

"No one was ever lost on a straight road".

~ Punjabi Proverb

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Editor's Note: FLAW IN TIGHTENING THE NOOSE

Control over Regulatory Authorities has started to spill in the realm of strong gung-ho management or perhaps helpless in the face of the "flouting connected". This has more often than not forced the pulpit in the hierarchy to take a broad brush and smear the very form. This stands at cross purposes with the very concept of Regulatory environment, a fact this scribe has been underlining in this maze to no big effect. Be that as it may, let this come as another lost attempt. Regulation is not a new concept entirely; its reintroduction not very long ago may have been funded by the multilateral loan and grant giving organizations. Regulation of businesses existed in the ancient early Egyptian, Indian, Greek, and Roman civilizations. Standardized weights and measures existed to an extent in the ancient world, and gold may have operated to some degree as an international currency. In China, a national currency system existed and paper currency was invented. Sophisticated law existed in Ancient Rome. In the European Early Middle Ages, law, standardization, and the power of the state languished after the decline of Rome, but regulation existed in the form of norms, customs, and privileges.

A regulatory agency as a concept is a public authority or government agency responsible for exercising autonomous authority over some area of human activity in a regulatory or supervisory capacity. An independent regulatory agency is a regulatory agency that is independent from other branches or arms of the government. Regulatory agencies deal in the area of administrative law—regulation or rulemaking (codifying and enforcing rules and regulations and imposing supervision or oversight for the benefit of the public at large). Regulation is controlling human or societal behavior by rules or restrictions. Regulation can take many forms: legal restrictions promulgated by a government authority, self-regulation by an industry such as through a trade association, social regulation, co-regulation and market regulation. Let's not unleash whim for it sinks the concept.

Capacity Building Training Programs: June 8-9 and June 22-23, 2010:

In the month of June two capacity building training programs on "Public Procurement Rules & Procedures" were held on June 8-9, and June 22-23, 2010 at National Institute of Procurement (NIP). Some of the main procuring agencies benefited from this training program were PAF, PAC, KARF, AMF, NBP, IBA-Karachi, KPT, SSGC, Aik Humar Aik Nagar, Sukkur IBA, University of Balochistan, Pakistan Railways, MRF and FATA Secretariat Peshawar.



National Institute of Procurement seeks to involve the private sector in public procurement training and capacity building in the same vigor as it is duty bound to do so with the public sector. In fact without the private sector the efforts of the public sector would be incomplete and in pursuance of the same Mr. Zaheer Baig, Vice President Human Capital (Wi-tribe) was the Chief Guest in the final session held on 22-23 June 2010. He enlightened the participants with his valuable presentation on "Cultural Challenges" in organisational behaviours. Presentation by the Chief Guest was informative and engrossing. Being from the private sector his approach to the basic principles of procurement was refreshing; the participants understood the concepts of transparency, fair play and level playing field in a new light. In the end, Mr. Zaheer Baig distributed certificates among the participants followed by a group photo to make the occasion memorable.



"He who sacrifices his conscience to ambition burns a picture to obtain the ashes".

~ Chinese proverb



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Effectiveness of PP Rules and Bidders Grievances:

There is no denying to the fact that aggrieved party wants speedy and effective outcome in shape of justice. Same is true in case of bidders who approach PPRA regarding their grievances with procuring agencies. The PP Rule 48 is about the grievances redressal by the procuring agency. The complainants expect from PPRA to exert pressure on the non-compliant procuring agencies to ensure justice. PPRA management has assigned due importance to this critical area in keeping with the legal framework. Along with regular efforts the formal correspondence to all procuring agencies instructing them to form a grievance redressal committee has been made and reiterated time and again. To strengthen grievance redressal mechanism as provided under Rule 48 of Public Procurement Rules 2004, the procuring agencies were further advised that the Principal Accounting Officer as a next logical step should conduct an administrative review on the findings of complaint and take action. To date 120 procuring agencies have formed grievance redressal committees. For transparency and further facilitation of bidders the information received has been uploaded on PPRA website.

