The Center for Peace and Development Initiatives, (CPDI) is an independent, non-partisan and a not-for-profit civil society organization working on issues of peace and development in Pakistan. It is registered UNDER SECTION 42 of the Companies Ordinance, 1984 (XLVII of 1984). It was established in September 2003 by a group of concerned citizens who realized that there was a need to approach the issues of peace and development in an integrated manner. The CPDI is a first initiative of its kind in Pakistan. It seeks to inform and influence public policies and civil society initiatives through research-based advocacy and capacity building in order to promote citizenship, build peace and achieve inclusive and sustainable development. Areas of special sectoral focus include promotion of peace and tolerance, rule of law, transparency and access to information, budget watch and Legislative Watch and Development.
Transparency and Accountability in Public Procurement Regime

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Executive Summary

Public procurement management in Pakistan, like in most developing countries, needs a lot of improvement. Laws, rules and regulations are either non-existent or poorly implemented and enforced. Capacity and morale of the workforce is low and accountability and transparency on need basis. Public procurement practitioners face challenges from both external and internal environment. The external environment includes legal environment, political environment, economic and business environment, socio-cultural environment etc. The internal environment of the public procurement regime in Pakistan is related to three factors: people who make procurement decisions; processes which provide guidance to the practitioners; and controls which ensure probity, transparency and accountability. For dealing effectively with the challenges coming from both these environment, it is important 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.

Pakistan is a federation, with one federal and four provincial governments. The Federal Government started the procurement reforms by creating Public Procurement Regulatory Authority in 2002 through a Presidential Ordinance and later added Public Procurement Rules in 2004, public procurement regulations in 2008, and consultancy services regulations in 2010. Due to the efficient working of PPRA, training of the procuring agencies and effective rules and regulations such as those related to planning, advertisements, bidding etc, procurement efficacy has improved at the federal level. Accountability and transparency has also increased manifolds since the establishment of PPRA as it forces procuring agencies to advertise properly, open bid transparently and be wary of challenges due to the accountability provisions now available to the private parties. The critical findings of the attached case studies (four) and bid evaluation report (Appendix C) are summarised as that the procuring agencies (e.g. CAA, PR, Health etc.) have the tendency of violating the public procurement rules relating to specifications, advertisement, preparation and issuance of prequalification documents and use of discretionary powers etc. The procuring agencies are good at complying with rules relating to announcement of evaluation of results, constitution of grievance redressal committees and online submission of tenders etc.. There is an effective corresponding mechanism in place, a combination of PPRA and TI Pakistan, which ensures that the procuring agencies are informed about importance of ensuring compliance with the Rules as well as removal of discretion in public procurement.

The provinces started procurement reforms late and still have a long way to go. Sindh is ahead of other provinces in carrying out procurement reforms. Sindh government adopted the Federal Public Procurement Authority Ordinance in 2006 through a Presidential Ordinance and later added Public Procurement Rules in 2004, public procurement regulations in 2008, and consultancy services regulations in 2010. Due to the efficient working of PPRA, training of the procuring agencies and effective rules and regulations such as those related to planning, advertisements, bidding etc, procurement efficacy has improved at the federal level. Accountability and transparency has also increased manifolds since the establishment of PPRA as it forces procuring agencies to advertise properly, open bid transparently and be wary of challenges due to the accountability provisions now available to the private parties. The critical findings of the attached case studies (four) and bid evaluation report (Appendix C) are summarised as that the procuring agencies (e.g. CAA, PR, Health etc.) have the tendency of violating the public procurement rules relating to specifications, advertisement, preparation and issuance of prequalification documents and use of discretionary powers etc. The procuring agencies are good at complying with rules relating to announcement of evaluation of results, constitution of grievance redressal committees and online submission of tenders etc.. There is an effective corresponding mechanism in place, a combination of PPRA and TI Pakistan, which ensures that the procuring agencies are informed about importance of ensuring compliance with the Rules as well as removal of discretion in public procurement.
procurement authority yet, despite passing of two years. So, the reform process is on hold. Khyber Pakhtunkhwa started the reforms early, coming up with procurement of goods, works and services Rules 2003 after NWFP Procurement Ordinance 2002 provided authority to the provincial finance department to make the rules. But the absence of a specific institution, the provincial public procurement authority, has really hurt the procurement reforms since then. There has been not much enforcement of procurement rules and meagre accountability. Transparency International is a non-governmental organization which works for increasing government accountability and curbing the national corruption around the world. From 2004, TIP has been supporting the procurement reforms for promoting transparency and accountability in both federal and provincial governments. TIP has done several things to make procurement reforms strong such as signing MoUs with various public sector organizations, writing procurement manuals for departments and working with CBOs to improve accountability and transparency in procurement work.

Thirdly, increased expenditure has created an opportunity for corruption and waste in public procurement and scrutiny has revealed many cases in which millions of dollars of public funds have been pilfered. Therefore, policies and activities to stop pilferage in government expenditure have focused on procurements. Fourthly, as world becomes a global village, international concerns and national goals, relating to procurements, sometimes come into conflict. Public procurement practitioners cannot ignore both of them so they have to find ways to comply with their own government's procurement regulations and social and economic procurement goals as well as international trade agreements. Finally, increased pace of change overall and particularly in the fields of information and communication technologies has forced the procurement practitioners plan years ahead, if they want to succeed. Without strategic procurement planning, procurement will never achieve its objectives.

The principles of efficient public procurement, therefore, are of paramount importance. These principles include economy, efficiency, fairness/competition, transparency and accountability. According to international financial institutions, economy is the outcome of a purchasing activity which achieves the ultimate purpose of maximum value for money whereas value may imply more than just price in case of complex procurements. Efficiency ensures that the procurement process is simple, swift and producing desired results without protracted delays. Competition is ensured when the procurement process is impartial, consistent and reliable. It must offer a level playing field to all players to compete with reliability. Transparency is ensured when good procurement practice establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair, but should be seen to be fair. Under accountability principle, good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to audit and to sanction for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility. There are generally three categories of inputs which...
Procurement Cycle

A typical procurement cycle (Fig. 1) starts with need assessment by the procuring agency; going through detailed definition of specifications of object of procurement, method of solicitation of bids/quotations and preparation of bidding documents, bid opening, evaluation and culminates at award of contract/purchase order to the winning bidder. However, the actual delivery of goods and/or services or completion of works by the contractor involves the maximum spending of taxpayer money. At this point the demand for ensuring the principles of transparency and accountability need to be fully ensured.

Figure 1

Procurement Cycle

This report is organised in four parts. The first part introduces the procurement environment. The second and third parts analyze the public procurement regulatory environment at the federal level and in the four provinces with a view of ascertaining the level of transparency and accountability within the system. Last part highlights the role of civil society organization such as Transparency International Pakistan Chapter and a conclusion containing recommendations on how to remove the systemic bottlenecks leading to improved public procurement environment that ensures promoting transparency and accountability in public procurement regimes in Pakistan.

Public Procurement Environment

Public procurement is a cross functional activity that works in a multi-faceted challenging field and public procurement practitioners face numerous challenges caused by external and internal factors. The ultimate objective in front of these practitioners is to ensure that the procurement activity has been done properly (i.e. for purposes which the procuring agency has authorized), scrupulously (i.e. in a manner beyond reproach) and wisely (i.e. whether it obtains value for money). One way of achieving this objective is through promoting transparency and accountability in public procurement regime. The practitioners face following external challenges imposed upon by a variety of environment factors including market complexity, legal environment, political environment, organizational environment, and socio-economic environment. The internal challenges faced by practitioners stem from three factors which constitute an internal environment of a public procurement regime. These are people working as procurement practitioners, processes broadly providing guidance/procedures to conduct the procurement activity and controls which ensure high level of probity, transparency and accountability. It is very important that practitioners have complete knowledge of universe of procurement tools and techniques on one hand and through information about the market forces to achieve strategic clarity. Subsequently the choice of an appropriate tool/technique by practitioners would determine that the procurement process is completed ensuring economy, efficiency, transparency and accountability. The processes governing the actions of practitioners must entail guidelines on salient features of an efficient public procurement system. According to some globally accepted norms, the indicators of such a system include the following:

- A regulatory body mandated to monitor the public procurement activities;
- Legal framework elaborating a mechanism as well as procedures on public acquisition of goods, works and services by the public sector enterprises;
- Establishment of a grievance redressal/appeal mechanism exclusively for settlement of complaints on the contract management issues;
- A mechanism for wide dissemination of government policy decisions, procurement opportunities and results of evaluation exercises for award of contracts;
- Regulatory arrangements for ensuring access to information on the public procurement system.

Controls require that they have been developed also to prevent spending for improper purposes. The controls covering procurement to prevent fraud and corruption include defined payment processes, proper balance between the financial audit and the performance audit in an efficient manner.

