

Procurement Issues in Pakistan's Government Departments - Auditor's Perspective

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Abstract

Public procurement is a material component of global GDP. In view of limited resource availability, procurement by government departments in Pakistan, a developing economy, significantly impacts the budgeted expenditures. The country has elaborate arrangements to regulate procurement at the federal and provincial levels of government. Procurement controls also exist within government departments to ensure compliance with procurement regimes. Challenges however remain and are accepted at the governmental level and efforts put in to bring about improvement. Compliance and Performance Audit Reports by the Supreme Audit Institution continue to highlight, year after year, issues of non-compliance with the procurement rules as well as instances of inefficient, uneconomical and ineffective procurements made by the government departments. Those who are charged with the governance of procuring entities and all other stakeholders, at their respective levels, need to feel responsible for optimum utilization of allocated funds for procurement and aim at getting value for money. Procurement managers in government departments, have the primary responsibility to ensure adherence to the existing procurement regime and strive to achieve acceptable benchmarks of economy, efficiency and effectiveness. Recognizing procurement as a living discipline, the procurement regimes need to be up-dated on regular basis.

Keywords: Audit Reports, Auditor General of Pakistan, procurement, public sector procurement, challenges in procurement, country procurement, irregularities in procurement, procurement controls, procurement rules, Supreme Audit Institution, World Bank

1.0 Introduction

Procurement concerns itself with acquisition of goods, works, and services. In general use, the term is used to indicate the process by which organizations, both private and public, get supplies to satisfy their organizational and business needs. The use of the term can be traced back to 14th Century¹ and is now a preferred term among the practitioners compared with the comparatively limiting concept of 'purchases'. Since governments are expected to provide public and merit goods to their citizens, they invariably turn to the private sector for provision of required goods, works and services. This is done keeping in view the budgetary allocations or the available resources. With "public authorities buying goods, works (e.g construction) or services from private companies"², transparency, accountability, value for money, legal and ethical considerations come into play which make the process inherently complex involving multiple risks. Public sector procurement managers therefore are expected to do a lot of work before and after the actual purchases are made to mitigate these risks to acceptable levels. An additional consideration is to ensure meticulous adherence to the procurement compliance regime as most of the time, internal and external reviewers (including statutory auditors) may be evaluating their performance on this benchmark only. Even in a Value for Money or performance audit, the

¹ <https://www.merriam-webster.com/dictionary/procurement>

² <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

auditors assign considerable importance to the compliance aspects of transactions. These multiple expectations from procurement process assume added importance when we take into account the quantum and magnitude of procurement in the public sector. Although there are issues concerning availability and reliability of statistics on share of public procurement in global GDP, most estimates put it to be between 10 and 25%. For instance, in the EU, the public purchase of goods and services has been estimated to be worth 16% of GDP.³ The WTO estimates government procurement to be between 10-15 per cent of the GDP of an economy on average.⁴ In absolute terms, the share of public procurement in world trade is estimated to be more than €1.3 trillion per year.⁵ In the context of global GDP,⁶ this material amount, which is spent by governments on procurements, has huge potential to create opportunities for the businesses and the industry. Transparency and integrity of procurement regimes assume critical importance in this context. An additional dimension of public procurement is that it is equally important for low- and high-income countries. Data from governments and international development institutions indicate⁷ that low-income countries have the highest share of public procurement in their economies estimated to be at 14.5 percent of GDP compared with 13.6 percent of upper-middle income countries. For Pakistan, its quantum is considered to be 10-15% of GDP, however, one estimate puts it at 19.8%.⁸ Given the country's GDP of USD 312.57 billion⁹, about 24% of the population living below the national poverty line¹⁰ and budget deficit¹¹ of 5-6%, stakeholders have a right to look expectantly, seeking evidence, that procurement expenditures are incurred with due regard to economy, efficiency, effectiveness and that these come up to the principles of transparency, propriety, and probity.

