

Report No. 22000

# Pakistan Country Procurement Assessment Report

June 30, 2000

Procurement Services  
South Asia Region

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## **ABBREVIATIONS AND ACRONYMS**

AG	Auditor General
CAP	Consultants Association of Pakistan
CBR	The Central Board of Revenue
CMP	Critical Path Methodology
CPAR	Country Procurement Assessment Report
CSC	Consultant's Selection Committee
CSR	Consolidated Schedule of Rates
EAD	Economic Affairs Division
MENA	Middle East and North Africa
GIKI	Ghulam Ishaq Khan Institute
GOP	Government of Pakistan
ICB	International Competitive Bidding
ICC	International Chamber of Commerce
ITP	Import Trade Practices
LUMS	Lahore University of Management and Sciences
MAP	Management Association of Pakistan
MOF	Ministry of Finance
NAB	National Accountability Bureau
NCB	National Competitive Bidding
NHA	National Highway Authority
NIPA	The National Institute of Public Administration
NPRP	National Procurement Reform Program
NWFP	North West Frontier Province
PAC	Public Accounts Committees
PEC	Pakistan Engineering Council
PIFRA	Pakistan Improvement to Financial Report and Auditing Project
PIU	Project Implementation Unit
PPRA	Public Procurement Regulatory Agency
PPWD	Pakistan Public Works Department
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RFP	Request of Proposals
SOR	Schedule of Rates
SRC	Standing Rate Committee
WAPDA	Water and Power Development Authority

Vice President:	Mieko Nishimizu, SARVP
Country Director:	John W. Wall, SARPK
Task Team Leader:	Ahsan Ali, SACPF

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# **PAKISTAN COUNTRY PROCUREMENT ASSESSMENT REPORT (CPAR)**

## **PREFACE**

1. The World Bank's interest in Pakistan's procurement system – the laws and rules that govern it and the practices that characterize it – dates back at least to a 1987/8 draft report done in the old EMENA Departments in the Bank. Subsequently, consultants hired by the Bank carried out a comprehensive review of the system in the Sindh Province in 1991/2 and incorporated their findings in a very detailed May 1992 report, "Pakistan – Procurement and Contract Management – Sindh Province" (the Sindh Report.) It identified a range of serious shortcomings – many of them confirmed in this CPAR – that were presented at a conference arranged under the auspices of the Ministry of Finance (MOF) and the Bank in November 1992. The conference participants agreed on the need for a coordinated, countrywide effort addressing all aspects of procurement and recommended a long-term comprehensive reform program.

2. As a result, the government in 1995 launched Phase I of the National Procurement Reform Program (NPRP), for which the Bank arranged a grant of US\$0.35 million primarily for technical assistance to develop recommendations for procurement reform based on international experience. The recommendations of the NPRP Phase I, which were developed through a consultative process, were unanimously adopted by the participants at a national conference arranged by the government in December 1996. These recommendations, including a draft procurement bill and the establishment of the Public Procurement Regulatory Agency (PPRA), were approved in principle by the Federal Cabinet and announced in the national press on April 16, 1997, under attributions defined by the Law.

3. The Bank then arranged an additional grant of US\$1.107 million for Phase II of NPRP and gave assurance of continued support for the implementation of procurement reform, including the development of national consulting, contracting and manufacturing industries. The grant was also to finance a substantial amount of training of procurement staff. After providing detailed comments on the draft procurement bill in a letter of June 12, 1998, the Bank was informed that the Law Division cleared the revised bill in October 1998. Since that time, no progress has occurred toward the enactment of the procurement legislation or the establishment of the PPRA, under attributions defined by the law. However, more recently, the new government has appointed a Managing Director of the proposed PPRA and has included implementation of procurement reforms in its structural reforms agenda.

### **The Present Country Procurement Assessment Report**

4. The present Country Procurement Assessment Report (CPAR) is the product of a joint effort by a large team consisting of Pakistan government officials, Bank staff, and internationally hired consultants as detailed in Volume II, Annex K.

5. Prior to the third and final mission (scheduled for end-July 2000), during which a draft of the CPAR will be discussed with Pakistani government officials in Islamabad and then finalized, two CPAR-preparation missions took place. The first ran from June 28 through 30, 1999; a detailed investigation was carried out during the second mission from September 16 through October 7, 1999. During the initial mission, the questionnaire, the terms of reference of the team members and the implementation plan were finalized. Preparatory meetings also took place with officials of the Ministry of Finance (MoF), the Economic Affairs Division (EAD), the Pakistan Engineering Council (PEC), the Asian Development Bank, the Association of Consulting Engineers and the Contractors Association of Pakistan. Between the first and the second missions, copies of the CPAR questionnaire were sent to almost one hundred recipients, officials of federal and provincial government departments and of parastatal organizations, as well as of representatives of suppliers, contractors and consultants (A list of the recipients is attached as Annex I-1 in Volume.)

6. The second mission visited Islamabad, Lahore, Peshawar, Quetta and Karachi to hold meetings with some 60 of the recipients of the questionnaire (a copy of the mission's itinerary, including the names of the officials with whom its participants met, is attached as Annex I-2 in Volume II.) Discussions during these meetings focussed particularly on the applicable procurement rules, instructions and practices; major procurement issues; gaps in the questionnaire responses; suggestions on an action plan for improvement; and comments on a pending procurement reform program of the then government. In essence, the mission found that most of the major issues identified in the Sindh Report seven years earlier remained unchanged in Sindh and were very much the same in the other three provinces and at the Federal level.

7. This Report presents an analysis of Pakistan's procurement system and an extensive set of recommendations for strengthening it. The Report consists of an Executive Summary, a Volume I containing the Major Findings and Recommendations and a brief Recommended Action Plan, and a Volume II which includes a series of Annexes providing detailed information that was mostly collected by the local consultants based, among other things, on the responses received to the questionnaires about various aspects of public procurement in Pakistan.