Public Procurement Environment in Pakistan

Pakistan's legal system is based on the 1973 constitution of Pakistan. The constitution doesn't deal with public procurement, nor was there any federal or provincial law regulating public procurement until the establishment of public procurement regulatory authority (PPRA) in 2003 and subsequent notification of public procurement rules by PPRA in 2004. Public procurement regime in Pakistan has gone through the following stages:

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General Financial Rules (GFRs)

On the federal level, ministry of finance first issued GFRs in 1951 and then in a second edition in 1979. Essentially executive orders of the president, they describe the financial powers of different authorities subordinated to the federal government and prescribe the procedures for those authorities to follow in securing and dispensing the funds required to discharge their functions.

Under GFRs, there was legal or regulatory requirement for public disclosure of procurement contracts. The records of procurement were usually maintained since the audit department invariably carried out the audit of this function. There are no known mandatory requirements to that effect though for the afore-said reason the record was properly maintained. General public didn't have any access to these records. The advertisement of a procurement opportunity was usually published in the print media. While such requirements were generally observed, it was not unusual to find that these requirements were not observed especially when it came to favouring a particular bidder/supplier.

Practitioners would follow GFRs regarding public bid opening. They would prepare bid opening statement. However, the bid evaluation reports were not accessible to the bidders participating in the competition. Financial negotiations after bid opening or before final award of contract were not forbidden under any law or regulation. Such negotiations would take place during the procurement process usually affording an opportunity to a favourite bidder to win the contract. There was no requirement as such of public notice of contract award. There was absolutely no regulatory requirement for publishing the summary data of information about public procurement e.g. number of bids received, bids disqualified, bids qualified for evaluation, names of successful bidders etc.

There was no well-defined regulatory framework / code of ethics checking of malpractices by public procurement practitioners despite several enactments, at federal and provincial level, on efficiency and discipline of government servants while conducting the official business. Finally, there was no system in place to provide a proper forum for resolution of any grievances regarding any procurement transaction. In case of a dispute between the procuring agency and the contractor the options were arbitration under Arbitration Act 1940 and the courts of law.

At provincial level, the public procurement activity of goods and services was governed by the purchase manuals. These manuals provided for the rules for petty and large procurements, the regulations and the procedures and a blanket guideline to meet the necessary standards of transparency, accountability, effectiveness and efficiency. For procurement of works the Pak PWD code and PEC forms dealt with procurement and the execution of public works. The guidelines for the public procurement at provincial level were hardly available to the public. These purchase manuals suffered from the same defects as GFRs.

(Attachment of case studies)

Following latest regulatory developments have taken place in the field of public procurement in Pakistan since 2002

At Federal level
- Public Procurement Regulatory Authority Ordinance 2002
- Public Procurement Rules 2004
- Public Procurement Regulations 2008
- Consultancy Services Regulations 2010

Sindh Province
- The Sindh Public Procurement Act 2009
- Sindh Public Procurement Rules 2010

Punjab
- Punjab Procurement Regulatory Authority Ordinance 2007
- Punjab Procurement Rules 2009

KPK
- The NWFP Procurement of Goods, Works, Services and Consulting Services Ordinance 2002

Balochistan
- Purchase Manual/Public Procurement Rules 2004

In the next two chapters the public procurement regimes at federal as well as provincial levels are examined with a view to identify the maturity of regulatory mechanisms/procedures in place needed for transparency and accountability in public procurement.
Federal Procurement Regime

Legal and Regulatory Framework

The Federal Government created Public Procurement Regulatory Authority (PPRA) in 2002 through a Presidential Ordinance. It is mandated to take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, works and services. The government notified Public Procurement Rules (PPR) in 2004 followed by the enunciation of first set of public procurement regulations in 2008, and then consultation services regulations in 2010. A Manual has also been finalized for use by the National Health and Population Welfare Facility which could well be used by both the Health and Population Welfare Ministries/Divisions and attached departments.

According to some previous research studies conducted by a group of international donors it has been established that throughout the government there is an acute dearth of skill in procurement and contract administration ranging from the development of policy to the management of the function. Dismal capacity in procuring agencies, regulatory authorities, and accountability institutions hamper the efficiency, economy, transparency and accountability of the procurement system.

The PPR outline broad guidelines for procuring agencies on various steps involved in a procurement cycle. The underlying objective of PPR is to help procuring agencies achieve value for money through ensuring transparency and accountability. The achievement of this objective is further strengthened by a clear cut guideline on misprocurement. PPRA Ordinance 2002 defines misprocurement as ‘public procurement in contravention of any provision of this Ordinance, any rules, regulations, orders or instructions made there under or any other law in respect of, or relating to, public procurement’. Rule 50 of PPR 2004 states that any unauthorized breach of these rules shall amount to misprocurement.

The detailed and unambiguous guideline on misprocurement leaves heavy responsibility on procurement practitioners across the board to ensure high standards of transparency and accountability while spending public funds for undertaking public procurement of goods, works and services. The ensuing paragraphs present a critical examination of various chapters of PPR with a view to determine the completeness of a guideline on how to conduct and complete the subject process. The salient features ensuring transparency and accountability include that the procuring agency shall

- promptly notify each supplier and/or contractor submitting an application to prequalify whether or not it has been prequalified;
- make all relevant information available to a person involved in prequalification process, upon request, the names of all suppliers or contractors who have not been prequalified;
- communicate to those suppliers or contractors who have not been prequalified.

In practice a letter informing and calling for invitation to bid is sent to the successfully prequalified bidders. The unsuccessful bidders are communicated only when they approach the concerned office in this regard. The evaluation committee evaluates the prequalification applications in line with technical capability, financial capacity and general experience of the applicants. The Works and Services Department, National Highway Authority, Irrigation Department, WAPDA etc. prefers to do prequalification for procurement of all types of Works.

Procurement Planning

The PPR and the Government Budget Rules require planning at the start of the fiscal year which starts on 1 July and ends on 30 June next year. This planning exercise is reflected in the annual budget. Procurement planning usually is done on the basis of an accurate need assessment and is all about how to acquire/ meet that need; allocation of funds to meet that need is considered as budget allocation. Procuring agencies seldom prepare procure plans in this context by identifying the size, nature and complexity of the object of procurement or works. Even if prepared these plans are not widely disseminated on PPRA website or the respective departmental websites. However, the annual procurement plans reflect the budget plans ex-post facto subject to modifications to be in line with the budget when the budget is presented and approved by the parliament.

Procurement Advertisement

As an international best practice timely notification of bidding opportunities is essential in competitive bidding. The notice should be published in local and national newspapers, official gazettes, or electronic bulletins, to suit the nature and size of the project. Information on the invitation to bid should be available in offices of the agency, and the district or county administration for local projects. Procurement opportunities should be publicized in the local language where small contractors and community organizations may be likely to bid. International bids should be published in widely circulated trade journals and newspapers, and through the Internet. In the case of large, complex works, turnkey contracts, or large consultancies longer period of time is allowed as response time.
bidders or their representatives who wish to attend. Such public bid openings reduce the risk that bids will be leaked to competitors, lost, or manipulated. After the bids are opened, no information on the bid evaluation and award recommendations should be disclosed until after the successful bidder is notified of the award. Bid evaluation is one of the most difficult steps to carry out correctly and fairly in the procurement process, and one of the easiest steps to manipulate.

Procuring agencies under PPR 35 are required to announce the results of bid evaluation in the form of a report giving justifications for acceptance or rejection of bids at least 10 days prior to the award of procurement contract. It is important for the results of the bidding process as a whole to be evaluated periodically to identify suspicious trends. Unusual or lengthy delays in bid evaluation are often a sign of trouble, an indication that someone in the system is attempting to discourage the best bidders or give extra time to favoured bidders on the basis of leaked information. Such delays should be strongly discouraged to maintain transparency and accountability. (Appendix C)

**Award of contract**

The agency should award the contract within the period of validity of the bids to the bidder whose bid has been determined (i) to be substantially responsive to the bidding documents and (ii) to offer the lowest evaluated cost. The bidder should not be required to undertake responsibilities not stipulated in the bidding documents or to otherwise modify the bid. This process should be transparent and according to objective criteria. There, too, delays are often a symptom of unfair or corrupt practices.

**Degree of Access to Information**

PPR 47 lays down guidelines on public access and transparency in this manner, ‘As soon as a contract has been awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public: Provided that where the disclosure of any information related to the award of a contract is of proprietary nature or where the procuring agency is convinced that such disclosure shall be against the public interest, it can withhold only such information from public disclosure subject to the prior approval of the Authority’. There are established norms for the safe keeping of records and documents related to transactions and contract management. The PPR regulation establishes a list of the procurement records that must be kept at the operational level. However, the conditions for getting access to the record, availability of records are not communicated when it comes to producing the records for public inspection. Since all systems are manual with few exceptions and no secure storage is provided, the authenticity and completeness of records cannot be guaranteed. Ironically, in the case of PPRA itself when a case record requisitioned from a procuring agency is not supplied there are no penal provisions available PPRA Ordinance for enforcement of its request.