2.0 Issues in Pakistan's Procurement Regime

World Bank made an assessment of Pakistan's procurement system two decades back and published the results in Country Procurement Assessment Report (CPAR).¹² The CPAR found Pakistan's procurement practices governed by a set of "outdated rules and regulations."¹³ It further observed that "the Federal Government, the four provinces, and the semi-autonomous or autonomous agencies each have their own procurement procedures. These generally provide for a system of open bidding, including: public advertising in the press, registration of contractors and suppliers, formal bidding and contract documents, public bid opening, and award to the lowest-price bidder. Many of these practices can be considered good for the procurement of small and simple contracts. Unfortunately, the actual practices are quite different from the

³ <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

⁴ https://www.wto.org/english/tratop_e/gproc_e/gproc_e.htm

⁵ <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

⁶ In 2017, global GDP amounted to about 80.14 trillion U.S. dollars. Please see <https://www.statista.com/statistics/268750/global-gross-domestic-product-gdp/>

⁷ Benchmarking Public Procurement, 2017, by World Bank Group

⁸ <http://blogs.worldbank.org/governance/public-procurement-rich-country-s-policy>

⁹ <https://data.worldbank.org/country/pakistan>

¹⁰ The estimates are for Year 2015; see <https://www.adb.org/data/statistics>

¹¹ <https://nation.com.pk/07-Jul-2018/budget-deficit-to-reach-rs2-5-trillion>, accessed on 30.06.2019

¹² Country Procurement Assessment Report (2000) by World Bank (Report No. 22000)

¹³ Ibid, Page (i)

official written procedures.”¹⁴ While highlighting other weaknesses of the procurement regime, the CPAR labelled price negotiations as “an unfortunate practice” and explained that the procurement officials resort to it “contending that the lowest among the bid prices is still too high”. The CPAR concluded that “these negotiations are an open invitation to corruption” as “they violate a fundamental principle of public procurement - that bidders cannot modify their bids after bid opening.”¹⁵

3.0 Addressing the Issues

Pakistan’s procurement regime apparently took the CPAR positively as major corrective steps were taken at governmental level. Significant among these was the establishment of a dedicated Public Procurement Regulatory Authority (hereinafter “the regulator”) in 2002 for “regulating public procurement of goods, services and works in the public sector”.¹⁶ Rules were made in 2004 and regulations have been following on need basis. The provinces initially adopted federal regime but, over a period of time, have established full-fledged procurement establishments and developed dedicated procurement systems. Table-1 captures the chronology.¹⁷

Table 1: Chronology of Federal and Provincial Laws and Rules

Level	Law	Rules
Federal	2002	2004
Punjab	2009	2009
Sindh	2009	2010
Khyber Pakhtunkhwa	2012	2014
Balochistan	2009	2014

The ‘new’ legal framework has since then undergone several revisions during the last one and a half decade. The basic structure nevertheless has remained intact. Some areas may have lost relevance and may not be in sync with the objective realities. For an illustration purpose, consider the existing monetary threshold limit beyond which the procuring agencies are prohibited from using the shopping method and instead are required to advertise the procurement notice on the regulator’s web portal and/ or their own website. This amount was set at One Hundred Thousand Pakistan Rupees in 2004 rules and has not been changed since then despite lapse of considerable time. At that time One USD was exchanged for some 58 Pakistan Rupees ¹⁸ but now as many as 155 Pakistan Rupees are exchanged for One USD. ¹⁹Therefore PKR100,000 at that time equated some 1724 USD but now equates 641 USD only.²⁰ The

¹⁴ Ibid , page 2

¹⁵ Ibid, page 3

¹⁶ Public Procurement Regulatory Authority Ordinance, 2002

¹⁷ For details, please see: http://www.bppra.gob.pk/policy_guideline.php; <http://e.pprasindh.gov.pk/>; <https://www.kppra.gov.pk/>; and <https://ppra.punjab.gov.pk/overview>

