



## Pakistan's Public Procurement Regime

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### 1. WHY WE NEED A PUBLIC PROCUREMENT REGIME?

Governments across the globe are spending a significant portion of their budgets on procurement. Public procurement spending is estimated to account for 15 percent of the world's GDP. Procurement is predominantly visible in developing countries with active infrastructure and social programs. Any attempt, therefore, to bring fiscal discipline by efficient allocation of resources and then pragmatically spending must consider procurement to be a fundamental part. Gains of a good public procurement framework make available additional resources for development and lead to better outcomes of expenditure by assigning the tasks to the best possible service provider. This eventually has a positive bearing on service delivery. Empirical evidence supports that procurement reforms improve spending efficiency by 1 percent of GDP. This means that this saving could be diverted to other pressing sectors like education, health, and municipal services. Thus, effective public procurement systems can help governments see better value for money, reduce pressure on public budgets, and leave agencies better prepared to invite private investments. Public funds are scarce and governments must invest with intention. Improving public procurement systems contributes to a vibrant private sector, helps governments get the most out of their investments, and supports growth. A developing country like Pakistan annually spends around 20 percent of GDP through this medium. This includes approximately 90 percent budget of public sector enterprises (PSEs). Therefore, it necessitates, without any doubt, that the associated governance structure should be fool proof and user-friendly.

### 2. PUBLIC PROCUREMENT REGULATORY AUTHORITY (PPRA)

The Public Procurement Regulatory Authority (PPRA) of Pakistan is an autonomous body endowed with the responsibility of prescribing regulations and procedures for public procurements by Federal Government owned public sector organisations intending to improve governance, management, transparency, accountability, and quality of public procurement of goods, works and services. It is also endowed with the responsibility of monitoring procurement by public sector agencies/organisations. The Federal Government created Public Procurement Regulatory Authority (PPRA) in 2002 through a Presidential Ordinance. Later, the government notified Public Procurement Rules (PPR) in 2004 followed by the enunciation of first set of public procurement regulations in 2008, and then consultancy services regulations in 2010.

### 3. HOW PPRA WAS CONCEIVED?

Historically, public procurement in Pakistan was traditionally regulated by three primary instruments as follows:

- The Purchase Manual of the defunct Department of Supplies and Disposal, which generally covered the purchase of commodities.
- The West Pakistan Building & Roads Department Code which governs the construction of buildings and roads and the hiring of consultants for this purpose.
- The General Financial Rules of the Federal Government and the delegation of financial power rules.

In the late 1990s, however, public procurement was now seen as a critical function of the state institutions as public procurement expenditure share continue to grow in the government expenditure. Following the World Bank's assessment of

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Pakistan's then procurement regime and recommendations put forward by the same on basis of this assessment, the Government of Pakistan worked upon introducing legislative and systemic reforms to the public procurement regime. Basically, the country Procurement Assessment Report (CPAR) of World Bank in 2000 concluded that procurement was characterised by (a) a plethora of different systems and procedures operating simultaneously, (b) lack of institutional capacity, and (c) lack of human resources adequately trained to implement the systems and procedures.

In this context, after the year 2000, Government of Pakistan (GOP) established Public Procurement Regulatory Authority (PPRA) through promulgation of Ordinance No. XXII of 2002 on 15 May 2002; Public Procurement Rules (PPR) in 2004; Public Procurement Regulations in 2008; and Public Procurement Regulations for Procurement of Consultancy Services in 2010. The Rules and Regulations, largely based on international best practices, are applicable to the procurement of goods, works and services by the federal government, state-owned enterprises and semi-autonomous organisations.

Following the federal regime, all provinces i.e. Balochistan, Sindh, Punjab and Khyber Pakhtunkhwa, and regions with special status - Gilgit Baltistan and Azad Jammu Kashmir (AJK), have also established their respective procurement authorities though, with slight variations but majorly all in line with the federal PPRA rules.

If we compare, the Sindh Public Procurement Rules are more exhaustive, they also provide an independent grievance redressal arrangement and a framework for regulating public-private partnership (PPP) procurements. The Punjab PPRA has adopted federal rules while Khyber Pakhtunkhwa has notified the NWFP Procurement of Goods, Works, Services, and Consultancy Services Rules. Punjab PPRA also exercised e-procurement, which is a very interesting case with respect to the future of procurement machinery. As for Balochistan, overall the province has followed the federal pattern. Whereas, in Azad Jammu and Kashmir, and Gilgit-Baltistan, procurement laws have not yet been introduced.

#### 4. CRITICAL EVALUATION OF PUBLIC PROCUREMENT IN PAKISTAN

Pakistan is losing over a trillion rupees in its public procurement, which can be saved through an effective and efficient procurement system. The system is generally stagnant over the years and no substantial development has been observed to enhance its efficacy. Over the years, PPRA rules have seen few amendments, but no significant changes have been made in the initial ordinance and consequent rules, thus, there remain many shortcomings and flaws despite nearly two decades since the authority was put in place.