## EXECUTIVE SUMMARY

1. **OVERVIEW.** At least since 1989, the World Bank has been concerned about the effectiveness of procurement practices in Pakistan, particularly the degree to which they foster competition, insure efficiency and provide transparency at all stages of the contracting process. Successive governments in Pakistan have shared these concerns. Spurred by a thorough 1992 report on procurement in Pakistan's Sindh Province<sup>1</sup> and assisted by Bank grants in 1995 and 1998 totaling nearly US\$1.5 million, the Government of Pakistan (GOP) conducted extensive consultation within the country and with outside experts on procurement issues. As a result, it established a National Procurement Reform Program (NPRP) to develop proposals for change and a consensus supporting them. The NPRP's principal recommendations included the enactment of procurement legislation modeled on international practice and the creation of a Public Procurement Regulatory Agency (PPRA) to oversee the adoption of new standards.

2. The Federal Cabinet approved the package in principle in 1997 and, after the Bank offered detailed comments on a draft statute, the Law Division cleared a revised procurement reform bill in October 1998. No further action ensued.

3. Between 1997 and 1998 auditors engaged by the Bank reviewed 4524 contracts and found that in 3700 there were generic procurement deficiencies, deviations or inappropriate end use. With about US\$1.8 billion committed to 21 projects currently being implemented in Pakistan, the World Bank has a substantial interest in the strengthening of Pakistan's procurement capacity. That is the area, according to audits in 1996 and 1997, where low overall efficiency, poor management, inadequate record keeping, inordinate delays in decision-making and restrictive bidding on contracts – among other factors – have impeded performance and affected results. Some of the problems stem from poorly paid and trained public sector staff. Others flow from procedures that discourage sound planning, thorough evaluation and due diligence in contract awards and execution and that stifle the energetic, open competition that makes contractors, engineers and other bidders for government business truly efficient and responsive.

4. **MAJOR FINDINGS.** As does the May 1992 Sindh Report, the CPAR finds Pakistan's procurement practices governed by a set of "outdated rules and regulations", the application of which is aggravated by the procedures that have grown up to thwart genuine competition for government business and to give officials wide and unsupervised latitude in applying or ignoring the tangle of rules. Theoretically sensible provisions for inviting bids through advertisements, determining qualified bidders for major contracts in advance and setting the cost parameters of a contract according to a Schedule of Rates (SOR) have been transformed over time into harmful practices. Advertising, for instance, is frequently placed in low-circulation publications not far in advance of bidding deadlines. Prequalification has become a means of excluding outside firms, and mandatory registration of bidders has made collusion among them extremely easy. Outdated SORs, moreover, can produce cost estimates so low as to deter bids and leave the field to insiders.

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<sup>1</sup> "Pakistan: Procurement and Contract Management, Sindh Province," International Development Business Consultants, May, 1992, for the Energy and Infrastructure Division of the South Asia Projects Department.

5. A further complication is the anomalous role of the *Pakistan Engineering Council (PEC)*, established by the Federal PEC Act of 1976 as an agency to regulate the engineering profession through registration and licensing – normally public responsibilities – and to uphold and upgrade professional standards. The PEC's by-laws suggest that its purpose also includes the protection of Pakistani firms against foreign competitors. The PEC has also extended its writ to cover contractors, requiring that they be licensed by PEC to be hired for civil works in Pakistan. Its dual role as an agent of the state and a professional association not only contains an inherent conflict of interest but also reflects a protectionist bias that recurs throughout public procurement practices in Pakistan.

6. Unlike many other countries to which the Bank lends, Pakistan has no legal provisions requiring that for contracts financed by foreign donors, the donors' procurement rules will prevail in the event of conflict with local rules. A February 25, 1996 notification by the MOF to all Federal ministries, divisions and departments has affirmed the precedence of World Bank rules in such cases. That instruction, however, has been disregarded by the staff of the Auditor General, particularly in blaming officials for not having forced the lowest evaluated bidder on a contract to lower the price further during supposedly required pre-award negotiations. In fact, although no rule requires these pre-award negotiations, they are commonplace occurrences explicitly mentioned in some Purchase Manuals. Aside from their extra-legal status, such negotiations discourage bidders from quoting their best price from the outset and can also give officials the leverage over contractors that easily leads to corrupt practices.

7. *Out-of-date SORs* put one kind of burden on contractors' price estimates. In addition, bidders assume considerable risks connected with the use of standard bidding documents that deny contractors compensation for non-performance by the employer, for unforeseen events and for price escalation due to delays in contract awards. Further, no mechanism provides fair and speedy dispute resolution for procurement grievances of bidders. Grievances on matters of law (but not fact) can be presented to the courts through writ petitions that normally take six months to three or more years to adjudicate. Civil suits can languish up to twelve years. As for disputes arising during contract execution, in contracts not involving World Bank financing or the requirement it carries for fair and speedy dispute settlement provisions, federal and provincial officials commonly delete any arbitration clause from public contracts, forcing such disputes into back-logged local courts.

8. Not only are bids inflated to compensate for the jeopardy in which Pakistani procurement practices place contractors. *Cost overruns* are also built into the process by the various delays involved in getting from the definition of a works project, for instance, to the award of a contract for it, to the start of actual work and to its completion. The price negotiations that often follow a successful bid obviously slow momentum. Out-of-date SORs that are also incomplete open the way for protracted disputes over areas the schedules fail to cover. Sometimes Standard Rates Committees even have to be convened to set the approved cost of items or activities not specified in advance.

9. *Human resources* tend to be weak on both sides of the procurement equation, another source of inefficiency and delay. Officials may lack the qualified staff to evaluate bids and award contracts speedily, while building and engineering firms – themselves short on in-house expertise and lacking a large pool of qualified consultants to assist them – are hard-pressed to perform quickly and effectively the tasks they have contracted to undertake.