¹⁸ https://www.theglobaleconomy.com/Pakistan/Dollar_exchange_rate/

¹⁹ http://www.forex.pk/open_market_rates.asp

²⁰ On the basis of US\$-PKR exchange rate as on 9.9.2019: http://www.forex.pk/open_market_rates.asp

possibility that the original amount of PKR 100,000 has lost its relevance over this period of time cannot be ruled out. The argument that this amount stands at artificially low level is strengthened when we notice that, incidentally, it is this provision that is seen violated many a time by the procuring departments. State auditors have reported on recurrent basis tendency among the procuring organizations to conveniently use (read: misuse) single and limited tender options to avoid public advertisement. The practice puts the government at a disadvantage and increases the risk that non-competitive rates may be accepted compromising the stated objectives of procurement law viz. transparency and value for money. In order to explain this marked tendency of the government department to use shopping method where open tendering should have been the preferred option, public sector auditors are under obligation to make recommendations to those charged with governance of these entities by actively seeking out evidence of this possible inadequacy of the threshold amounts besides exploring other specific reasons. A mere 'deviation- from- criteria' model may not work here and procurement audit approach may have to be re-evaluated. For example, auditors may look outwards and point out that the World Bank procurement framework allows USD100,000 (roughly equivalent to PKR 16,000,000 i.e. 160 times more than the amount admissible in government's procurement regime) as the threshold amount for shopping method of goods and works in Pakistan in the projects and programs directly funded by the Bank.²¹ Another existing provision requiring review may be that of restrictions placed by the procurement rules on conducting negotiations with the bidders after the bids have been opened. The current law does not have flexibility in this regard²² whereas international best practices may be more malleable in this area. For instance, World Bank has provisions for conducting negotiation following Bid/Proposal evaluation and before final contract award.²³

4.0 Procurement Controls

Several procurement controls exist at various levels of government. At the regulator level in the federal government, for instance, the procurement process has an elaborate legal framework at its back. The law has made e-tendering mandatory as a step towards a full-fledged e-procurement regime. Since public procurement is linked to the private sector, the preparation and publication of procurement plans by procuring agencies is a strong internal control and a mandatory requirement. The procurement laws also make it binding on the procuring agencies to make public the Bid Evaluation Reports through the regulator's web portal so as to promote transparency about the award of contract. Additional controls exist wherein the up-loaded tenders are monitored and an online query system facilitate the government departments in understanding the niceties of procurement regime. Sound financial management principles expect the procurement managers to ensure economical, efficient and effective (3Es) procurement. Since there is no dedicated procurement cadre within the overall government, procurement officers, being government servants, may attach more importance to a blind adherence to the compliance regime. Interestingly, however, in many a case, existing rules may be found fully oriented towards the 3Es. For instance, rules in Pakistan require that procurement be made from the supplier offering the lowest rate in case of shopping method and offering the lowest evaluated offer in case of open tender cases. However, at times, the trade-offs may have

²¹ World Bank: Thresholds for procurement approaches and methods by country (2016). However, if funding is through budgetary support as in PforR programs, the country's own procurement rules and thresholds amounts apply

²² Rule 40 of Public Procurement Rules, 2004.

²³ <http://pubdocs.worldbank.org/en/663621519334519385/Procurement-Guidance-Negotiation-and-Best-Final-Offer.pdf>

to be weighed depending upon the procurement objectives. For instance, requirements on minimum response time and re-bidding in case of non-responsive bids may lead to ‘inefficient’ procurement process but if these controls are not in place, then ‘economy’, ‘effectiveness’ and ‘transparency’ aspects may be compromised.