There is a rudimentary public information system which provides information only for initial opportunities and access to tender documents or to otherwise modify the bid. This process should be transparent and according to objective criteria. There, too, delays are often a symptom of unfair or corrupt practices.

**Redress of Grievance/complaints**

According to a joint study conducted by World Bank and Asian Development Bank certainly some avenues should be available for entertaining legitimate grievances and complaints from bidders about the fairness and confidentiality of the process, and for furnishing clarifications.

In Japan, a special unit in the cabinet office considers complaints relating to international competitive bidding. In some countries, complaints can be addressed to the ombudsman if the procuring agency is unresponsive. Some countries provide for a review of the decision on the award of the bid if representations are received from the other bidders in time, but all procurement decisions are open to judicial challenge in most countries. Attitude is also important. The unresponsive behavior of procurement staff to complaints and suggestions can make it less attractive to do business with the government, and thus reduce effective competition in the future. This, of course, may sometimes be precisely the goal of the unresponsive behavior of procurement staff.

PPR 48 stipulates that a procuring agency shall constitute a committee comprising of odd number of persons with proper powers and authorization. The committee should decide the complaint within fifteen days. Appeal mechanism likely to make inconsistent decisions on similar issues. Though existing complaint review system has the capacity to handle complaints efficiently; it takes years by the complaint handling system to enforce a remedy. The aggrieved bidder may lodge an appeal in the court of law if not satisfied with the decision of the committee. These complaints are relating to the pre-contract issues. For settlement of disputes arising after the award of contract arbitration under Arbitration Act 1940 is prescribed. There is no clear cut guideline on what if the committee does not decide in line with the given instructions; there is no penal provision to this effect. (Appendix E)

**Control and Audit System**

As such the PPR do not provide for any guideline on procurement audit by a group of specialized auditors. Audit, both internal external, is largely limited to financial transactions only. Mechanism for performance audit is in place, however, rarely undertaken largely due to capacity constraints. Implementation of internal control mechanisms in individual procuring agencies with clearly defined procedures for procurement audit is done but the corresponding findings are not available. A usual annual audit of financial transactions is conducted; the audit observations are discussed and settled generally within 6 months where feasible. The record of observations showing the details is not available to PPRA what to speak of outside public. PPR 11 stipulates an approval mechanism setting out a clear authorization and delegation of powers for different categories of procurement and shall only initiate procurement activity once approval of the competent authorities concerned has been accorded.
Provincial Regulatory Regimes

Sindh Procurement Regime
Sindh is the second most populous province of Pakistan. It has around 23% of the population and 18% of the land area of Pakistan.

Procurement Systems
Legal framework: Before coming up with its own procurement law and rules, Sindh government, in 2006, adopted the Federal Public Procurement Authority Ordinance, 2002 and Federal Public Procurement Rules issued in 2004. However, work on the procurement and rules continued and Sindh assembly passed the Sindh Public Procurement Bill (later Act) in April 2009 which came into force in May after assent by the Governor. This Act is quite similar to the Federal PPRA Ordinance, discussed in the preceding chapter, except for the few changes such as addition in functions (managing capacity building activities and providing a dispute resolution mechanism), a larger board of directors and inclusion of district governments and public private partnership in the domain of the authority. Addition of civil society (particularly Transparency International), in addition to the private sector, in the PPRA (Sindh) board of directors has been a particularly astute decision as frequently public sector entities and private companies collude to take actions detrimental to the larger public interest.

The Sindh Public Procurement Rules (SPPR) were notified in 2010. They are much more detailed than the Federal Public Procurement Rules, 2004. For example, unlike federal rules, SPPR give details of international and national competitive bidding procedures (Rule 15 of SPPR), grievance/dispute resolution mechanism (Rules 31-35) etc. Moreover, last two parts of the SPPR give provisions and procedures relating to procuring of consulting services (Rules 58-80) and public private partnership project (Rules 81-88).

These details not only help in increasing transparency by giving more information to the public but also increase accountability by reducing discretion available to the procuring entities and officials. Sindh Public Procurement Regulatory Authority (SPPRA) has also published online the following documents for comments:
- Draft standard bidding documents for pre-qualification of works, drugs, large & small works and goods
- Draft regulations for procurement of works
- RFP for selection of consultants

However, despite reference to regulations in the rules, there are no regulations notified.

Statutory body for reviewing and leading procurement process: SPPRA was established in 2006 and is now the most efficient and effective of all provincial PPRA in Pakistan. It has defined set of functions and has legal authority to oversee and evaluate all procurement in the province. Besides the managing director, it has two directors, two procurement specialists, four managers, a web programmer and ancillary staff. It has also sufficient funds for its operations and each year government contributes to its budget. The independence of SPPRA in enshrined in the Sindh Public Procurement Authority Act, 2009 and it has worked independently from the government. As SPPRA is not involved in procurements (except for small procurements for itself), therefore, it is free from possible conflict of interest in its operations.

Effective Control Systems: General financial rules and control systems exist but as they are not specific to procurement process, their utility is partial. Moreover, even these general controls are slack and their compliance and practice is half-hearted. Auditor General of Pakistan and Accountant General, Sindh are responsible for auditing (pre-audit and post-audit) of government transactions. There are also some rules for internal control in the provincial departments. However, despite presence of all these organizations and rules, control systems are lax. Moreover, control systems are only concerned with financial impropriety. There are no performance indicators to also review the working of officers and departments.

Punjab Procurement Regime
Punjab is the most populous province of Pakistan, with around 60% of the Pakistan's population living in this province. Although Punjab started on procurement reforms earlier than other provinces, these reforms are now stalled.

Procurement systems
Legal framework: Punjab Public Procurement Authority Ordinance was initially promulgated in 2007 but it lapsed as the provincial assembly didn't pass it in the stipulated time of four months. A new ordinance, with the same name, was promulgated in 2009 and later became an Act after it was passed by the provincial assembly and assented by the governor in November, 2009. This act is similar to the Federal PPRA Ordinance, discussed in the preceding chapter, except for the few changes such as addition in functions (establishment of performance indicators for the procuring agencies, assistance of capacity building and preparation of standard documents for public procurement), a larger board of directors, inclusion of district governments and appointment of third party evaluation firms. Addition of three members of the provincial assembly in the board of directors while making the authority internally accountable to the public representatives endangers it to political pressures. Another difference which distinguishes the Punjab PPRA from the federal and Sindh PPRA is that the Punjab PPRA is to be audited by a chartered accountants firm,
instead of Auditor General of Pakistan. This may have detrimental effects on accountability in future.

The Punjab Procurement Rules (PPR) were notified in 2009. The government of Punjab simply adopted the federal public procurement rules, 2004 and named them PPPR 2009. As federal public procurement rules, 2004 have been discussed in detail in the preceding chapter, they will not be discussed again. In June 2010, PPPR were amended to include provision related to public private partnerships. Rules 52 to rule 59 were added and some minor changes were also made in the previous rules. These new rules increased the transparency and accountability in relation to public private partnership projects, which are supposed to be major mode of financing major infrastructure projects in the province.

### Statutory body for reviewing and leading procurement process:

Punjab PPRA was established in 2009. However, as only one official, the managing director, was posted to the authority it is close to being non-functional. Effort to bring in more officers proved unsuccessful in 2010 and situation have deteriorated further as full time managing director has also been transferred and now a deputy secretary in Services & General Administration department is performing the duties of MD, Punjab PPRA, in addition to his regular duties. These circumstances, obviously, have a very detrimental effect on any efforts to increase transparency and accountability in the procurement processes of Punjab government departments.

### Effective Control Systems:

As discussed in case of other provinces, general financial rules and control systems exist but as they are not updated regularly and not specific to procurement process, so they donot contribute to establish an effective control system. Auditor General of Pakistan (post-audit) and Accountant General, Punjab (pre-audit) are responsible for auditing of government transactions and rules for internal control of the government expenditure also exists in the provincial departments. However, control systems are still lax and piffage of public funds is common. Establishment of district government has led to further decrease the effectiveness of control systems as establishment of control systems at the district level will take time. Moreover, as there are no performance indicators, control systems are only concerned with financial impropriety.

### Appeals/Grievance Mechanism:

The appeal and grievance mechanism has been given in the Punjab public procurement rules but without staff, this mechanism is not operational. Once the staff is available, the authority has to make regulations or add detail to this mechanism as currently, it is given in very general terms.