10. *Corruption* in such a disordered environment is unavoidable. Its extent, however, is beyond the scope of this CPAR. Given its widespread incidence in procurement practices in developed as well as developing countries, there is little reason to doubt the judgment of Pakistan's Chief Executive that "corruption of tremendous proportion has threatened the very basis of our state..."<sup>2</sup>

## PRINCIPAL RECOMMENDATIONS

11. Specifically, this Report makes the case for implementing the following major recommendations – some of them already developed under the NPRP:

- promptly enacting a modern, transparent public procurement law along the lines of the UNCITRAL Model Law for Procurement;
- creating, as to be provided and delineated by the new law, a small, professionally staffed, independent regulatory agency to develop the procurement framework, with functions which are mainly confined to policy, documentation, development of rules, etc. and not to include line clearance functions for awarding of contracts;
- constituting an interim tribunal or authority – pending adoption of the reform legislation – to hear and dispose of bidders' grievances;
- abolishing a number of anti-competitive practices – pre-award price negotiations, the mandatory registration and/or prequalification of bidders, unfair contract conditions and the requirement that bidders conform to the outdated and diverse Schedules of Rates (SORs);
- amending the Arbitration Act of 1940 to insure that panels of arbitrators for dispute resolution will include at least an odd number of arbitrators and will be able to decide the cases they hear by majority vote;
- limiting the authority of the Pakistan Engineering Council to exclusively private-sector responsibilities; and
- adopting – if only as interim measures – World Bank models for Standard Bidding Documents and for Standard requests for RFPs.

12. To achieve the procedural/institutional reforms being sought, the key recommendation is the first: adoption of a comprehensive law governing public procurement. It proceeds from the finding that Pakistan has an accretion of laws, rules, regulations, codes and manuals dealing with procurement but no coherent, single law setting standards for those activities and no effective legal protection against collusion and corruption in the award of government contracts. Instead of a procurement system, as such, it has a web of practices and customs most of which deter competition and conceal favoritism from the public. To replace that bias and the inefficiency it fosters, a new, modern legislative instrument is needed and strongly recommended. The PPRA should be preceded by the law to ensure its attributions and obligations are only those defined by the law.

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<sup>2</sup> *Washington Post*, October 18, 1999.



**PAKISTAN**  
**COUNTRY PROCUREMENT ASSESSMENT REPORT**  
**(CPAR)**

**VOLUME I**

**A. LEGAL AND REGULATORY FRAMEWORK**

**Legal System**

1. Pakistan's Legal System is based on the 1973 Constitution of the Islamic Republic of Pakistan and is generally similar to the British Common Law system in which it originated. The Constitution does not deal with public sector procurement, nor is there any Federal or provincial law regulating public procurement. This absence of legislation enacted by a Parliament or Provincial Assemblies regulating procurement distinguishes Pakistan from most other countries. Since, in the field of procurement, Federal laws would presumably prevail over provincial ones, any procurement legislation that could be enacted by the Federal Government would oblige the 4 Provinces to enact procurement legislation in harmony with the Federal one.

2. On the Federal level, the "General Financial Rules" (Rules), first issued by the Federal Ministry of Finance in 1951 and then in a second edition in 1979 (to be co-financed by the government) are rules that, among other things, address public procurement issues. 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 disbursing the funds required to discharge their functions. Departmental authorities should follow these rules as supplemented by special rules and instructions contained in their own departmental regulations and other special orders applicable to them. Having been issued by a Minister, the Rules can be amended or abolished by the same official without approval by any legislature. Such broad discretion concentrates power while minimizing accountability. The public interest would benefit from having procurement rules in a form that would be much more difficult to modify than in the case of these Rules.

3. The Rules, however, merely set forth major principles, leaving broad discretion to the agencies involved. The Pakistan Public Works Department (PPWD) has issued the Pakistan Public Works Department Code that deals with procurement and the execution of public works, developing standard forms used for contracts by other departments as well. Rules about the procurement of goods can be found in the "Revised Purchase Manual," 1972, and the provincial governments have their own purchase Manuals generally based on the Federal model.

4. In addition, the Pakistan Engineering Council (PEC), a professional trade organization, fills a semi-official role. It basically governs pre-registration requirements for consultants and contractors and does so with a protectionist approach that conflicts with open eligibility requirements of foreign financing institutions. Furthermore, no provisions in the Rules or

manuals recognize that when Pakistani and donor procurement regulations are in conflict, those of the donor should prevail.

5. The main impression of those interviewed as well as the conclusion reached after examination of the Rules, Instructions, and Manuals is one of substantive lack of clarity and transparency. The legal and regulatory framework does not provide effective means for settling disputes or addressing the grievances of suppliers/contractors/consultants. Arbitration procedures under the 1940 Arbitration Act, while otherwise satisfactory, permit arbitration panels of two arbitrators without providing a solution in case of a deadlock between the two. The Rules leave a great deal of flexibility and discretion to officials, and allow numerous practices which are not conducive to transparent and efficient procurement, which are explained further in the section Procedures and Practices. There is a general feeling that corruption is a serious problem.

### **Issues and Recommendations**

6. **Issue:** Confusing maze of outdated rules and by-laws at federal and provincial level leading to procurement that is inefficient and vulnerable to corruption.

**Recommendation:** Enactment of a modern, transparent and competitive public procurement law based on UNCITRAL Model Law for procurement coupled with the creation of a small, independent procurement regulatory agency with functions defined by the procurement law (which are mainly confined to policy, documentation, development of rules, etc. and not to include line clearance functions for awarding of contracts).

7. **Issue:** Protectionism and conflict of interest between public and private interests in the field of responsibility allocated to PEC.

**Recommendation:** Unburden PEC of its public sector functions.

8. **Issue:** Lack of mechanism for speedy settlement of procurement grievances and problems with the Arbitration Act.

**Recommendation:** Introduction of a speedy settlement mechanism for procurement grievances (later to be covered by the public procurement law) and amendment of the 1940 Arbitration Act to require an odd number of arbitrators of whom the majority shall decide awards.

## **B. PROCEDURES AND PRACTICES**

### **General**

9. The Federal Government, the four provinces, and the semi-autonomous or autonomous agencies each their own procurement procedures. These generally provide for a system of open bidding, including: public advertising in the press, registration of contractors and suppliers,

formal bidding and contract documents, public bid opening, and award to the lowest-price bidder. Many of these practices can be considered good for the procurement of small and simple contracts. Unfortunately, the actual practices are quite different from the official written procedures.