At the level of a typical procuring agency’s level, controls include a whole host of committees like a) bid/tender/ proposal opening committees; b) Purchase committees, permanent or created on an ad-hoc basis, for recommending purchases; c) in case of complex procurement episodes, separate technical and financial bid opening/evaluation committees may be formed; and d) Inspection committees for verifying the procured items or services. Separation of duties exist, more or less, among functions relating to procurement need assessment, performance of procurement process, evaluation of offers, approval of technical and financial aspects and ultimately making the payments. Controls are constantly reviewed and new controls are added in view of the policy objectives of the government. A recent example could be additional responsibilities on the procurement agencies to ensure that, in all tender cases, only those bidders are allowed to participate who are on the active tax payers list of government tax establishment. Earlier only registration with the tax establishment was required. The objective is to link public sector procurements to the tax revenues of the government. For practical purposes, this would be added to the duties of the Bid Opening Committees. Sanctioning of procurements made and the decision to award a contract is a critical one in public sector as budgets and delegation of financial powers available to the procuring officers now come into play.²⁴ In most regular government departments,²⁵ contractual payments are processed through an agencies independent of the procuring agency.²⁶ Last but not the least of the set of controls,²⁷ extensive accounting and procurement record is maintained and as part of regular expenditure audits, the SAI conducts audit of procurement as well.²⁸

5.0 Challenges

After two decades of CPAR and corrective actions that have been following since then, challenges remain on the procurement front and are hard to miss. Regularity and Performance Audit Reports by the Supreme Audit Institution (Department of Auditor General of Pakistan), year after year, continue to highlight violations of the procurement regime and of the principles of procurement-that procurements are fair, transparent and bring value to the procuring agency²⁹ and that the procurement process itself is efficient and economical. There is acceptance at the governmental level of these procurement violations. For instance, during 2017-18, 37923 tender notices of public sector organizations were uploaded/ monitored by the regulator, and out of these 2105 deviations (5.55%) from the Public Procurement Rules 2004 were pointed out to the heads of the concerned procuring agencies for taking remedial measures.³⁰ Analysis of monthly

²⁴ At the Federal level, the delegation has been documented in the System of Financial control and Budgeting, 2006, issued by Finance Division, Government of Pakistan on 30.09.2006). Provinces have separately issued these financial powers like the Punjab Delegation of Financial Powers Rules, 2016.

²⁵ Government’s autonomous bodies, public sector enterprises, development projects including some foreign aided projects may be exception to this control as these are independent units with their own set of internal controls.

²⁶ These work under the Controller General of Accounts, an office under the Federal Ministry of Finance.

²⁷ The controls listed here are obviously for illustration purposes and the list is not exhaustive.

²⁸ The SAI may also conduct a stand-alone procurement audit and the nature of such audit may be regularity or performance depending on the audit objectives.

²⁹ Section 4 of the Public Procurement Authority Rules, 2004.

³⁰ Public Procurement Regulatory Authority, Year Book, 2017-18

data, as presented in Table 2 below³¹ from December 2018- July 2019 show the percentage of violations at 4.76%.

Table 2: Procurement Violations, [Federal]

Month	Tenders	Violations	%
December	2928	116	3.96%
January	3276	154	4.70%
February	2654	152	5.73%
March	3009	125	4.15%
April	3068	121	3.94%
May	3029	144	4.75%
June	1670	151	9.04%
July	2368	85	3.59%
Total	22002	1048	4.76%

In case of one provincial government i.e. of Punjab, 5-year data from 2014 –2019 puts at about 11 % the violations observed in tender notices as shown in Table 3 below.³²

Table 3: Procurement Violations, [Punjab]

