

## Project & Contract Management

Lecture - 02

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## Legal & Regulatory Framework

- It consists of:
  - Regulatory Bodies (e.g. Pakistan Engineering Council - PEC, Public Procurement Regulatory Authority - PPRA, National Electric Power Regulatory Authority – NEPRA etc.)
  - Codes of Practice
  - Regulatory Guidance
- A clear and comprehensive regulatory framework is important for establishing and implementing transparent and fair procurement practices. In the absence of a comprehensive regulatory regime, all types of manipulations for corrupt ends may occur and prevention strategies may be difficult to enforce.

## Pakistan's Legal & Regulatory Framework – 01

- Pakistan is a federation which consists of one federal and four provincial governments. Public procurement rules and regulations are different at federal and provincial levels.
- Before adopting present 'modern' practices, the whole public procurement system was governed by the **General Financial Rules** of the Central Government along with two Manuals each dating back to the colonial era namely,
  - **The Purchase Manual**
  - **The West Pakistan Building and Roads Department Code**

## Pakistan's Legal & Regulatory Framework – 02

- In 1999/2000, the World Bank completed the country's first procurement system's assessment which recommended a number of actions including the establishment of a **Regulatory Authority**.
- The procurement system at national level was revamped in 2002 when Public Procurement Regulatory Authority Ordinance was passed via presidential order. This is now considered as the principal legislation in force for the regulation of public procurement in Pakistan.
- The Public Procurement Rules which support this ordinance were finalized in 2004 along with the establishment of the Public Procurement Regulatory Authority.

## Pakistan's Legal & Regulatory Framework – 03

- The Public Procurement Regulatory Authority (PPRA) is an independent body and is responsible for monitoring procurement activities by public sector organizations.
- PPRA is responsible for developing procedures and regulatory guidelines for all kinds of public procurement at federal level made with public funds.
- The Public Procurement Rules (PPR) 2004 are largely applicable to procurement of goods and works and do not explicitly mention about services in particular consulting services.
- For funded projects, procurement rules and regulations of donors prevail local procurement rules and regulations.

## Pakistan's Legal & Regulatory Framework – 04

- PPRA also has the authority to exempt procurement of an object or class of objects from the application of its rules and regulations. This ultimately undermines the actual aim of establishing this regulatory body for improving the governance and quality of public procurement of goods, works and services.
- There are many public procurement organisations which do not follow PPRA and have developed department specific rules and regulations. This information asymmetry empowers government officials in applying or ignoring the rules at their discretion thus reducing process objectivity and transparency.

## Procurement Planning and Project Appraisal Process in Pakistan - 01

- PPR (2004) do not cover procurement planning rules, instead the country's Budget Rules provide for them.
- **Project Funds Availability**
  - On the announcement of Pakistan's annual development budget, the Planning Commission of Pakistan seeks the details and priorities of the projects (whether ongoing or new) to be funded by the allocated amount of development budget from the federal and provincial procurement organisations.
  - Therefore, the priorities of the projects are determined according to the available size of the development budget instead of procurement plans being reflected in the budget.

## Procurement Planning and Project Appraisal Process in Pakistan - 02

- **Project Funds Availability**
  - The availability and continuity of project finance is necessary for it's on time and within budget completion.
  - The allocations for on-going projects are also adjusted to create space for new initiatives and fund releases are further slowed down to respond to the political pressures for new initiatives.
  - The system of annual budgeting encourages the use of bribery to speed up the process in order to avoid potential delays in project funds availability especially for ongoing projects.

### Procurement Planning and Project Appraisal Process in Pakistan - 03

- **Economic and Financial Appraisal of Projects**
  - It is the responsibility of the Planning Commission (PC) of Pakistan to plan, appraise, approve and monitor all development schemes in the country.
  - Financial appraisal of a project provides an estimation of cash inflows and outflows, whereas economic appraisal looks into the social benefits of the project.
  - The initiation and preparation of a project is the responsibility of procurement/sponsoring agencies at both, federal and provincial levels.

### Procurement Planning and Project Appraisal Process in Pakistan - 04

- **Economic and Financial Appraisal of Projects**
  - Appraisal methods have various shortcomings which include; over-estimation of the benefits and under-estimation of project costs to get it approved initially as a project with the least cost and then subsequent allocations are made.
  - The non-statutory frameworks for public procurement currently in force do not have a built-in "PPP Option Analysis" i.e. it is not mandatory to demonstrate that a PPP Option has been considered and found not feasible before approval of a project .