### **Mandatory Registration and/or Prequalification of Suppliers and Contractors**

10. Mandatory Registration and/or Prequalification of Suppliers and Contractors is a long-standing practice which results in each department at Federal and provincial level, as well as each agency, keeping its own separate registration or prequalification procedures. As an example, a contractor registered with any one of the four engineering departments in each province – communications and works, irrigation and power, public health, and housing – cannot bid in another department in the same province or another one. In addition to registration, works contracts impose the added requirement of prequalification. These registration and qualification procedures, a heavy burden on contractors, are often used to protect local (provincial) contractors, an outcome deemed desirable by local authorities despite its effect in undermining the development of the contracting industry and open competition.

11. The interviews held by the authors of this report consistently indicated that the registration systems are often corrupt; qualifications are not verified, and registration is frequently the result of a bribe or of pressure on the responsible official. Also, once registered, a supplier/contractor remains registered as long as it pays periodic fees. Once a contractor wins a contract, no serious effort is ever made to conduct a post-qualification exercise to ensure the contractor is still qualified. Often, the award of contracts to unqualified bidders results in poor contract performance. An additional consequence of the system is that it facilitates pooling arrangements due to the limited number of contractors participating in each bid, all of them known in advance, leading to likely cases of collusion and resulting in higher prices.

### **Price Negotiations**

12. An unfortunate practice takes place before final contract award: procurement officials, contending that the lowest among the bid prices is still too high, will make every effort – through negotiations – to achieve its reduction. Such negotiations may involve only the lowest bidder or other bidders as well. Although their stated purpose is to reduce the contract price, these negotiations are an open invitation to corruption; they violate a fundamental principle of public procurement – that bidders can not modify their bids after bid opening.

13. Because price negotiations are either permitted or ignored in the manuals, they are, in effect, encouraged. The Auditor General has even objected to situations when negotiations did not take place, claiming that they are mandatory in Pakistan.

14. The practice of post-award negotiations, in fact, may reflect the higher prices that flow from the unnecessary registration and prequalification procedures that invite corruption and permit collusion (pooling). The effort made to reduce the prices through negotiations, however, invites more corruption that is not likely to result in effective procurement.

15. **Issue:** Corruption associated with mandatory registration/prequalification of bidders and with price negotiations with the lowest bidder.

**Recommendation:** The elimination of mandatory registration and of negotiations in public bidding.

### **Schedule of Rates and Standard Rate Contracts**

16. The Schedule of Rates (SOR) procedure is essentially a system of unit rates derived from a detailed breakdown of unit prices, which is supposed to provide all the inputs required to carry a unit of work. Of the numerous schedules of rates in Pakistan, most are not kept up to date and do not necessarily reflect the approaches used by different contractors to carry out the work. SORs are used by government officials to estimate the cost of contracts and as a basis for bidders to express their bid price, either as a percentage premium or as a discount over the estimate.

17. The use of SORs as the basis for bidding presents serious disadvantages that outweigh their usefulness, as listed below:

- Since not all items are covered in SORs, they lead to contractual disputes and open the doors to corrupt practices associated with the ensuing forced negotiations.
- SORs are often out of date, but since authorities are prohibited from awarding contracts when the estimate is exceeded by, say, 10 or 15%, many contracts are either not awarded or result from the corrupt practices encouraged by the system and the forced negotiations it generates.

### **Issues and Recommendations**

18. **Issue:** Outdated SORs encourage inefficiency and corruption.

**Recommendation:** Eliminate SOR system as a basis for bidding.

### **Selection of Consultants**

19. No public rules, guidelines, or instructions cover the selection of consultants, except for the by-laws of the Pakistani Engineering Council and the Punjab's Guidelines for the Selection of Consultants (1999). Nevertheless formal competitive processes tend to be followed with allocating weights of 85% and 15% to technical and financial proposals, which would appear perfectly sound. The problem, however, is that instead of awarding the contract to the firm that achieved the highest combined score, the common practice is to negotiate with firms with highest combined scores to reduce their price to the lowest priced competitor or the estimate, whichever is lower.

20. **Issue:** Corruption encouraged by negotiations with firms after financial and technical proposals have been opened.



**Recommendation:** Sharply reduce the scope of negotiations that are allowed.

### **Other Procedural Problems**

21. **Issue:** The widespread practice of project authorities not initiating procurement activities until project funds have been released. This results in enormous waste of time at the outset of projects.

**Recommendation:** Establish clear rules allowing project officials to initiate procurement actions, at least until the point of contract signing, particularly in the case of donor-financed projects.

22. **Issue:** The requirement that procurement decisions be approved by the highest authority of any given agency or government organization, based upon recommendations by lower technical staff, leads to delays, dilution of responsibility, and more opportunity for corruption. Any unnecessary layer of approval adds opportunities for delays and corruption.

**Recommendation:** Delegate procurement decisions to appropriate level and hold parties accountable for these decisions.

***NOTE:*** For Bank-financed projects, the Government, in the context of improving NCB procedures, has already agreed to some of the above recommendations: see Attachment J-2, an excerpt from the procurement schedule attached to the Project Agreement for Credit 3248-PAK.

## **C. BIDDING DOCUMENTS**

23. All provincial, semi-autonomous and autonomous agencies have standard documents for the locally financed procurement of goods and small works. These documents are based on updated pre-independence documents. Conditions of contract for goods are contained in the Purchase Manuals. For the Federal Government, this manual was last updated in 1972. For Punjab, Sindh and Balochistan the manuals were updated in 1985, 1989 and 1991, respectively, and hence are not totally consistent with one another.

24. The differences among standard documents as detailed in Annex H (Checklist Comparing National Competitive Bidding Procedures and World Bank Policy), are substantial. Not only are all the provincial documents outdated; they are also grossly inequitable. They do not pay contractors for non-performance of the employer, do not protect the contractor from unforeseen events, do not compensate the contractor for price escalation due to substantial delay in contract awards and do not provide mechanisms for fair and quick settlement of disputes.