Period	Tenders	Violations	%
10/2014- 2/9/2019	122521	13802	11.27%

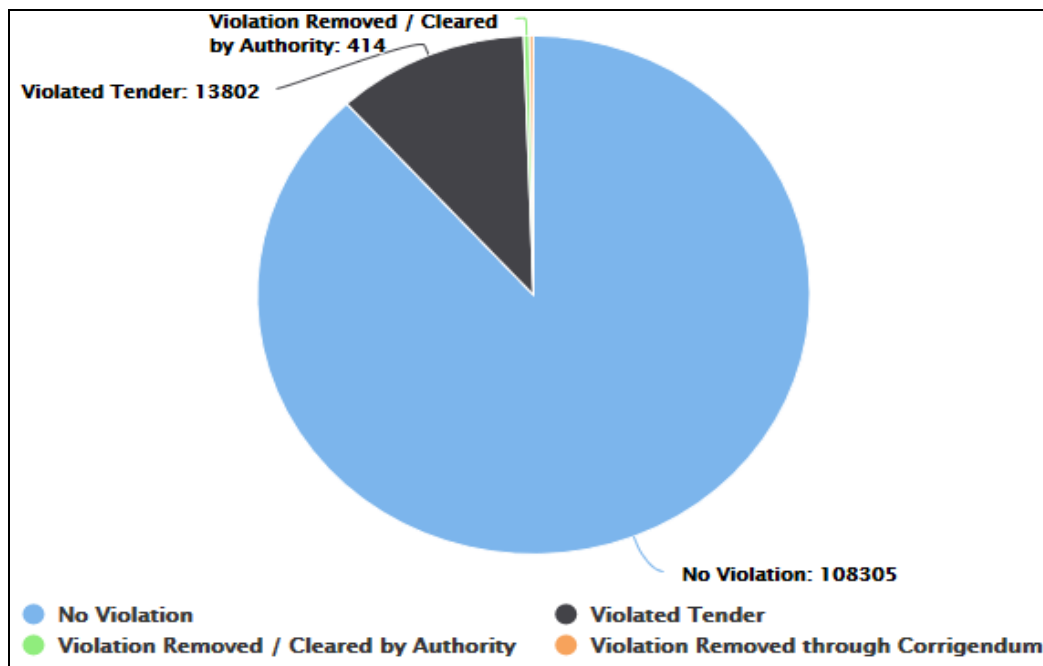
This is further explained by Figure 1 below.³³

³¹The source is the Executive Summary Reports up-loaded by federal PPRA on its website (<https://www.ppra.org.pk/>) on monthly basis.

³²The data is from October, 2014 till 02 September, 2019 and is available at https://eproc.punjab.gov.pk/Dashboard/Public_Violated_Procurement_Summary.aspx, accessed on 8.9.2019.

³³ <https://eproc.punjab.gov.pk/ViolatedTenders.aspx>, accessed on 8.9.2019.

Figure: 1 Graphical Presentation of Table 3



What could be possible reasons for frequent violations of the procurement regime? Why are the ‘criteria’ violated despite the fact that the procurement regime is in place for more than one and half decade?

6.0 Tip of the Iceberg

Questions like above require that we perform a deeper analysis than a mere ‘deviation- from- criteria’ model which may well be inadequate for taking effective corrective measures. Procurement challenges highlighted above appear just a tip of the iceberg when we have a look at the audit reports of the Supreme Audit Institution (SAI) of Pakistan. The SAI has the constitutional mandate to audit all public expenditure and receipts. Procurement expenditure incurred by regular government departments and autonomous bodies of the government is audited as part of annual regularity audit exercise. At times, performance audits are also conducted on specific procurement issues. Consequently, audit reports which are presented to the legislature on yearly basis highlight weaknesses in the procurement regime in planning, process and contract management.³⁴

Since most of the time public sector procures from private sector, procurement plans of government departments are essentially required by the private sector to plan their operations. Rules are clear on it and prescribe that “all procuring agencies shall devise a mechanism, for planning in detail for all proposed procurements with the object of realistically determining the requirements of procuring agency, within its available resources, delivery time or completion date and benefits that are likely to accrue to the procuring agency in future.”³⁵ SAI’s reports

³⁴ For this part of the article, some latest compliance audit reports issued by the Auditor General of Pakistan have been consulted on random basis. Under Article 171 of the Constitution of the Islamic Republic of Pakistan, 1973, reports of the Auditor General are presented to the President and Governor of a Province, as the case may be, for laying before both houses of the Parliament and before the Provincial Assembly as appropriate.

