants for hearing of the appeal shall be made in the following manner:

- (a) On receipt of the appeal from the Registrar of Appeals, the Managing Director shall nominate a Technical Assistant or a panel of Technical Assistants in accordance with sub-rule (2) of Rule-10 of the GR Rules, for hearing of the appeal.

- (b) In case the Technical Assistant(s) declare his/their conflict of interest or inability as per sub-rule (3) of Rule-10 of the GR Rules, the Managing Director shall amend the nomination order to remove the conflict or the inability.

10. Issue of summon and production order: The issue of summon and production order shall be made in the following manner:

- (a) On finalization of the nomination order and its communication, the Technical Assistant(s) shall order the issue of:
 - (i) summons in the **Form No.3** to the appellant and **Form No.4** to the respondents; and
 - (ii) production order of the record considered necessary by the Technical Assistant(s) for hearing and disposal of the appeal.
- (b) The summons to the respondents shall be accompanied with a copy of the memorandum of appeal and its enclosures.
- (c) A summon shall be served by:
 - (i) Tendering or delivering its copy to the person summoned or his duly authorized representative, or
 - (ii) Sending through official channels of communication, if the person summoned is an employee of Government or Public Sector Organization.
- (d) A summon may be sent through a registered post, courier or messenger, or digital means if proper address is available for the purpose; provided that an acknowledgement purporting to be signed by the respondent or an endorsement by the postal or courier service that the respondent refused to take the delivery may be deemed to be prima facie proof of service.

11. Issue of interlocutory order: The Technical Assistant(s) may issue interlocutory order in accordance with provisions of sub-rule (4) of Rule-10 of the GR Rules which shall be promptly conveyed to the Procuring Entity for compliance.

12. Submission of response: The respondent may submit written response to the memorandum of appeal together with documents relied on to the Registrar of Appeals, prior to or on the day of hearing specified in the summon, or may choose to present his response verbally during hearing of the appeal.

13. Production of documents: The parties shall produce the requisite documents by the due date in compliance with the production order, if any. In case of failure to produce the requisite documents, the Technical Assistant(s) may draw appropriate assumptions and proceed with the case accordingly.

14. **Attendance at the hearing:** On the day set for hearing of the appeal for which due summon has been issued and served, the parties shall appear in person or through a representative duly authorized in the **Form No.2**.
15. **Absence of Parties at hearing:** At hearing of the appeal, after service of the summons on the parties,
- (i) if the appellant or his authorized representative appears and the respondent or his authorized representative fails to appear, the hearing shall be proceeded with ex-parte unless the Technical Assistant(s) deems it fit to adjourn the case;
 - (ii) if the respondent or his authorized representative appears and the appellant or his authorized representative fails to appear, the appeal shall be dismissed unless the Technical Assistant(s) deems it fit to adjourn the case; and
 - (iii) if both the parties fail to appear, the appeal shall be dismissed.
16. **Procedure at the hearing:** At hearing of the appeal, unless decided otherwise by the Technical Assistant(s), the appellant shall be given the first opportunity to present the case, including evidence by the witnesses, if any, in support of the appeal and the respondent shall be given an opportunity to reply thereto.
17. **Consolidation of appeals:** Where two or more appeals arising from the same bidding or procurement process are instituted, the Technical Assistant(s) may consolidate the appeals and hear them as if they were one appeal.
18. **Withdrawal of appeal:** An appeal may be withdrawn and the relevant parties and the Technical Assistant(s) informed thereof in accordance with provisions of Rule-11 of the GR Rules.
19. **Hearing of appeal:** The hearing of the appeal shall be conducted in the following manner:
- (a) The hearing shall commence at the place, date and time specified in the summons to the parties and shall be open to all parties to the appeal.
 - (b) The Technical Assistant(s) may, at hearing of the appeal, exclude any person from the hearing whom he deems is unruly, interruptive or otherwise conducts himself in an unreasonable manner.
20. **Adjournment:** The Technical Assistant(s) shall proceed with hearing of the appeal on day to day basis, except for the reasons to be recorded in writing, or adjournment may be granted on the request of the parties with convincing grounds, subject to such costs or other conditions as are considered appropriate by the Technical Assistant(s).
21. **Arguments:** The parties may, either personally or through authorized representatives, submit orally or in writing or in both, their arguments before the Technical

Assistant(s). The appellant shall not, except by leave of the Technical Assistant(s), urge or be heard in support of any ground not set forth in the memorandum of appeal.

22. **Compilation and submission of report:** After hearing the parties and examination of the relevant documents and evidence on record, the Technical Assistant(s) shall compile a report stating the concise facts of the case, the points of determination, findings thereon along with reasons and recommendations, including specific relief to the appellant or rectification or annulment of the procurement process by the Procuring Entity, and submit it to the Managing Director within prescribed period.
23. **Submission of report to Authority and its disposal:** The Authority or the Managing Director, as so authorized by it, may, after examining the report so submitted under sub-rule 8 of Rule 10 and taking into consideration the whole recourse, 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.
24. **Specific Powers of Authority:** Without any prejudice to their general powers, the Authority shall have powers to order provision of any specific relief to the appellant, rectification or annulment of the procurement process and endorse the recommendations for initiation of disciplinary and/or criminal proceedings against the defaulting employees of the Procuring Entity in accordance with the sub-rule 3 of the Rule 13 of GR Rules.
25. **Binding nature of decisions of Authority:** The decision of the Authority on the appeal shall be binding on the Procuring Entity, and non-compliance thereof shall, besides any other liability, constitute misconduct against the concerned employees of the Procuring Entity.