25. Sometime towards the end of 1989, the Pakistan Engineering Council constituted a committee of representatives of employers, consultants and contractors with the mandate to produce standardized formats for different categories of works viz civil, electrical/mechanical,

small works and also engineering consultancy services. This Committee has so far produced a number of documents as listed in Volume 2, Annex D-2.

### **Issues and Recommendations**

26. **Issue:** The existing outdated and inequitable bidding documents encourage all kinds of high-handed acts by the employers during contract administration and unsound policies and practices. They encourage rent-seeking and corruption and increase costs substantially without commensurate benefits. The PEC tried to correct the situation but could not meet its mandate, possibly due to lack of resources and expertise.

**Recommendation:** Use of standard bidding documents for small and large procurement of works, goods and pharmaceuticals be mandated as a matter of urgency. Since the government agencies, contractors, as well as suppliers and consultants have been using the mandated Bank's Standard Bidding Documents for ICB as well as Bank-agreed documents for NCB<sup>3</sup> for some time, and officials, consultants and contractors have received training over the last few years in their use, it is suggested that these documents be mandated for general use. As all the Bank's documents have data sheets, it is possible to adapt them to other donor requirements without changing the General Conditions of Contract, which are based on good and acceptable international standards.

27. **Issue:** There are no standard provincial documents for procuring consulting services financed locally. Different provinces normally use different guidelines. For example, in NWFP the weightage given to the experience of the short-listed firm is 35% compared to 20% in Punjab. Punjab has the most recent guidelines dated October 31, 1989. These guidelines have a number of major deficiencies. For example, (i) details of key staff for evaluation are not given in the Letter of Instructions (LOI), nor are the criteria and sub-criteria detailed; and (ii) the best-ranked consultant is required to lower his price to that of the lowest priced qualifying consultants and even lower if the price is higher than an unrealistic departmental estimate. This requirement often results in non-transparent decisions.

**Recommendation:** A standard Request for Proposals (RFP) be prepared for use in the country as a whole. Since the Bank's Standard Forms of Consultants' Contracts have been in use in Pakistan and are well understood by the industry, it is *recommended* that government model their documents on the Bank's Standard Form for RFPs for procuring consulting services.

## **D. HUMAN RESOURCES DEVELOPMENT**

28. Procurement is not a recognized profession. In Pakistan, because government/parastatal officials who carry out procurement functions are regularly transferred to other duties like any other civil servants, neither expertise nor continuity in procurement has developed as it has in other professions. Only autonomous agencies like WAPDA and NHA have procurement cells.

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<sup>3</sup> For ICB – Civil Works, Smaller Works, Goods, Pharmaceuticals, Textbooks, Consultants (Lumpsum and Time Based). For NCB – Works, Goods and Pharmaceuticals.

Lack of expertise has caused considerable delays due to poor procurement planning, as well as delays in the preparation of bidding documents and RFPs, in bid and proposal evaluation and in contract awards. The resulting cost overruns bring losses to the economy.

29. The World Bank Field office provides Basic Procurement Training in different districts and provinces on a regular basis. The Bank has also initiated advanced procurement training in the two private universities, Ghulam Ishaq Khan Institute (GIKI) and Lahore University of Management and Sciences (LUMS), with a view to building sustainable procurement training in Pakistan. The Government appreciates the Basic Training and wants it to be increased, but considers the advanced training at GIKI and LUMS expensive.

### **Issues and Recommendations**

30. **Issue:** Qualified procurement staff is in short supply in Pakistan.

**Recommendation:** To commission a detailed study by consultants of all aspects of the training of procurement and auditing officials in Pakistan. Beginning with a need analysis, the study should, among other things, recommend two or more institutions in Pakistan suitable for cost-effective and sustainable training as well as recommend recognized international training institutions to serve as twinning partners to the Pakistani institutions and to provide them with technical assistance. These international institutions would, *inter alia* i) establish skills, knowledge and experience-based criteria for certification at various levels; ii) develop a procurement training strategy consistent with other professional development of public employees; iii) create a series of procurement/project and material management modules for public and private sector officers; iv) prepare short modules for policy makers and management; v) identify potential trainers for procurement training and train them; and vi) review the syllabus of the engineering universities to ensure that procurement, project, contract and material management are included in the undergraduate studies, and if not, propose appropriate material for inclusion.

## **E. AUDIT**

31. Under the Constitution, the Auditor General (AG) is required to carry out an independent audit of the expenditures of the Federation and the provinces to ascertain whether moneys disbursed were legally available for the purposes intended and were duly authorized.

32. The AG is required to submit annually his report on the Federation to the President and for the provinces to their governors, who lay them before the Parliament and the provincial assemblies. The AG's reports are discussed with the AG and the implementing agencies by the Public Accounts Committees (PAC) of the Parliament and the national assemblies, and they agree on appropriate action. It is understood that the AG normally prepares his annual report on time, but PACs have not discussed these audit reports on a timely basis.

33. The AG's audit is mainly related to financial auditing. The AG is not required to audit in the important area of procurement processing, nor does the AG have expertise in this field. Notwithstanding this, auditors in the provinces have been reported to be insisting that implementing agencies follow practices which are completely inconsistent with agreed procedures and good procurement practices. For example, while the Ministry of Finance had advised all procuring entities that donors' procedures have precedence over national procedures, auditors often disregard this instruction and insist that national rules prevail. They also insist that negotiations be carried out with the lowest priced bidder to reduce prices through pre-award discussions, even though such bargaining is not required by the national rules nor allowed in Bank-financed projects.