### Degree of access to information/transparency:

Although severely handicapped due to the absence of dedicated staff, Punjab PPRA has done some work to increase transparency in the procurement work. List of tenders on its website is regularly updated and contractors have access to the tenders, procuring agencies and their publishing and closing dates. The Punjab PPRA ordinance/act, rules and amended rules can be read and downloaded from the website. Link for members of the board of management and black listed firms have also been provided but there is no information as only posts of the members have been given (not names) which are also given in the act and there are no names of blacklisted firms. This level of transparency is, however, disappointing and government of Punjab should appoint more staff in the authority to make it truly functional.

### Accountability:

For accountability of the public servants in relation to procurement decisions, there are two types of laws/rules: general and specific. The general laws/rules deal with all kinds of financial impropriety and government officials can be held accountable according to Punjab Office of Ombudsman Act (1997), Efficiency & Discipline Rules (1973), NAB Ordinance (1999), Punjab Anti-corruption Establishment Ordinance (1961), Punjab Anti-corruption Establishment Rules (1985) etc. The specific provisions, related to procurement, are given in the Punjab procurement rules and they are similar to the federal public procurement rules, which have been discussed in detail in the preceding chapter. Corrupt and fraudulent practices have been defined in Rule 2(6) and Rule 19 gives information about blacklisting of contractors and suppliers if they indulge in such practices or do consistent unsatisfactory work. The only difference is attachment of draft ‘Integrity Pact’ to the rules which binds contractors to not to indulge in corruption, fraud, non-disclosure of full information etc.

Enforcement of these rules and regulations is again a matter of concern. Law are passed and rules are notified but their low enforcement shows a weak and inefficient state battling powerful vested interests. Every few years, usually after a martial law or a new government takes over, there is a flurry of anti-corruption cases and arrests but after that powerful interests prevail and everything is forgotten. Legislative accountability is also weak as public accounts committee of the provincial assembly scrutinize public accounts after long delay and cannot punish corrupt public servants. The civil society is slowly getting powerful but it will take many years before it can make government efficient and accountable and procurements transparent.

### Balochistan:

Balochistan is the least developed of all the provinces of Pakistan. Although it constitutes more than 40% of the total area of Pakistan, its population is less than 10% of the Pakistan’s population. Its economic and social indicators are abysmal, particularly gender-related indicators.

### Legal framework:

Procurement is a decentralized function in Balochistan and every department has the powers to do most of their procurements. The one restriction is that, if the procurement expenditure exceeds a certain limit, representatives of Finance department (and sometimes Planning & Development) are also part of the approval process. Balochistan government passed a Balochistan PPRA Act in 2009. This act is similar to the federal PPRA Ordinance. Previously, there was a purchase manual to deal with the procurement matters of the government departments. Despite passing of the Balochistan PPRA Act, most of the officers in government departments are still using the erstwhile purchase manual for dealing with their procurement issues. The procurement of civil works is done according to Pakistan Engineering Council’s rules and there are no rules for the procurement of services. Ironically, even this outdated purchase manual, being followed by most officers, is not freely available which creates serious transparency and accountability issues. Most of the contractors do not know what the government rules are and whom they have to approach if they have any issue with the procurement process. In case of services, the situation is worse as there are no rules so transparency is next to impossible. The public access to rules and regulations, which are not sometimes even available, is very restricted.

Statutory body for reviewing and leading procurement process: The Balochistan PPRA Act, 2009 calls for setting up of a procurement authority but despite passing of two years, there is no institution as yet for leading procurement reforms and reviewing procurement process in Balochistan. Without this authority, the procurement process has been moving at a pace which is not compatible with the developments in 21st century. Purchase manual is at least forty years old and there has been very few changes made in it since it was made mandatory. Not only the private contractors but government officials also face problems because of its obsolete rules but there is no body to review this manual or replace it with something better.

### Effective Control Systems:

General financial rules and control systems exist but as they are not specific to procurement process, their utility is partial. Moreover, even these general controls are slack and their compliance and practice is half-hearted.

### Appeals/Grievance Mechanism:

Due to the absence of legal framework related to procurement process, appeal and grievance mechanism is not available to the concerned parties. If there are any complaints, the
affected parties have two options. First, parties can use the regular process of complaining to the superior officer or going to the courts but both these options result in a long process with uncertain results.

Degree of access to information/Transparency: There are serious problems in information dissemination about the procurement process. Starting from advertisement to the end of procurement process, the concerned parties find it difficult to get the required information. As rules, regulations and guidelines are absent; there is not even a requirement of providing information to the concerned parties. Ironically, while the required information is difficult to get, propriety and personal information, which shouldn’t be disclosed, is sometimes disclosed to the public.

Accountability: As explained above, the legal framework relating to procurement is not available. Purchase manual and Pakistan Engineering Council rules do touch some of the issues related to fraud, black-listing and corruption but that still leaves lot of areas where the accountability regime is absent. For example, there are no rules related to dealing to conflict of interest and how government officials should avoid it. Besides rules and regulations, a big part of accountability is enforcement. In Balochistan, enforcement of rules and penalties is very low. Sometimes people get caught and get punished but usually that is not the case. There is provincial anti-corruption department and there is also the federal agency National Accountability Bureau but, according to various surveys, corruption rampant in government due to lack of rules and enforcement.

Outside the executive branch, there is also a public accounts committee of the provincial assembly but they scrutinize public accounts after a delay of many years when the few evidences available are also gone and committee have no authority to punish.

The civil society is the weakest in Balochistan as it has the lowest level of education in the country. The few civil society organization that work in Balochistan have to also deal with the current law and order problem, making their work of making government accountable more difficult.

Khyber Pakhtunkhwa Province (KPK)

Legal Framework: The North West Frontier Province (NWFP) procurement of goods, works and services Rules 2003 regulate the public procurement activity in the province. Khyber Pakhtunkhwa is the new name of NWFP and now commonly known as KPK. The NWFP Procurement Ordinance 2002 provided authority to NWFP Finance department under section 45 to make the rules. Primarily, these rules are very much under the influence of the provisions specified in NWFP Delegation of Financial Powers under the Financial Rules and Powers of Re-Appropriation Rules 2001. The rules can hardly be considered as a procurement regulatory framework per se. Procurement is a decentralized function and every department has the powers to do most of their procurements. The one restriction is that, when the procurement expenditure exceeds a certain limit, representatives of Finance department (and sometimes Planning & Development) are also part of the approval process. These rules and procedures are allegedly followed by all but the copy of rules is not freely available which creates serious transparency and accountability issues. The supply side is completely unaware of the very existence of these rules. Generally, the reliance is placed on the word of mouth. In case of services, the situation is rather worse as there are no specific rules describing methods of selection of consultants. The public access to rules and regulations, which are not sometimes even available, is very restricted.

Statutory body for reviewing and leading procurement process: There is no institution as yet for leading procurement reforms and reviewing procurement process. Unlike PPRA in Sindh or at Federal level, procurement opportunities are mostly published in the local newspapers only. The procurement activity is predominantly dominated by actions of Finance department. Without this institution, the procurement process has been moving at a pace which is not compatible with the developments in 21st century. Purchase manual is at least forty years old and there has been very few changes made in it since it was made mandatory. Not only the private contractors but government officials also face problems because of its obsolete rules but there is no body to review this manual or replace it with something better.

Effective control mechanism & Accountability: The practitioners take procurement as a clerical function; therefore, have developed liking and specialisation in the provisions of rules which promote manual working. There is no clear cut distribution of duties; the routine audit of financial transaction is conducted on annual basis. The rule of the day is award contract to the lowest bidder. There is no conscious realisation of conducting some sort of due diligence in terms time life costing. The auditors raise an objection against the tender awarding committee if the tender is not awarded to the lowest bidder. The possibility of leaking/selling out the critical information on contract is very high and there is no accountability mechanism. The financial negotiations with the lowest bidder are encouraged and equal to mandatory.

Degree of Access to Information: The procuring agencies are not obliged to ensure wide dissemination of procurement decisions. In the absence of a web portal and ownership of the procurement function there is less awareness amongst the general public. The contractors are well aware of the consequences of any litigation, minor or major, therefore like to restrain from such practices. The general public can be provided the results of evaluation exercise upon request.

Appeals/Grievance Mechanism: Rule 43 of the rules prescribe a detailed procedure on an aggrieved bidder should file a review application within 10 days of the announcement of award of contract. Interestingly, despite the fact that the sub rules stipulate guidelines on who to submit the application; identifying various authorities and the time line which is 20 days for finalisation of a complaint/review application, in case no decision is made by the given reviewing authority, the Tender Accepting Authority without waiting for the outcome of application for review may enter into a contract with the successful bidder.
Transparency International Pakistan (TIP)

Transparency International Pakistan is a non-governmental organization, dedicated to government accountability and curbing the national corruption. It is mandated to strengthen the global value system by making transparency and accountability more relevant public norms. TIP noted that presently public procurement in all departments of Pakistan is treated as a downstream, clerical, buying function and therefore does not attract professionalism and competent staff to deal with the meagre resources with integrity and transparency. One of the main reforms TIP has been working on since 2002 is to professionalize the organizations and individuals responsible for procurement through targeted capacity building activities. This is the core element of the initiative, addressing not only capacity building efforts at the level of agencies and individuals responsible for procurement through targeted capacity building activities but also to strengthen systems, transparency and to tackle corruption.