### Procurement Planning and Project Appraisal Process in Pakistan - 05

- **Economic and Financial Appraisal of Projects**
  - The Planning Commission screens, reviews and proposes potential PPP projects from the Public Sector Development Programme (PSDP) which should actually be done by the procurement agencies. Thus, the public procurement organisations have no thirst to apply their mind to the possibility of infrastructure service delivery through PPP arrangements.

### The institutional framework for pre-approval appraisal of all proposed schemes and respective approval ceilings

Sanctioning Authorities by Size of Project		
Statutory Body	Limitation	Ceiling (PKR Min)
Provincial Departmental Development Working Party (P-DDWP)	Projects Foreign Funded or requiring Foreign Exchange to be referred onwards	40 (In Punjab Rs. 200 million)
Provincial Development Working Party (PDWP)	Projects Foreign Funded or requiring Foreign Exchange to be referred onwards	50
Federal Departmental Development Working Party (F-DDWP)	Projects Foreign Funded or requiring Foreign Exchange to be referred onwards	60
Central Development Working Party (CDWP)	Federal and Special Area Projects	1,000
Concept Clearance Committee (CCC)	Provincial Projects	5,000
Economic Committee of the National Council (ECNEC)	Provincial and Special Area Projects	>1,000
	Provincial Projects	>5000

Source: Planning and Development Division, Government of Pakistan

## Legal & Regulatory Framework - 01

- **Redress of Grievance/Complaint Mechanism**
  - Availability of complaint mechanisms to report fraudulent, corrupt and unethical behaviour is essential in detecting and deterring corruption and to increase public trust in the fairness of procedures and institutions.
  - Such mechanisms should allow other bidders and the general public to verify the actions of procurement personnel as if they are in accordance with the prescribed rules and regulations.

## Legal & Regulatory Framework - 02

- **Redress of Grievance/Complaint Mechanism**
  - In Pakistan, the mechanism for handling complaints by aggrieved bidders exists at both the administrative and judicial levels.
  - Both mechanisms have complementary functions and handle complaints related to pre-contract issues only. For complaints or disputes post-contract award, arbitration under the Arbitration Act of 1940 is prescribed.

## Redress of Grievance/Complaint Mechanism - 01

- **Administrative Review Mechanism**
  - The PPR (2004) do not provide any rules to guide the administrative review mechanism and formation of an administrative review committee. Instead, procurement authorities establish their own procedures. This requires initial complaints to be directed to procuring authority itself.
  - According to PPR (2004), only aggrieved bidders (not just any citizen) may file a written complaint within 15 days of publishing a bidding report supported by sufficient evidence.
  - Usually, it is difficult for an aggrieved party to collect and verify the facts while considering the risks of lodging a complaint in given time.

## Redress of Grievance/Complaint Mechanism - 02

- **Administrative Review Mechanism**
  - In case an aggrieved bidder is not satisfied with the decision, he may go to court of law within 15 days of receiving the administrative review.
  - The administrative review covers only decisions made during the tendering process and therefore are supposed to correct errors only. It does not cover corruption during either the procurement planning or delivery phase where no potential complainants are available.
  - Moreover, the review decisions do not cause any delays or halting of procurement procedures and no second level review is available other than the court of law.

### Redress of Grievance/Complaint Mechanism - 03

- **Judicial Review Mechanism**
  - If the aggrieved bidder is not satisfied with the decision of the review panel, he may file an appeal in the civil court or in the Office of Ombudsman.
  - An administrative review is essential before going to the judicial review.
  - Judicial reviews cover such decisions which result from wilful misconduct and an administrative committee refuses to rectify. However, there is no specified time limit for judicial complaints under PPR (2004).

### Redress of Grievance/Complaint Mechanism - 04

- **Judicial Review Mechanism**
  - Pakistan has three anti-corruption laws, namely; Pakistan Penal Code (PPC) 1860 (sections 160-165), Prevention of Corruption Act (PCA) 1947 and the NAB Ordinance 1999.
  - Sections 160-165 A of the PPC 1860 defines corruption as "illegal gratification" (GoP/NAB, 2002). The NAB Ordinance 1999 which considers "assets beyond known means as corruption" and certain categories of private sector corruption (wilful defaulters, etc.) in its purview.