34. Consultants who carried out a diagnostic study of the Government-financed reporting and auditing under the Third Technical Assistance Project identified many areas of weakness. These weaknesses are detailed in the Pakistan Improvement to Financial Reporting and Auditing Project (PIFRA) Staff Appraisal Report dated August 5, 1996, and financing for improvement is provided in Credit 2921-PAK dated November 21, 1996. One of the main objectives of this project is to develop institutional capacity through training for which US\$6.0 million has been provided. However, training in auditing of procurement processes is not included in this component, and it would be timely to rectify this deficiency.

### **Issues and Recommendations**

35. **Issue:** Auditors do not follow procurement applicable rules; they insist on negotiations with the winning bidder and disregard that donor rules prevail over local rules.

**Recommendation:** That AG instruct his staff in writing to follow the applicable procurement rules and agreements with the donors. It is furthermore *recommended* that the office of the AG also carry out procurement process audits as a normal part of its responsibilities and that AG's staff be trained under the Institutional Development Component of PIFRA. This can be done by broadening the training consultants' TORs to include training needs assessment, course design, material development and training of trainers in procurement processes and procedures. The course material should be shared with the provincial training institutions as appropriate, and audit staff trained on a regular basis. In a recent meeting between the World Bank and the AG, it was agreed that the World Bank Field Office would also conduct a basic training workshop on the Bank's procurement procedures, exclusively for AG's staff.

## **F. ANTI-CORRUPTION MEASURES**

### **The Present Situation**

36. Both the Chief Executive of the present government of Pakistan, General Musharraf, and the President of the World Bank, Mr. Wolfensohn, have strong feelings about corruption, the former declaring in one of his first public speeches after taking over the government (as quoted

by the Washington Post, of October 18, 1999) that “....corruption of tremendous proportion has threatened the very basis of our state....”, and the latter repeatedly stating the Bank’s policy of “zero tolerance for corruption”.

37. As far as the public procurement sector in Pakistan is concerned, it would be difficult to disagree with the Chief Executive. Obviously, there is no hard-and-fast evidence available to the Bank, showing that bribes are being paid by bidders/suppliers/consultants are paying bribes and that public officials are receiving them in exchange for undeserved awards or other favors. However, indications are that these exchanges happen routinely and are actually facilitated by the prevailing procurement rules and particularly the procurement practices. These indications are so strong that it is difficult to escape the conclusion that corruption is alive and well in the public procurement sector in Pakistan. Indeed, this conclusion, stated already in substantial detail in the Sindh Report (paras. 278 through 289), is supported by most of the persons interviewed in Pakistan in the preparation of this Report.

38. Among the many procurement practices (some of them discussed in more detail above under “Procedures and Practices”) previously described, the following would seem to facilitate corruption, not to say invite it

- Multiple mandatory registrations and/or prequalification of bidders.
- Practically no verification of prequalification information.
- Very often completely insufficient time for bid preparation.
- Standard practice of forcing the lowest evaluated bidder, through pre-award negotiations, to further reduce his price.
- Absence of fair and speedy settlement mechanism to deal with bidders’ grievances during the procurement process.
- Unfair and imbalanced contract conditions..
- Frequent absence of arbitration provisions in contracts.

39. Numerous Acts, Rules, Ordinances and similar instruments have been enacted or issued in Pakistan to combat corruption, beginning with the Prevention of Corruption Act, 1947.<sup>4</sup> Similar instruments have been issued from time to time by the Provinces. All of them are designed to eradicate corruption by putting in place effective measures for prosecution and speedy disposal of corruption cases, often by creating the office of a special prosecutor and establishing special courts to hear the cases brought by that office. It is difficult to ascertain what impact these instruments may have had or are having now. But be that as it may – from the point of view of procurement rules and practices, what really counts is not so much whether the

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<sup>4</sup> In fact, the present Government and its two immediate predecessors each issued its own Act or Ordinance for this purpose (i.e., the Ehtesab (Accountability) Ordinance, 1996; the Ehtesab (Accountability) Act, 1997; and the brand-new National Accountability Bureau Ordinance, 1999, issued only a few months ago by the present military government.) Similar instruments have been issued from time to time by the Provinces.

“sinners” are caught and put away (which is essentially an issue of criminal law and criminal procedure), but that, to the extent possible, the “sins” – corrupt and fraudulent activities in public procurement – are prevented from occurring. *It is here that the need for a modern, transparent and competitive procurement law comes in.* In advocating the introduction of such a law in Pakistan, the authors of this Report are not claiming that it will totally eradicate corruption in public procurement in Pakistan. They do strongly feel, though, that, while the present procurement rules and practices, as explained earlier, practically invite corrupt and fraudulent practices, or at the very least make them extremely easy to perform, a public procurement law of the kind proposed, will – through introducing true transparency and competition – make such practices much more difficult.

## **Issues and Recommendations**

40. **Issue:** As in so many other developed and developing countries, corruption in public procurement seems to be rampant in Pakistan.

**Recommendation:** The preparation of a National Procurement Law, and of the supporting regulations indispensable for its application, may yet take a bit of time; in fact, consultants selected among other things for the purpose of advising the authorities on the drafting of those regulations, have still not been hired. For the interim period, it is *recommended* that Pakistan, through an amendment of the General Financial Rules mentioned in para. 7 of Section A on “Legal and Regulatory Framework,” or through another appropriate instrument, introduce new procurement rules designed to deal urgently with the serious issues raised above, in a manner consistent with the public interest.

## **G. PRIVATE SECTOR**

41. The local construction industry is weak partly due to the business environment and partly due to unsound and corrupt practices followed by employers. The industry can grow and become more efficient if procurement policies and practices are improved as recommended in Section B – “Procedures and Practices” – para. 34, and if construction firms are treated fairly and equitably. Additionally, contractors need training in the area of planning, bidding and bidding strategy and contract management. Some contractors attended an advanced course at GIKI, but quite rightly felt that as the course was too long and not totally relevant, it could be made shorter and more focussed on their needs. (See also para. 49 of Section D, “Human Resources Development.”)