³⁵ Public Procurement Rules, 2004, Rule 8

provide us with scores of instances where these plans were either not prepared, prepared in a sketchy manner or not followed in spirit. At times, unnecessary, wasteful and ‘avoidable’ procurements were observed. The procuring agencies had resorted to these simply because budget was available and had it not been utilized before the close of financial year, it would have lapsed to the government. The incentive to spend unnecessarily and in a big lavish way is amplified considering how the incremental system of budgeting works. You do not spend in year 1 and in all probability, you will have a tough time getting funds in year 2. The prevalent general system of release of funds out of budgetary allocations to the procuring agencies is such that it has high likelihood of making available a big chunk of funds in the 4th Quarter of the financial year,³⁶ especially in the month of June. This in turn triggers a “spending spree” of purchases compromising the principles of propriety and value for money. Violations of procurement rules is the resultant eventuality as can be seen from Table 2 which puts at 9% the violations of rules in June. Instances abound where shopping method was excessively used by procuring in smaller packages through ‘splitting up the procurement budgets’ or using direct contracting where the choice method should have been the open competitive bidding. Using the emergency clauses of procurement law for routine procurements without any rationale is also not uncommon.

In addition to issues associated with the choice of suitable mode of procurement, wrong choice of procurement methodology has also been observed by the state auditors. This is especially evident when, despite the nature of procurement being of technical and non-routine category, the preferred method of “single stage, two-envelope” and/or “two-stage” bidding was ignored for the simpler one of “single- stage, one-envelope”. Vague specifications, unrealistic timelines for submission of bids, stringent conditions for submission as well as for evaluation of bids increase the likelihood of having a procurement process that is anything but competitive and transparent. The risks are that in such cases procurements may be at exorbitant rates, at times substantially higher than the last purchase rates or having marked differences between the accepted rates of entity A and other entities although procurements were made in the same period.

One persistent reported issue is that of non-obtaining performance guarantees or failure to obtain additional performance guarantee when scope of work stood enhanced. There have been instances when the guarantees expired before the Defect Liability Period but these were not revalidated with the result that effectively it was just a piece of paper that was left with the procuring agencies having no monetary value. When the contract was in process, instances have come to notice whereby unnecessary extensions in the delivery schedules have been allowed just on the request of the contractor without any cogent reasons. Similarly, specifications are sometimes changed when the contractor shows inability to provide a particular item. This has huge implications for the transparency of the procurement as originally other contractor B, C, D, for instance, might have been ignored as those were unable to provide a particular item /service (at a particular time) which ‘A’ agreed to and won the contract and now, right in the middle of the contract, ‘A’ is requesting to allow change of specifications and with that propose a different delivery time. The end result is a procurement episode where the private interests were found to have been safeguarded at the cost of public exchequer. A regular feature of audit reports pertaining to government departments is that of contractors being paid in full or part, in violation of the contract clauses, before goods and services are actually delivered.

³⁶ Pakistan’s financial year is from July to June

7.0 Conclusion

Study of procurement regime is an interesting area as it offers immense opportunities to bring about sound financial management with the objective that scarce fiscal resources are put to optimal use. Pakistan has limited budgetary resources. This necessitates that all stakeholders make all out conscious efforts to get value for money out of public procurement which materially affects public exchequer. The country has an elaborate legal and regulatory procurement framework at the federal and provincial levels. There are visible incremental efforts to move towards an e-procurement regime. Procurement controls exist at the regulator as well as within the procuring organizations. Inefficiencies in the procurement processes and instances of non-compliance with the stated principles of procurement are regularly pointed out in the reports of the SAI. These need to be taken seriously by those charged with the governance of procuring organizations to avoid their recurrence in the best of public interest. Periodic review of procurement rules may be built in within the system so as to make these realistic and in line with best international practices.

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