The major criticism of the PPRA ordinance and rules is the lack of coherence between the two. While in actuality, the rules must be in line with the and following the spirit of the ordinance, the PPRA ordinance and rules seem like two documents on completely separate wavelengths. The ordinance, in many places, has been formed using vague terminologies with only the basic details including some unnecessary ones and lacks necessary explanations on many fronts.

The ordinance is also missing basic principles of the procurement regime, which instead have been mentioned in the rules. Including the rules of procurement in the ordinance will not only increase the worth of the ordinance, but also provide much needed legal framework and support to these principles. Additionally, no regulatory ideas that the rules shall follow have been discussed in the ordinance. The ordinance just establishes the procurement authority but fails to define the main regime of procurement, which must have been included in the ordinance to strengthen the base for the PPRA rules.

Among things that the ordinance and rules do include, a lot has been left to subjective interpretation which is highly problematic for any legal framework and guiding rules. This adds to the overall inconsistency of the procurement framework by creating a massive gap between the ordinance and consequent rules. The definition for corruption and fraudulent activities has neither been defined nor has it been linked to any specific corruption laws outside the framework of the PPRA ordinance. This creates a massive hurdle and bottleneck in procurement procedures due to a lack of clarity on what may come under the umbrella of corruption.

Basically, the PPRA ordinance and rules and regulation are extracted from the procurement manuals of the World Bank (WB) and Asian Development Bank (ADB). In fact, both the documents are a brief mixture of both the manuals of WB and ADB. Hence, removing many definitions, explanatory notes etc. leaving a space for subjective interpretation. Seems like the work was done in haste, or loopholes deliberately left for vested interests.

Besides, mis-procurement has been equated to corrupt and fraudulent activities. Without a clear definition of corruption otherwise, in addition to unclear approval mechanisms, terming mis-procurement as corrupt or fraudulent activities is not only problematic but also kills the efficiency and effectiveness of the rules. As a result, procurement officers would be most unwilling to approve procurements, and in cases where they would approve such procurements, the time costs attached will increase in a bid to ensure absolute compliance to the rules which though are not well-defined.

In parallel, there is a need to improve the bidding rules and procedures as well, as currently in case of a single bid at the first call of bids cannot be accepted regardless of its merits, but a single bid will automatically be awarded the contract if no other bids appear even during the second call. This causes a severe delay in such cases by not awarding single bidders the tender in the first

attempt as the entire process needs to be repeated. The option to negotiate a price with the winner after awarding of tender, while ensuring no exploitation is also lacking from the ordinance despite its possible benefits in reducing costs where possible.

Additionally, while the PPRA was envisioned to bring about robust and efficient reforms in the procurement regimes, the limitation on splitting or regrouping of proposals is a source of inefficiency in the current framework and needs to be looked upon. The lack of flexibility in the PPRA ordinance and rules despite it being aimed at ensuring efficiency and bringing about the greater public good reflects poorly on the performance of PPRA.

Furthermore, the concept of Public Private Partnerships is still in its formative phase at the national level. At the federal level, the regulatory and legal framework for the PPPs is not backed by legislation. The federal PPRA Rules are silent regarding PPP procurements. At the provincial level, however, some progress has been made in Sindh and the Punjab. Line departments at both federal and provincial level suffer from capacity constraints as there is dearth of professionals having expertise of managing PPP transactions. The private market for PPPs is also underdeveloped.

Another significant issue is that PPRA appears to be substantially understaffed vis-a-vis its scope of responsibilities. In the given backdrop, its functioning can be improved with due support and attention. Likewise, PPRA board is supposed to comprise 10 members, but positions of three private members seem to be vacant since long. Moreover, their role gets diluted when the PPRA ordinance says five members can complete the quorum.

Summing up, within public procurement domain of the country, many laws, rules and regulations are either non-existent or poorly implemented and enforced. Capability of the staff is low and accountability and transparency is often on need basis. Public procurement practitioners face challenges from both external and internal environments. The external environment comprises legal framework, political ecosystem, economic and business situation, socio-cultural atmosphere etc. The internal environment of the public procurement regime in Pakistan is related to three key factors: individuals who make procurement decisions; processes which provide guidance to the practitioners; and controls which ensure justice, transparency and accountability. For dealing effectually with the challenges coming from both these environment, it is vital that the public procurement regime of country must have specific institutions to oversee procurements, adequate independent control and audit mechanisms, proper balance between the financial audit and the performance audit and implementation of internal control mechanisms in procuring agencies.