42. Pakistan has adequate consulting capacity to meet its present needs for most requirements. Local consultants work successfully in joint ventures with international consultants for larger projects, and some also work in neighboring countries. The Consultants Association of Pakistan (CAP) is very active. Recently, FIDIC conducted a World Bank-financed business seminar for its members, some of whom have also participated in the Advanced Procurement Courses at LUMS & GIKI and lectured to participants. However, prevailing procurement policies and practices are a definite obstacle to the industry’s growth and

development. On a number of occasions the Association has raised its genuine concerns with the Government, but without success. The major problems facing the development of the industry are unrealistic time frames for completion of assignments and unrealistic reduction in fees through negotiations.

## **H. GENERAL RISK ASSESSMENT**

43. The Bank finances only a small portion of the public sector procurement in Pakistan. To the extent that the Bank's prior review procedures under the Guidelines apply, the risk that undue influences are being brought to bear on the procurement process for a Bank-financed contract is probably neither more nor less than in most other borrowing countries. As far as post-review contracts financed by the Bank are concerned, agreement has been reached with the Government on amending unacceptable procedures and practices (see Attachments 2 (A) and 2 (B) in Volume 2.) Enforcement of this agreement by the Federal Government, Provincial Governments and Auditor-General is essential, followed by independent ex-post audit and declarations of misprocurement, if applicable. Government and Auditor General should advise all their staff on agreements reached and enforce compliance.

44. Major improvements in public procurement cannot be expected unless the procurement procedures and practices are completely changed as recommended above. This will take time. In the meanwhile, the Bank considers Pakistan to be in the high risk procurement category.

## **I. PERFORMANCE ON BANK-ASSISTED PROJECTS**

45. **FINDINGS.** Since 1952, the Bank has approved 96 loans and 141 credits to Pakistan totaling more than US\$12 billion. Two hundred and sixteen projects have been completed with a total disbursement of US\$9.8 billion as of December 31, 1999. Of the 21 projects currently under implementation totaling about US\$1.8 billion, 4 are rated problem projects due mainly to implementation problems in some sectors, linked to issues surrounding the overall reform program, and financial/procurement problems in other areas. The ratio of projects at risk is 20%, the same as the Bank-wide average.

46. In projects subject to prior review, audits<sup>5</sup> have identified the main problems related to inadequate institutional capacity to undertake procurement efficiently. They include poor project and contract management capability due to inability to recruit because of low public-sector salaries; inadequate record-keeping that makes it difficult to trace history to ascertain quality in infrastructure contracts; external pressures brought to bear prior to contract awards; poor quality of evaluation reports and inordinate delays in deciding to award contracts. These audits also recommended that training of staff be intensified.

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<sup>5</sup> SGS audit of 1996 and IAD audit of January 14, 1997.

47. In projects subject to ex-post reviews, recent audits have identified problems due to restrictive bidding, to inadequate bidding periods, to price negotiations with the lowest priced bidders and to the failure of the bidding documents to provide for post qualification and evaluation criteria. Out of 20 credits, for instance, repeated deviations of that sort marked 15. In 38 contracts within the National Drainage Program Project, a review found serious procurement flaws in every one, including four cases where contracts did not go to the lowest evaluated bidder.

48. In addition to discussing these issues with the Federal and provincial governments to advise them on procurement policies and to highlight the improvements required especially in the area of bid validity, procurement planning and due diligence, the Bank is taking action to ensure that proper evaluation of Borrower's capacity is carried out at appraisal. The focus is on handling procurement efficiently and strengthening capacity by hiring procurement agents or advisors. A complementary concern is the provision of intensified training for Bank Project Staff and procurement accredited staff. The establishment of a procurement unit in the Islamabad Field Office has brought gains in borrowers' on-the-job-training resulting in speedier processing and in training their staff in basic procurement. The initiative should be expanded.

## **J. SUMMARY OF RECOMMENDATIONS**

- Enactment of a modern, transparent and competitive public procurement law based on UNCITRAL Model Law for procurement.
- Creation of a small, independent procurement regulatory agency, with functions defined by the procurement law (which are mainly confined to policy, documentation, development of rules, etc. and not to include line clearance functions for awarding of contracts).
- Unburden PEC of its public-sector functions.
- Introduction of UNCITRAL-based arbitration and grievance procedures.
- In general, the elimination of negotiations in public bidding.
- Eliminate SOR system as a basis for bidding.
- Sharply reduce the scope of negotiations that are allowed in selection of consultants.
- Establish clear rules allowing project officials to initiate procurement actions, at least until the point of signature of a contract, without waiting for release of funds.
- Delegate procurement decisions to appropriate level and hold parties accountable for these decisions.



- Use standard bidding documents for all procurement of goods and works.
- Prepare a standard Request for Consultants' Proposals (RFP) for use in the country as a whole.
- Commission a detailed study by consultants of all aspects of training of procurement and auditing officials in Pakistan.
- The AG instruct his staff, in writing to follow the applicable procurement rules and agreements with the donors. The office of the AG also carry out procurement process audits as a normal part of its responsibilities and that AG's staff be trained under the Institutional Development Component of PIFRA.
- Until enactment of a Public Procurement Law, and its supporting regulations, amend the Rules, to introduce procurement measures to deal with the most urgent matters.

**PAKISTAN  
COUNTRY PROCUREMENT ASSESSMENT REPORT  
(CPAR)**

**VOLUME II**

**DATA ANALYSIS**

## **ANNEX A – LEGAL FRAMEWORK**

### **1. GENERAL FEATURES**

#### **A-1.1 Legal System (i.e. Common/Civil Law; Socialist; Shari’a; other)**

The legal system is based upon the Constitution of the Islamic Republic of Pakistan and is similar to though not exactly the equivalent of the British Common Law System. Most of the procedural laws and the substantive laws are based upon the English Models left behind by the British upon leaving as the colonial rulers in 1947.

#### **A-1.2 Form of Government (i.e. Federal or Centralized)**

**Federal.** The nature and extent of the authority of the Federal government vis-à-vis the Provinces is the subject matter of the detailed provisions in the Constitution. Part V of the Constitution comprising of Sections A to C (Articles 141-159) deals with the subject of “Relations Between Federation and Provinces.” The brief titles of these Articles which suggest the contents are as under:-

Article 141- Extent of Federal and Provincial laws.