PPRA's response to complaints has been found by the bidders to be efficient and timely and within 24 hours the complaints are disposed off at PPRA's end. The same has been acknowledged by 71% of the survey respondents last year. Unfortunately the response from some of the procuring agencies is not as efficient and positive as it should have been. To overcome the issue of delay the reminders are issued from PPRA to procuring agencies to expedite the redressal of grievances.

The data of last few years reveals that consequent to PPRA endeavors the trust of private sector has increased on the Authority. The following graph is evidence to this claim as there has been significant rise in the number of complaints received in PPRA. The overall increase between 2005-06 and 09-10 has been phenomenal and particularly the last fiscal year (09-10) has witnessed unprecedented growth as 268 complaints were received and disposed off as compared to only 83 in the previous year. Similarly, the success rate has also improved and large numbers of complaints have been settled in response to PPRA actions.



Public-Private Partnership (P3) and PP Rules in Pakistan:

Public-private partnership (P3) is a government service or private business which is funded and operated through a partnership of government and one or more private sector companies. It involves a contract between a public sector authority and a private party, in which the private party provides a public service or project and assumes substantial financial, technical and operational risk in the project. It is a long-term contractual arrangement between the public sector and a private sector individual or entity for provision of some public service or infrastructure development with clear allocation of risks between the two parties.

The Economic Crisis of 70s led to rapid increase in public debt hence the need was felt to involve and encourage private investors in various fields to fill the resource gap. The private sector is attracted in P3 as the partnership with government reduces the risks. The PPP can take many shapes; however, one of them is more common i.e. Private finance initiative (PFI). The PFI is a way of creating "public-private partnerships" (PPPs) by funding public infrastructure projects with private capital. It is a procurement method which secures private funding for public institutions in return for part-privatization. PFI projects aim to deliver infrastructure on behalf of the public sector, together with the provision of associated services such as maintenance.

This methodology adopted in the modern world is based on public-private partnership, a venture funded and operated through partnership of the Government, and one or more private sector companies for investment in sectors like infrastructure and social sector projects such as roads, bridges and hospitals etc. In Pakistan, Infrastructure Project Development Facility (IPDF), a company has been set up by the Ministry of Finance under Section 42 of the

Companies Ordinance, 1984 to develop and promote Public-Private Partnership Projects (PPP). It had been argued by this company that its projects are not routine public procurements and hence they are outside the purview of PPRA Rules as the actual procurement of goods or services in the PPP projects is done by the private parties.

PPRA has been of the view that the procurements undertaken under the Public Private Partnership arrangement are covered under the Public Procurement Rules 2004 as the same are public procurements, which has been defined under Section 2(I) of the PPRA Ordinance as "acquisition of good, services or construction of any works financed wholly or partly out of the Public Fund, unless excluded otherwise by the Federal Government.

The issue of applicability of PP Rules on PPP projects had been discussed during different meetings between GOP established company IPDF established at Ministry of Finance and the PPRA. For a policy decision on the subject PPRA had presented this issue before its Board in 6th Meeting held on 12th Feb, 2008.

The Board discussed the matter and, after detailed deliberations, it was observed that public private partnership (PPP) projects may broadly be of the following two types:-

- PPP projects in which the Federal Government does not have any equity or ownership and procurements are made by the private party.
 - PPP projects in which the Federal Government and the private party have joint equity or ownership through a corporate body and procurements are made by such body.
- It was decided that PPRA Ordinance 2002 and PP Rules 2004 will not be applicable to the type (a) mentioned above, while type (b) above will be governed by the Ordinance and the Rules

PPRA Goings on:

- The inauguration ceremony of Dr. Mahbubul Haq Center "Executive Development Center" at FAST-National University of Computer & Emerging Sciences, Islamabad was attended by the Managing Director and Director (PPRA). The MD PPRA also gave a presentation on "PPRA ENFORCEMENT AND THE PRIVATE SECTOR".
- Representatives of Pakistan Petroleum, Karachi visited PPRA to understand PPRA rules in the light of their experience and problems confronted by the organization in their procurement practices.