Since the establishment of PPRA followed by notification of PPR in 2004; TIP has been supporting the procurement rules for promoting transparency and accountability in public procurement regime in Pakistan. In this connection TIP has signed various MoUs with various public sector organizations such as Pakistan International Airlines (PIA), Pakistan Steel Mills, Port Qasim Authority (PQA), City District Government Karachi (CDGK), Department of Agriculture, Sindh, Karachi Water and Supply Board (KW&SB), Pakistan State Oil (PSO), Trade Development Authority of Pakistan (TDAP) and State Life Corporation of Pakistan to provide support to these entities in better understanding of PPR 2004. TIP has also written Procurement Manuals, in line with PPR 2004 for organizations such as PIA, CDGK, PQA, Pakistan Steel, KW&SB.

The main objective of writing these manuals was to ensure that procurement decisions made in these organizations are in line with PPR 2004 to ensure transparency and accountability of procurement process. Increasing number of whistleblowers within government organizations and venturing of a part of media into investigative journalism has also helped TIP in unearthing the irregularities in procurements, appointments and other government dealings. Recently TIP has pointed out various irregularities in the procurement process initiated by energy sector organizations (DISCOS) for procurement of goods, National Insurance Corporation (NICL) and construction contracts etc. TIP reviewed the processes employed by the defaulting organizations in the light of PPR 2004 with a view to promote transparency and accountability. TIP also sits on the Sindh Public Procurement Regulatory Authority (SPPRA) Board and has contributed towards drafting and promulgation of SPPRA Rules in 2010. (Appendix F)

Underlying is a comparison of Global Corruption Barometer (GCB) 2004 with GCB 2010

For spreading the message of anti-corruption across the country, TIP has partnered with different community based organizations (CBOs) who organize activities within their locality from time to time. Local communities took great interest in those activities which were reflected by the way they participate. In addition, it helped TI Pakistan in taking its message to grass root level which was otherwise a not-so-easy task. TIP has organized various workshops all across the country. TIP in collaboration with Rural Development Organization, Faisalabad, Punjab, held seminars and rallies in 11 districts of Punjab in cooperation with the following NGOs:-

1. Hope Organization Bhawalnagar,
2. Chenab Welfare Society – Chiniot
3. Human Freedom Organization – Faisalabad,
4. Environment Welfare Society – Gujranwala,
5. Concept Community Development Organization – Multan
6. Dost Organization – Okara
8. Community Development council – Sahiwal
10. Social Welfare Society – Toba Tek Singh
11. Sudhar Development Organization
Conclusion

Historically considered a clerical activity, public procurement has become one of the most important functions of the government due to increasing size and activities of the governments, growing expenditure of the government ranging from 20%-25% of GDP in the developing countries and about 10%-25% of GDP in the developed world. In recent years attention has been paid towards the importance of public procurement in stimulating national, regional and local development. A direct result of this interest has been a realisation that if public procurement is to fulfil its potential as a driver of social and economic improvements, there is a need to focus its role in achieving transparency and accountability through a multi-pronged approach. In many developing countries, efforts to close loopholes for corruption or to achieve social goals have created increasingly detailed regulations and centralized control and Pakistan should not be an exception.

The main direction of improvement is to achieve a better balance between controls and managerial flexibility. The uneven documentation and bidding procedures of different government entities compound the problem of excessive controls. Standard bid documents for goods and services, as well as work contracts, are in fact a guaranteed way of ascertaining transparency and accountability in the procurement process. Major improvements in integrity would result from extending such standard bidding documents to all government procurement because their use i) reduces opportunities for undue discretion, collusion, and extortion ii) build up the capacity of the contractors in understanding and preparation of bids; and iii) facilitates and promotes communication between buyer and the seller.

Other improvements in procurement in the country regulatory framework could be realized by addressing the slowness of the dispute resolution mechanisms. The process is slow partly because of weaknesses in the judicial system and partly because of the complex appeal procedures. The process of recovering money from suppliers in case of bad performance or default is cumbersome; the insurance bonds are rarely cashed. Bank guarantees fall prey to collusion between bank and the contractor.

Contractors also face protracted legal battles in recovering disputed sums from government. A contractor also has to take on the blame of a problematic contractor, when he goes to litigation, is penalised at the time of prequalification. With the government and the contractors thus forced to take steps to protect themselves from these eventualities, transaction costs increase for sides, making the purchase of goods and services, and contracting, much more costly in the government than in the private sector. Overall weaknesses in the judicial system are a broader problem, which could be dealt with by establishing a streamlined and fast-track procedure for appealing administrative court decisions on procurement disputes.

Finally, although the process of procuring goods, services, and works is critical for the economical and effective use of public funds, procurement issues have not received much attention from senior public managers and political leaders. In part, senior managers are not interested in the mechanics of procurement; they are also concerned with keeping their distance (and deniability) from potential waste or corruption scandals. Yet, they must realize the great importance of procurement in an efficient, effective, and honest government, and place it at the center of their responsibility rather than shunting it off to lower-level staff. In turn, political leaders must give them their support in the exercise of this delicate responsibility.

Recommendations: Directions of Improvement

In a developing and transitional economy like Pakistan, improving the procurement system to meet standards of economy, competition, accountability, and honesty generally requires moving to:

1) simplified legal and regulatory framework for procurement;
2) clear organizational arrangements, combining centralized procurement policy/oversight with decentralized operations;
3) improved public access to information and documentation;
4) measures to ensure that only civil servants of competence and integrity are in charge of government procurement, and providing for commensurate rewards through career options and frequent rotation;
5) simple and transparent process of procurement, whichever method is chosen;
6) more effective mechanisms to curb fraud, abuse, and corruption, with appropriate assistance from international CSOs and local NGOs regarding raising of public awareness apropos more attention to contract execution and monitoring with a view to achieve value for money through promoting transparency and accountability.
**Case Studies**

1. **Pakistan Railway's bid to purchase 150 locomotives**

Pakistan Railways (PR) is bound to conduct all procurements in accordance with PPR 2004 and any violation of rules amounts to declaring the process as mis-procurement. Whereas PR conducted the procurement process in violation of PPR 2004 alleged by Transparency International (TI) Pakistan in a letter sent to the Secretary/Chairman, Railways, on May 12. TI Pakistan expressed concern over the violation of rules in the procurement of locomotives which may result in a loss of Rs 40 billion to the exchequer. Following violations were observed by TI Pakistan:

**Rule 10:** Only US-made locomotives are specified in the tender. This is not allowed under Rule 10 which states: "Specifications shall allow widest possible competition and shall not favour any single contractor or supplier nor put others at a disadvantage. Specifications shall be generic and shall not include references to brand names, model numbers, catalogue numbers or similar classifications."

**Rule 12:** Tender notice was published only in one newspaper. This is against Rule 12 (2) which states: "all procurement opportunities over two million rupees should be advertised on the Authority's website as well as other print media or newspapers having wide circulation."

The advertisement in newspapers shall principally appear in at least two national dailies, one in English and the other in Urdu.

**Rule 23:** Cost of tender documents was Rs 500,000. This is against Rule 23 (5) which states: "the procuring agency shall provide a set of bidding documents to any supplier or contractor, on request and subject to payment of price, if any. Explanation - for the purpose of this sub-rule price means the cost of printing and providing the documents only."

**Rule 11:** PC-1 was not prepared or approved. This is a violation of Rule 11 which states: "approval mechanism - all procuring agencies shall provide clear authorisation and delegation of powers for different categories of procurement and shall only initiate procurements once approval of competent authorities concerned has been approved."

**Rule 2(f):** In case reports about the deal are proved to be true, then under PP Rule 2(f), it would be a collusive practice designed to establish bid prices at artificial, non-competitive levels and to deprive procuring agencies of the benefits of free and open competition, and Rule 7 "Integrity Pact" and as a result the contractor may have to pay 10 times the loss to Government of Pakistan.

**Rule 20(f):** states: "corrupt and fraudulent practices includes the offering, giving, receiving or soliciting of anything of value to influence the action of a public official or the supplier or contractor in the procurement process or in contract execution to the detriment of the procuring agencies; or misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition and any request for, or solicitation of anything of value by any public official in the course of the exercise of his duty."

The PR had taken refuge behind following rules which TI Pakistan explained as:

PP Rule 42 is not applicable in this procurement. Rule 2(f) is applicable in this particular situation as it pertains to collusive practices among bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agencies of the benefits of free and open competition. Rule 10 is applicable in this and each and every procurement by all procuring agencies.