## 5. THE WAY FORWARD

The public procurement regime, without any doubt, necessities comprehensive reforms. PPRA should be strengthened through operational independence and financial sustainability. To transform the PPRA into autonomous, neutral, and independent regulatory bodies, the mechanism for the constitution of PPRA Boards may be reviewed. Inclusion of representatives of private-sector stakeholders (such as trade bodies), civil society, Auditor General, National Accountability Bureau (NAB), Pakistan Engineering Council (PEC), a representative of opposition members in the National Assembly may be considered. The Managing Director may also be selected from the public/private sector through an open competitive process. For financial autonomy, the PPRA may request the Ministry of Finance/ Finance Departments to prescribe a formula for funding their activities so that there is predictability in the expected resources from the government.

Plus, there is a dire need for amendments and revisions of rules. The legal framework may be reviewed and amended periodically to address the gaps and weaknesses, improve transparency and facilitate efficiency and economy in procurement processes. For instance, to mention a few may include: value for money assessments; prescribing timelines for different steps in procurement processes; enabling provisions for e-procurement; specifying consequences of mis-procurement and specific penalties for bid-rigging or use of corrupt, fraudulent, collusive, or obstructive practices in procurement and so on.

Also, there should be a second-tier grievance redressal forum. PPRA shall make arrangements to develop a second (independent) tier for the redressal of grievances. This will help the public procurement system in better process management and accountability of public officials which will ultimately lead to efficiency in procurements. PPRA Boards may deliberate and decide on the contours of such a tier. To ensure that the public procurements do not suffer inordinate delays, a timeframe could be given within which these complaints can be filed. The PPRA Board can also consider a standstill period which will mean that if a complaint is filed within this period, the Board could bar the procuring agency from signing the contract till the complaint is resolved. The second-tier office should duly publicise its decisions and keep a record of the complaints about the identification of common issues and persistent aberration from the rules/ norms.

Additionally, the PPRA shall develop procurement regulations, standard bidding documents, and model manuals for goods, works, and services. These regulations and manuals may be developed in consultations with the stakeholders.

In parallel, PPRA should formulate a legal framework for public-private partnerships. Fiscal limitations in countries have led to innovative approaches in the provision of infrastructure. To bridge the growing deficit between the cost of the infrastructure and the resources available, and to achieve efficiency and effectiveness in the delivery of infrastructure services, Public-Private Partnerships have emerged as a growing element of public sector procurement. To provide legal support to PPPs the federal and provincial governments may introduce a comprehensive legal and institutional framework that provides clear guidelines and procedures for the development and implementation of 14 Public-Private Procurement Partnerships in sync with international best practices.

Besides that, the government should consider to develop a cadre of procurement professionals to handle procurement and contract administration functions for improving procurement efficiency and ensuring value for money. The situation may be improved through application of a broad systemic approach. First, to develop a cadre of procurement professionals. Second, for capacity building of existing procurement practitioners; and thirdly the strengthening of the National Institute of Procurement.

Lastly and exceedingly important reform area is that PPRA must introduce E-procurement, which is the future. International experience suggests that technological innovations such as e-procurement and electronic reverse auctions can enhance the efficiency of procurement, eliminate bid-rigging, strengthen transparency and achieve value for money. The digitalisation of procurement processes eliminates the direct interface between procurement officials and bidders and thereby significantly reduces the chances of bribery and corruption. Having said that, digitisation is possible in the long run only. As of now, there is no ground work being done for the purpose and there also requires a skilled human resource for the subject idea.

#### E-Procurement

Shifting of procurement procedures to E-methods has long been under consideration and being tested out primarily in a few departments in Punjab. E-procurement in Pakistan, however, cannot be effectively and efficiently achieved in the current scenarios.

Before shifting to E-Procurement, it is necessary to understand that E-Procurement is not limited to just online submission of paperwork to express interest. Instead, it requires a complete digitisation of the procurement procedures. This includes everything from the online availability of bidding documents, which to date remain unstandardised, to allowing changes in already submitted documents as per the provisions within the Procurement Rules.

In order to successfully implement this, it is required that a complete server-based system be developed for storing of data and processing information before the E-procurement practices can be initiated. Besides, the technical staff needs to be adequately trained to work on the system and be capable to resolve any issues faced by the bidders. Additionally, data protection also remains a major cause of concern. Measures to protect data and information shall be put in place before E-procurement methods are adopted.

Summing, E-procurement can lead to increase in efficiency in procurement regime of Pakistan, however, it needs to be done step-by-step. Complete homework must be done on introducing E-procurement before developing the systems, which then should be introduced in phases in procurement processes to avoid any system breakdowns. Capacity building before implementation shall be the norm for E-Procurement, unlike many other aspects in Pakistan's procurement regime that continue to suffer due to lack of institutional capacities.

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