### Redress of Grievance/Complaint Mechanism - 05

- **Judicial Review Mechanism**
  - Corruption in public procurement is penalized under general criminal laws which include; provisions regarding corruption, fraud, conflict of interest, and other unethical behaviour. The related provisions are included in tender documents.
  - These laws look for individual responsibilities to abstain from corruption and provide consequences for those who are found guilty, however, various other corrupt practices like bribery through intermediaries and collusion, are not penalized in Pakistan.

### Redress of Grievance/Complaint Mechanism - 06

- **Judicial Review Mechanism**
  - No laws exist to terminate the contract won through corrupt practices or to hold contractors liable for damages or depriving them from economic benefits.
  - Disclosures of conflicts of interest and provisions for codes of conduct exist to mitigate against exerting undue influences on the procurement process by corporate suppliers beyond certain contract values.
  - It is mandatory for bidders to sign "Integrity Pacts" as part of public procurement contracts for goods and services where the contract worth more than PKR 5 million for consultancy and PKR 50 million for construction works.

## Redress of Grievance/Complaint Mechanism - 07

### Audit System

- The auditors and supervisory bodies assist in establishing an effective and efficient review mechanism to detect and deter corruption. However, PPR (2004) do not provide explicit guidelines on procurement audits by specialized independent auditors.
- Audits of procurement agencies are required by the Auditor General of Pakistan (AGP) and Chartered Accountants yearly or sometimes after six months.
- Both, the external and internal audits of procurement organisations are largely limited to financial transactions only.

## Redress of Grievance/Complaint Mechanism - 08

### Audit System

- The technical expertise of auditors is perceived to be low, particularly in skills required to uncover corruption.
- In order to cover up irregularities and deficiencies between reported and actual revenue and expenditure, there are strong perceptions that collusion between auditors and bureaucrats do exist.
- Although, the mechanisms for independent performance audits is available, it rarely takes place due to capacity issues.

## Redress of Grievance/Complaint Mechanism - 09

### Audit System

- Audit reports are presented to the President annually instead of presenting at the time when it is actually ready. This lowers the relevance and functional credibility of these reports.
- The record of audit findings and observations have limited access and are not even available to the PPRA.
- Although the Audit Rules and the NAB Ordinance and the Evidence Act require the preparation, maintenance and production of a full list of bidding documents, no explicit provisions are available to enforce the routine safe keeping of these documents.

## Redress of Grievance/Complaint Mechanism - 10

### Public Access to Information

- Access to information or Right to Information (RTI) means that everyone should have right to access information and records held by or under the control of any public bodies or organisations that benefit from taxpayers' money.
- Although there are some legislative arrangements for access to information in Pakistan, but the country still has a legacy of the British colonial regime in the form of the Official Secrets Act, 1923, which puts an extreme restriction on citizens' Right to Information.

## Redress of Grievance/Complaint Mechanism - 11

- **Public Access to Information**
  - In addition, Punjab Maintenance of Public Order, 1960, can be used to withhold information in the name of national security, national interest and privacy.
  - In 2002, Freedom of Information Ordinance was promulgated for transparency in governance. The main criticism on this act was that an unreasonable amount of information was exempt from accessibility, in particular it's applicability is only to the Federal Government ministries, attached departments and agencies, boards, councils, courts, tribunals and the commission or authorities.

## Redress of Grievance/Complaint Mechanism - 12

- **Public Access to Information**
  - With regard to public procurement, PPR (2004) allow public access to procurement information on very basic things, which includes information on initial procurement opportunities for submission of expression of interest, bids and proposals for all public procurements. However, there is no system to provide information on the processes, outcomes, results, and performance of the procurement processes for the general public.
  - There is no explicit information available for getting access to bidding documents/procurement record when needed for public inspection.

## Redress of Grievance/Complaint Mechanism - 13

- **Public Access to Information**
  - PPR (2004) allow public access to information on awarded contracts but not regarding pre-qualification procedures or debarment.
  - Project Audit reports have limited access and are not available to the general public.
  - PPRA website publishes procurement opportunities of businesses at federal level, but does not publishes information on procurement plans or the results of contract awards.

The End