Under Rule 10, PR cannot name one country only as supplier, nor PR can specify only two brand names GE and GM prime movers without writing or "equivalent", as even in US at least four other reputable manufacturers exist, viz, American Locomotive Company (ALCO), Baldwin-Lima Locomotive Works (BLW), Fairbanks-Morse (FM) and Green Goats.

Rule 42 (d) is not applicable in this procurement as it is Rs 40 billion procurement of 150 locomotives, which are manufactured by hundreds of firms all over the world. PR understanding of Rule 42 is wrong.

PR has not been tied up forever with GE. With this logic, PIA shall always buy Boeing aircraft, under replacement program.

While PR has clarified that Ministry of Railways has never favoured any single contractor or supplier but has requested all suppliers/manufacturers in the US for participation in the bid, TI Pakistan insisted that since PR is asking for foreign funding from bidders in this procurement and when payment in foreign currency is made and sovereign guarantee is required for foreign exchange loan, approval of Ministry of Finance and Government of Pakistan is mandatory requirement, prior to processing the procurement.

PR further clarified that the specifications are not confined to any one particular brand name, model number, or catalogue number, etc, in view of the replacement program of old US origin locomotives and availability of US Exim Bank tied loan, the tender has been floated for all US suppliers and that, too, is subject to the approval of loan by the Government of Pakistan. Since monitoring the source country does not mean a single supplier, PPR 10, therefore, is not valid.

The cost of tender document shown as Rs 500,000 has been described as a typographical error which was meant to be Rs 5,000 only and necessary amendment is being issued, it said.

Other points clarified by PR are as follows:

It is on the advice of the Planning Commission that the locomotives are being procured on the non-development side and not development side only. In an earlier case, the Planning Commission had advised that procurement of rolling stock and locomotives is a non-development activity which should not be routed through CDWP and ECNEC by way of submitting PC-1. Therefore, it is wrong to say that the Planning Commission had been bypassed.

The approval mechanism for such procurement is being strictly followed. The process has been initiated with the approval of the competent authority in the Ministry of Railways. The tender will help Railways in getting competitive prices, and final proposal will contain the realistic price to be approved by the ECC. In any case, the tender is subject to the approval of loan by the Government of Pakistan, as mentioned in the tender.

Regarding the need for two envelope bidding process, PR clarified that in an earlier case PPRA had advised the Ministry of Railways to use two-envelope system under section 36(d) of PP Rules in such procurements. That is exactly what the Ministry did.

TI Pakistan in response replied as follows:

PR has accepted the violation of Rule 23 and agreed to reduce the cost of tender documents from Rs 500,000 to Rs 5,000.

TI Pakistan is of firm view that specifying procurement only from one country is violation of PP Rules which require specification to allow widest possible competition and shall not favour any single contractor or supplier nor put others at a disadvantage. Public Procurement Regulatory Authority had informed the Managing Director of Pakistan Railways Carriage Factory, Islamabad, on May 5 that a tender notice cannot be country-specific. Pakistan Railways shall note the spirit of open competition which is described in Rule 2(f).

TI Pakistan has drawn the attention to Rule 5 whereby any unauthorised breach of these rules shall amount to mis-procurement. In case the procurement is financed under a commitment of the federal government arising out of an international treaty or an agreement with state or donors, then the donor's procurement conditions will over rule PP Rules, 2004.
1. Civil Aviation Authority (CAA) accused of violating Public Procurement Rules, 2004

Public Procurement Regulatory Authority (PPRA) took serious note of the alleged violation of procurement rules by the Civil Aviation Authority (CAA) in the purchase of a hydrant refueling system for the new Benazir Bhutto International Airport, Islamabad.

PPRA sought report from the CAA in the wake of a 'petition for intercession' by China National Precision Machinery Import and Export Corporation (CNMPIEC) filed with the Secretary Defence through TI Pakistan.

The Chinese firm alleged that its bid for the project opened on August 5, 2009, was the lowest - amounting to Rs1,290,509,127 inclusive of duties and taxes - against AlTariq Constructors whose bid offer amounted to Rs1,398,784,629 inclusive of duties and taxes. Thus the Chinese bid was Rs108,275,502 less than its competitor.

TI Pakistan pointed out to CAA that the authority had to sign the 'integrity pact' with the contractor under Rule 7. Procurements exceeding the prescribed limit shall be subject to an integrity pact as specified by regulations with approval of the federal government, between the procuring agency and the supplier or contractor. And under the integrity pact, if corruption is deducted at any stage, the contractor is committed to pay ten times the amount of loss to CAA due to corrupt act besides facing legal action under the law of the land.

In the case of complaints lodged by the Chinese firm, if Rs100 million is proved the amount of recovery from the contractor may be Rs1 billion. The Chinese firm maintained that it had successfully completed the hydrant refueling system at Allama Iqbal International Airport, Lahore, saying that its competitor had no expertise of hydrant refueling system.

While rejecting the Chinese firm's offer, the CAA advised CNMPIEC that it had been declared 'commercially non-responsive' as its bid price included the customs duty and taxes. The Chinese firm explained that it had complied with Civil Aviation Authority's own instructions to bidder. The hydrant refueling system is required for airports with high air traffic density and where the demand for fuel is high a refueling system known as the 'hydrant refueling system' is used. The main characteristic of this system is that fuel from the airport depot is supplied, under pressure, directly to the apron through a system of pits connected to a network of lines. The fuel is then loaded into the aircraft using a servicer fitted with a supply monitoring station. The major advantages of hydrant refuelling system, compared to re-fuelling carried out using re-fuellers, are practically no limits in quantity to be loaded on board aircraft; quicker fuelling procedures; and safer for airports, since there are no re-fuellers circulating with fuel on board.

2. Violation of PP Rules by Civil Aviation Authority (CAA) regarding Pre qualification Notice for Chain Link Fencing D.G. Khan Airport

CAA published pre qualification notice in daily Dawn on 12 February 2010 for Procurement of China Link Fencing for D.G. Khan Airport. Violation was made on account of Rule 16 by not providing a set pre qualification documents to the potential bidders. CAA had to process all procurements under the PP Rules 2004

PPRA took notice of this violation during its desk monitoring of procurement opportunities published in the newspaper(s). Subsequently, TI Pakistan followed up on this violation and wrote a letter to the DG CAA intimating the violation.

Rule 16 of PP Rules 2004 explain prequalification process as under

(1) The procuring agency engaging in pre-qualification shall announce, in the pre-qualification documents, all information required for pre-qualification including instructions for preparation and submission of the pre-qualification documents, evaluation criteria, list of documentary evidence required by suppliers or contractors to demonstrate their respective qualifications and any other information that the procuring agency deems necessary for prequalification.

(2) The procuring agency shall provide a set of pre-qualification documents to any supplier or contractor, on request and subject to payment of price, if any. Explanation.- For the purposes of this sub-rule price means the cost of printing and providing the documents only.

CAA was informed that PP Rules had eliminated all discretions in prequalification process and avenues of corrupt practices in tendering by explaining the prequalification process in detail in the Rules. In response to this intimation by PPRA as well as by TI Pakistan CAA prepared a set of prequalification documents including the prequalification evaluation criteria and provided them to the potential bidders on request accordingly. While doing so CAA extended the deadline for submission of applications.
3. Violation of PP Rules by Federal Government Employees Foundation regarding Expression Of Interest for Establishment of Educational Institution on BOT Basis

The procuring agency published expression of interest notice in daily Dawn on 8 November 2010 for establishment of educational institutions on Build, Operate and Transfer (BOT) basis. PPRA noticed that the notice did not include a set of prequalification document would be provided to the applicants as required under Rule 16 of PP Rules 2004. TI Pakistan also noticed that violation was made on account of Rule 16 by not providing a set pre qualification documents to the potential bidders.

TI Pakistan stressed that an intimation on provision of prequalification documents should have been included in the procurement notice to be issued under Rule 16 which would comprise of all information required for including instructions for preparation and submission of the prequalification documents, detailed evaluation criteria, list of documentary evidence required by suppliers or contractors to demonstrate their respective qualifications and any other information that the procuring agency deems necessary for prequalification.

Reference was also made to the Supreme Court order given on 28 April 2010 in case of disputed award of multibillion dollar LNG contract to GDF-Suez, in which the SC had announced that ‘Here we may observe that it is duty of the court to ensure that the PPRA Ordinance 2002 read with the PP Rules 2004 are adhered strictly to exhibit transparency’

PPRA further informed Director Overseas Pakistan Foundation about Rule 16 of PP Rules 2004 which explains prequalification process as under

1. The procuring agency engaging in pre-qualification shall announce, in the pre-qualification documents, all information required for pre-qualification including instructions for preparation and submission of the pre-qualification documents, evaluation criteria, list of documentary evidence required by suppliers or contractors to demonstrate their respective qualifications and any other information that the procuring agency deems necessary for prequalification.