FORM No. 1

(See Clause No. 4 of the Guidelines on Public Procurement Grievance Redressal)

Memorandum of Appeal

Appeal before the Khyber Pakhtunkhwa Public Procurement Regulatory Authority

Appeal under the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017

1 (i) Name of the appellant

(ii) CNIC No.

(iii) Business/Official address

(iv) Residential address

(v) E. Mail address

(vi) Telephone contact No.

2. (i) Name(s) of the respondent(s)

(ii) Addresses of the Respondent(s)

(iii) E. Mail addresses of the Respondent(s)

(iv) Telephone No. of the Respondent(s)

3. Number and date of the order appealed against and name and designation of the officer / authority who passed the order, and/or a brief statement of the decision, action or omission of the procuring entity by which the appellant is aggrieved:

4. If the Appellant proposes to be represented by an authorized representative his name, CNIC No. and postal address:

5. Number and nature of affidavits furnished along with the appeal:

6. Grounds of appeal:

7. Prayer:

8. Interim relief, if any:

Place

Date

**Appellant's Signature and
Thumb Impression**

(Note: Use additional sheets if needed.)

FORM No. 2

(See Clause No. 5 and 17 of the Guidelines on Public Procurement Grievance Redressal)

Letter of Authorization

Appeal before the Khyber Pakhtunkhwa Public Procurement Regulatory Authority

Appeal under the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017

Title: (Name of the Appellant) vs. (Name of the Procuring Entity)

Appellant

Respondents

I have appointed Mr. /Ms.bearing CNIC No..... as my representative in the above stated appeal. I hereby authorize the said representative to file my appeal and/ or appear on my behalf and represent me in the proceedings before the Registrar of Appeals and/or the Technical Assistant(s). He/She shall have all powers on my behalf in connection with processing and hearing of the appeal, and to do all other acts necessary in connection with the appellate proceedings.

Signature of the Appellant / Respondent

Signature of the Representative

FORM No. 3

(See Clause No. 10 of the Guidelines on Public Procurement Grievance Redressal)

Summon to Appellant

Office of Registrar of Appeals, KPPRA, Main Office KPPRA, Khyber Road, Peshawar

(Appeal under the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017)

Appeal No..... of

Title: (Name of the Appellant) vs. (Name of the Procuring Entity)

Summon in the name of (Name and address of the appellant)

Whereas your appeal against the procurement proceedings (reference of the particular case, order, action or omission) of (name of the Procuring Entity) has been fixed for hearing before the Technical Assistant(s); you are hereby summoned to appear in the **Committee Room of Main Office, KPPRA, Khyber Road, Peshawar**, in person or by an authorized representative, along with relevant documents, and witnesses if any, on the day of 20.....

In case of failure to appear in person or by an authorized representative and/or to produce the relevant documents and witnesses, the appeal shall be heard and determined in your absence, on the basis of available record and evidence, in accordance with the GR Rules and the guidelines issued thereunder.

Given under my hand and the seal of the Technical Assistant(s), on this.....day of 20.....

Seal

Technical Assistant(s)

FORM No. 4

(See Clause No. 10 of the Guidelines on Public Procurement Grievance Redressal)

Summon to Respondent

Office of Registrar of Appeals, KPPRA, Main Office KPPRA, Khyber Road, Peshawar

(Appeal under the Khyber Pakhtunkhwa Public Procurement Grievance Redressal Rules, 2017)

Appeal No..... of

Title: (Name of the Appellant) vs. (Name of the Procuring Entity)

Summon in the name of (Name and address of the respondent)

Whereas (name of the appellant) has filed an appeal against the procurement proceedings (reference of the particular case, order, action or omission) of (name of the Procuring Entity) which is fixed for hearing before the Technical Assistant(s); (copy of memorandum of appeal and enclosures attached); you are hereby summoned to appear in the **Committee Room of Main Office, KPPRA, Khyber Road, Peshawar**, in person or by an authorized representative, along with relevant record of the case, and witnesses if any, on the day of 20.....

You shall also submit written response to the memorandum of appeal together with documents relied on to the Registrar of Appeals, KPPRA prior to or on the day of hearing specified in the summon, or may choose to present your response verbally during the hearing of the appeal.

In default of filing of reply and your appearance on the day before mentioned, the appeal shall be heard and determined in your absence, on the basis of available record and evidence, in accordance with the GR Rules and guidelines issued thereunder.

Given under my hand and the seal of the Technical Assistant(s), on this.....day of 20.....

Seal

Technical Assistant(s)

-Sd-

Managing Director

Khyber Pakhtunkhwa

Public Procurement Regulatory Authority