2. The procuring agency shall provide a set of pre-qualification documents to any supplier or contractor, on request and subject to payment of price, if any.

Explanation.- For the purposes of this sub-rule price means the cost of printing and providing the documents only.

PPRA also referred to Rule 50 which states that violation of any rule of PP Rules 2004 shall render the procurement to be declared as mis-procurement under rule 50 of the PP Rules 2004.

In response to these guidelines/intimations by PPRA as well as TI Pakistan the procuring agency prepared a set of prequalification documents including the prequalification evaluation criteria and provided them to the potential bidders on request accordingly. While doing so, the concerned procuring agency extended the deadline for submission of applications.

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**Appendix A**

**Organization**

<table>
<thead>
<tr>
<th>Name</th>
<th>National Database and Registration Authority NADRA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>HQ NADRA, Sector G5/2 Shahrah-e-Jamhuriat</td>
</tr>
<tr>
<td><strong>City</strong></td>
<td>Islamabad</td>
</tr>
<tr>
<td><strong>Tel No.</strong></td>
<td>051-9205784, 90391852</td>
</tr>
<tr>
<td><strong>Fax No.</strong></td>
<td>0519206435</td>
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<tr>
<td><strong>Receipt No</strong></td>
<td>36940</td>
</tr>
<tr>
<td><strong>Tender No</strong></td>
<td>488/2011(September-18)</td>
</tr>
</tbody>
</table>

**Description**

Headquarter NADRA intends to purchase Barcode Reader from Sale/income tax registered firms. a. Barcode Reader Metrologic MS-1690 with USB Interface or Equivalent Qty 10 Nos TERMS & CONDITIONS:-

1. Specification and detailed terms & condition of the Equipment can be collected from the office of procurement department at a cost of Rs.1000/- in cash (non-refundable) between 0900 to 1600 hours except Saturdays, Sundays & Holidays. 2. The tender will be accepted by 1100 hours on 17th October 2011 using the single stage one Envelope method. The same will be opened at 1130 hours on same day in the presence of available vendors. 3. Earnest money @ 2% of quoted amount will be deposited along with quotation /financial bid in the shape of Bank draft/Pay order in favour of HQ NADRA Islamabad. 4. NADRA reserves the right to reject all bids as per rule 33 of PPRA 2004. 5. NADRA reserves the right to increase or decrease the quantity of above mentioned Equipment. 6. Performance Guarantee @ 5 % of quoted amount will be deposited at time of issuance of purchase order.

**Remarks**

**Advertisement Date** 30/9/2011

**Closing Date** 17/10/2011

**Closing Time** 11:00:00 AM

**Opening Time** 11:30:00 AM

**Tender** No Attachment
Appendix A

<table>
<thead>
<tr>
<th>Opening Time</th>
<th>11:30:00 AM</th>
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</thead>
<tbody>
<tr>
<td>Tender Documents</td>
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<tr>
<td>Estimated Cost</td>
<td>National</td>
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<tr>
<td>Earnest Money</td>
<td>2% of the amount</td>
</tr>
<tr>
<td>Bid Validity</td>
<td>should remain valid at least three months</td>
</tr>
<tr>
<td>Bidding/Tender Document Cost</td>
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</tr>
<tr>
<td>Remarks</td>
<td></td>
</tr>
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</table>

Appendix B

GOVERNMENT OF PAKISTAN
PLANNING & DEVELOPMENT DIVISION
PLANNING COMMISSION

No. 8(60)/WR/PC/2008
Islamabad, the 12th February, 2008

SUBJECT: IMPLEMENTATION OF REVISED PEC STANDARD BIDDING/CONTRACT DOCUMENTS

In pursuance of Executive Committee of National Economic Council’s (ECNEC) decision taken in its meeting held on 12th November 2007, it is hereby notified that:

a) The following revised standard form of bidding/contract documents prepared by Pakistan Engineering Council (PEC) a statutory body shall be applicable to procurement of all engineering goods, works and services. The Federal, Provincial/Departments/Organizations and District Governments will be responsible to implement the decision of ECNEC.


iv) Standard Form of Contracts for Engineering Consultancy Services (For Large Projects)—Time Based Assignments dated June 11, 2007.

v) Standard Form of Contracts for Engineering Consultancy Services (For Large Projects)—For Lump Sum Assignments dated June 11, 2007


b) The aforesaid documents have been hoisted on PEC website i.e. www.pec.org.pk and also available from PEC.

c) Economic Affair Division will include provisions in all loan agreements for use of PEC documents for procurements of engineering goods, works and services.

d) The above rules/ regulations would prevail notwithstanding the existing procurement procedures/regulations.

2. This supersedes SRO No. 8(60)/WR/PC/2002 dated 21st August 2002 on the subject.

[Naseer Ahmad Gillani]
Chief (Water)

- All Federal Secretaries of Ministries/Divisions*
- Chief Secretaries of Provinces*
- Chairman P&D Board Punjab, ACS Development of Provinces*

*They are requested to kindly circulate the documents to the concerned department for implementation.
ANNOUNCEMENT OF EVALUATION REPORT FOR PROCUREMENT OF ANIMAL HOUSE EQUIPMENTS FOR THE YEAR 2010-2011.

1. Strengthening of National Control Authority for Biologicals and its Independent Laboratory Project, Ministry of Health, Islamabad had invited bids through the PPRA website on 13th December, 2010 adopting Single Stage Two Envelop procedure to procure Animal House Equipments out of PSDP funds released for the fiscal year 2010-2011.

2. The bid was opened on 15th January, 2011 by the Departmental Procurement Committee (DPC) under the Chairmanship of Project Director. Three Bidders participated in the bidding process; they were M/s. City Scientifics, M/s Pak Glorious Enterprises and M/s. Vantage technologies. The Bids of these three bidders were accepted and handed over to the Technical Evaluation Committee. The Technical Evaluation Committee evaluated the technical proposals in the light of clause 23 of the bidding document and accept all three bids including M/s. City Scientifics, M/s Pak Glorious Enterprises and M/s. Vantage technologies.

3. The Departmental Procurement Committee met again on 8th February 2011 and opened financial proposals in the presence of all three bidders who were recommended technically qualified bidder by the Technical Evaluation Committee.

4. The financial evaluation was carried out by the Departmental Procurement Committee and DPC accept the bid of M/s. Vantage technologies due to the following reasons:
   i) The bid price offered by M/s. Vantage Technologies for the items S. No. 1, 2 & 5. with GST and were comparatively low than the prices quoted by the M/s Pak Glorious Enterprises, Rawalpindi for the items S. No. 1, 2 whereas, item of S. No. 5 was not quoted by other firms and is not comparable.
   ii) The financial bid of the firm has been found responsive in all respect.

5. The Departmental Procurement Committee rejects the bids of the following firms due to the reasons mentioned against each:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of Firm</th>
<th>Reasons</th>
</tr>
</thead>
</table>
| 1. | M/s. City Scientifics Rawalpindi | i) Rate quoted by the firm without GST and it has been mentioned that GST will be charged extra accordingly. Thus firm committed violation of section 9(9.4) of the bidding document.  
   ii) The earnest money deposited is less than the due amount which is violation of clause-2 of special conditions of the bidding document. |
| 2. | M/s. Pak Glorious Enterprises | i) Rate quoted by the firm without GST and it has been mentioned that GST will be charged extra accordingly. Thus firm committed violation of section 9(9.4) of the bidding document.  
   ii) As per bidding document earnest money was required to pay in the shape of Pay order bank draft / call deposit in the name of DDO project NCA B, Islamabad but the firm provided earnest money in the shape of Bank Guarantee which is violation of clause-2 of special conditions of the bidding document. |

5. On the bases of the technical evaluation carried out by the Technical Evaluation Committee and financial evaluation carried out by the Departmental Procurement Committee. The Chairman and member of the Departmental Procurement Committee unanimously recommended and approved for the contract to be awarded to M/s. Vantage technologies for the following items. The complete procedure was approved by the Competent Authority, Additional Secretary Health MOH.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Item Description</th>
<th>Unit</th>
<th>Qty.</th>
<th>Unit Rate</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Mice Cages as per sample shown</td>
<td>No.</td>
<td>400</td>
<td>2,485</td>
<td>994,000.0</td>
</tr>
<tr>
<td>2.</td>
<td>G. pigs Cages as per sample shown</td>
<td>No.</td>
<td>50</td>
<td>3,185</td>
<td>159,250.0</td>
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<tr>
<td>3.</td>
<td>Feeding bottles as per sample shown</td>
<td>No.</td>
<td>500</td>
<td>174.0</td>
<td>87,000.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>Rs. 1,240,250.0</strong></td>
</tr>
</tbody>
</table>
GOVERNMENT OF PAKISTAN
MINISTRY OF EDUCATION

Subject: **REDRESSAL OF GRIEVANCES BY THE PROCURING AGENCY**

In pursuance to PPRA’s D.O. 3(5)/DD-II/PPRA/2009 dated 23rd December, 2009, a Committee for “Redressal of Grievances and Settlement of Disputes” in accordance with provisions of Public Procurement Rules 2004, is constituted in Ministry of Education consisting of following members:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name/Designation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chairperson</td>
</tr>
<tr>
<td>2.</td>
<td>Mr. Shabir Ahmed, Deputy Secretary (F&amp;A), Tele: 051-9200067 Mob: 0300-8500095, D-Block, Pakistan Secretariat, Ministry of Education, Islamabad.</td>
</tr>
<tr>
<td></td>
<td>Member</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. Muhammad Qamar, Section Officer (General), Tele: 9207173, D-Block, Pakistan Secretariat, Ministry of Education, Islamabad.</td>
</tr>
<tr>
<td></td>
<td>Member</td>
</tr>
</tbody>
</table>

2. This issue with the approval of the Sr. J.S.(Adm).
This Memorandum of Understanding is signed on 30th August 2005 between Transparency International Pakistan (TIP) and the Department of Agriculture (DOA), Government of Sindh for the Implementation of the “Integrity Pact” and Transparency in Procurement Systems in the Department of Agriculture, Government of Sindh.

Transparency International is a non-governmental organization, dedicated to government accountability, and curbing the international and national corruption. Through over 98 independent National Chapters, Transparency International brings together people of integrity in civil society, business, and government, to work as coalitions for systemic reforms. Transparency International does not name names or attack individuals or investigate, but focus on building systems that combat corruption.

Transparency International national chapter Transparency International Pakistan aims at building a coherent National Integrity System, to institutionalize efforts to curb corruption. The ultimate goal of this system is to make corruption a “high risk” and “low return” undertaking. It is designed to prevent corruption from occurring in the first phase, rather than resting on punishment after the event. Because corruption tends to be the result of SYSTEMATIC failures. The primary emphasis of Transparency International Pakistan is on reforming the system, rather than blaming the individuals.

The “Integrity Pact” is an Integral Part of the National Accountability Bureau initiative towards Shaffaf Pakistan, the National Anti Corruption Strategy approved by the Cabinet on 20th September 2002 & 5th October 2002, its Implementation mechanism approved by the President 24th October 2002. The Integrity Pact is a tool developed by Transparency International, which ensures that all activities and decisions of public offices are transparent and that the projects/works are implemented, services are provided or taken, and goods/materials are supplied without giving taking or allowing for any kind of benefit, financial or otherwise. Justification of the decisions taken is provided without discrimination to all parties concerned or to any individual or institution/organization. Considering that all Companies and Organizations in Pakistan share a responsibility to combat bribery in all forms and manifestations, it is agreed:

That the Department of Agriculture (DOA), Government of Sindh will work with Transparency International Pakistan for the application of Transparent Procurement Rules, complying GoS Rules and Pakistan Engineering Council Bylaws and Standard Bidding documents and the “Integrity Pact” in the

Department of Agriculture, Government of Sindh

To sign this Memorandum of Understanding between Transparency International Pakistan (TI-Pakistan) and the DAO for the Implementation of the “Integrity Pact” and Transparency in its Procurement Systems.

That DOA along with TI-Pakistan will work jointly for the implementation the recommendations in the NACS involving Transparency in procurement, and incorporate them in PEC & World Bank Standard Bidding Documents. It is also agreed that the DOA will establish an accountability in all its dealings and try to provide all the necessary Checks and Balances in its effort towards an all encompassing Transparent Procurement System. The process will comprise the formation of a Coordination Committee to implement the Integrity Pact in all Procurement Contracts. That in case the DOA fails to carry out the above agreed-upon recommendations Transparency International Pakistan has the right to withdraw from this Memorandum of Understanding and declare the same through a public announcement. Such withdrawal shall be effective 30-days after the date of the receipt of a notification given by TI-Pakistan to the DOA to this effect.

The Coordinating Committee.

This committee to be set up by DOA, shall consist of a three members comprising 3 Officials of DOA, with responsibilities related to the Administration, Financial and Technical (Procurement & Contracts) Departments.

Appendix F

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is signed on 30th August 2005 between Transparency International Pakistan (TIP) and the Department of Agriculture (DOA), Government of Sindh for the Implementation of the “Integrity Pact” and Transparency in Procurement Systems in the Department of Agriculture, Government of Sindh.

In accordance with the proposed Pact, Transparency International Pakistan will provide experts’ services for the implementation mechanism approved by the President 24th October 2002. The Integrity Pact is a tool developed by Transparency International, which ensures that all activities and decisions of public offices are transparent and that the projects/works are implemented, services are provided or taken, and goods/materials are supplied without giving taking or allowing for any kind of benefit, financial or otherwise. Justification of the decisions taken is provided without discrimination to all parties concerned or to any individual or institution/organization. Considering that all Companies and Organizations in Pakistan share a responsibility to combat bribery in all forms and manifestations, it is agreed:

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<thead>
<tr>
<th>S.No.</th>
<th>NAME</th>
<th>DESIGNATION</th>
<th>PHONE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Minister for Law, Parliamentary Affairs and Criminal Prosecution</td>
<td>Chairperson</td>
<td>021-99211316 021-99212094</td>
</tr>
<tr>
<td></td>
<td>Department, Government of Sindh</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Chief Secretary Sindh</td>
<td>Vice-Chairman</td>
<td>021-99212949 021-99212950</td>
</tr>
<tr>
<td>3.</td>
<td>Mr. Muhammad Shaharyar Khan Mahar</td>
<td>Member</td>
<td>021-99205396</td>
</tr>
<tr>
<td></td>
<td>Member of Provincial Assembly (Nominated by Speaker)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Dr. Ahmed Ali Shah</td>
<td>Member</td>
<td>0300-8204610</td>
</tr>
<tr>
<td></td>
<td>Member of Provincial Assembly (Nominated by Speaker)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Additional Chief Secretary (Dev.), P&amp;D Department</td>
<td>Member</td>
<td>021-99211405 021-99211921</td>
</tr>
<tr>
<td>6.</td>
<td>Secretary, Finance Department</td>
<td>Member</td>
<td>021-99203114 021-99206519</td>
</tr>
<tr>
<td>7.</td>
<td>Secretary, Law, Parliamentary Affairs Human Rights and</td>
<td>Member</td>
<td>021-99212038 021-99212023</td>
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<tr>
<td></td>
<td>Criminal Prosecution Service Department</td>
<td></td>
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<tr>
<td>8.</td>
<td>Secretary, Irrigation &amp; Power Department</td>
<td>Member</td>
<td>021-99211445 021-99211451</td>
</tr>
<tr>
<td>9.</td>
<td>Secretary, Works &amp; Services Department</td>
<td>Member</td>
<td>021-99211940 021-99211893</td>
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<tr>
<td>10.</td>
<td>Secretary, Information Technology Department</td>
<td>Member</td>
<td>021-99211421</td>
</tr>
<tr>
<td>11.</td>
<td>Secretary (GA), SG&amp;A, CD</td>
<td>Member</td>
<td>021-99211899 021-99211963</td>
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<tr>
<td>12.</td>
<td>Mr. Anjum Nisar</td>
<td>Member</td>
<td>021-99218001-9</td>
</tr>
<tr>
<td>13.</td>
<td>Engr. Sohail Bashir</td>
<td>Ex-General Manager (Procurement) KESC.</td>
<td>Member</td>
</tr>
<tr>
<td></td>
<td>Representative of Pakistan Engineering Council.</td>
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<td>14.</td>
<td>Mr. Zubair Shaikh</td>
<td>Member</td>
<td>021-99212949 021-99212950</td>
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<td></td>
<td>(Nominated by the Government)</td>
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<td>15.</td>
<td>Mr. Nazim F. Haji</td>
<td>Member</td>
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<tr>
<td>16.</td>
<td>Mr. Syed Adil Gilani</td>
<td>Member</td>
<td>0300-8204610</td>
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<tr>
<td></td>
<td>Representative of the Transparency International, Pakistan.</td>
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<tr>
<td>17.</td>
<td>Mr. Zubair Motiwal</td>
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<td>18.</td>
<td>Mr. Abdul Jabbar Memon</td>
<td>Member</td>
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<td>19.</td>
<td>Director General Audit, Sindh</td>
<td>Member</td>
<td>021-99205396</td>
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<tr>
<td></td>
<td>Representative of the Auditor General of Pakistan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20.</td>
<td>Managing Director, PPRA, Sindh</td>
<td>Member / Secretary</td>
<td>021-99205396</td>
</tr>
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</table>

Transparency and Accountability in Public Procurement Regime