Article 142- Subject matter of Federal and Provincial laws

Article 143- Inconsistency between Federal and Provincial

Article 144- Power of Majlis-e-Shoora (parliament) to legislate for two or more Provinces by consent.

Article 145- Power of President to direct Governor to discharge certain functions as his Agent.

Article 146- Power of Federation to confer powers, etc., on Provinces, in certain cases.

Article 147- Power of the Provinces to entrust functions to the Federation.

Article 148- Obligations of Provinces and Federation

Article 149- Direction to Provinces in certain cases

Article 150- Full faith and credit for public acts etc

Article 151- Inter-Provincial Trade

Article 152- Acquisition of land for Federal purposes.

Article 153- Council of Common Interest.

Article 154- Functions and rules of procedure

Article 155- Complaints as to interference with water supplies.

Article 156- National Economic Council.

Article 157- Electricity

Article 158- Priority of requirements of natural gas.

Article 159- Broadcasting and Telecasting.

**A-1.3 Does the Constitution contain any provision directly bearing on public sector procurement?**

No. There is no provision in the Constitution dealing specifically with public sector procurement.

**A-1.4 Is the country a signatory to the Agreement on Government Procurement of the World Trade Organization?**

Yes.

**A-1.5 Does the basic contract law contain any provision directly bearing on public sector procurement? (if so, describe).**

No. The Preamble to the Contract Act states “WHEREAS it is expedient to define and amend certain parts of the law relating to contract, ---“ The provisions of the Act apply to all contracts generally and to that extent and in that context having bearing upon public sector procurement as well as such procurement is always based upon a contract.

**A-1.6 Is there a separate body of law which regulates public sector procurement, or is it governed by regulations issued under an organic finance act?**

Except for General Financial Rules issued by the Federal Ministry of Finance which do not specifically and exclusively deal with public sector procurement, there is no separate body of law which regulates public sector procurement. Section A – “Introductory” of the said Rules explains the status thereof in the following words:

“1. The rules contained in this volume, which are essentially executive orders of the President describe primarily the financial powers of different authorities subordinate to the Federal Government and the procedure prescribed by the President which should be followed by them in the securing and spending of the funds necessary for the discharge of the functions entrusted to them. Departmental authorities should follow these rules, supplemented or modified by the special rules and instructions, if any, contained in their departmental regulations and other special orders applicable to them.”

There are, however, administrative instructions/regulations in the shape of Purchase Manuals/Codes which contain the guidelines to be observed and followed while undertaking procurement in the public sector. One reason why these Manuals/Codes are generally followed is that the audit department checks and audits the affairs and procurement transactions against the touch stone of these Manuals/Codes.

*The Manual of Office Procedure (Purchase) was first published by the Director General, Department of Promotion and Supply, Government of Pakistan and was*

*adopted in its entirety by the then Government of West Pakistan and subsequently by the Government of Sindh. Thereafter a revised edition of the Manual was prepared and captioned "Sindh Purchase Manual, 1977" which provided for centralised purchases through the Department of Industry. This was again revised in 1991 whereunder the purchases were decentralized. This manual is in force with effect from 28-10-91 and is applicable to all the departments of the Government of Sindh. All references in this document are to the latest edition of this Manual.*

- A-1.7 Do other bodies of law regulating associated aspects of procurement contain provisions which are directly related to problems identified within the local system? (e.g. Labour, tax, customs, insurance, and banking laws, foreign exchange controls or laws defining national standards – If so, describe).**

Yes. Foreign Exchange Rules of the State Bank of Pakistan, Pakistan Engineering Council Act, 1976, regulate some associated aspects of procurement. These laws inter alia deal with payments in currencies other than Pakistani Rupees and their appropriation, regulation of the procurement process and of its participation, and finally with the standardisation of products/goods for use in the country.

- A-1.8 Is the system clear, comprehensive and consistent? Does it cover all essential aspects with no unduly complicated, unnecessary, conflicting or outdated regulations and are rules found in various distinct sources or within a well coordinated legal framework?**

No. There is a lot of confusion and conflict within the system (Public Procurement System) which is generated by lack of existence of a well co-ordinated legal framework. There is, in fact, no legal framework for public procurement except some Rules, Bye-laws and Instructions of doubtful validity and uncertain applicability to the system or any part (s) thereof. These have been amended/modified from time to time but not as part of an over-all policy in any given and precisely-determined direction. The statutory corporations and semi-autonomous bodies mostly have their own procurement codes/regulations which are comprehensive and well-defined. These represent exercise of rule/regulation making powers by these entities and thus can be said to be a legal framework for procurement as far as that particular entity is concerned.

- A-1.9 Is hierarchy of the sources of procurement rules well established?**

No. On the contrary, there is no precisely defined hierarchy nor indeed any well-understood scope and effect of various Rules, Byelaws and Instructions which occupy the field of public procurement. As an illustration, the prevalent view is that where any procurement transaction is funded by any Donor Agency, the Guidelines of that Agency take precedence over any other Rules or Byelaws otherwise relevant to such procurement, whenever there is a conflict or inconsistency between the two. However, it is not uncommon to find auditors raising objections and writing up audit reports under the mistaken belief that the local Rules/Byelaws govern such

procurement transactions to the exclusion of the Guidelines of the relevant Donor Agency.

The Ministry of Finance has clarified this position through its circulars/instructions viz: that in case of any conflict between the local rules/regulations relevant to any procurement and the rules/regulations of the Donor Agency (Providing finding for such procurement), the latter shall, to the extent of any conflict or inconsistency, prevail over the former. This illustration merely brings into focus the need for proper formulation and effective circulation of the relevant rules/regulations amongst all such agencies/departments as are dealing with, in any manner or to any extent, with the procurement of goods, services and/or works.

*These circulars/instructions are confidential and therefore not freely available to the general public. This has been confirmed by the concerned officials on more than one occasion.*

**A-1.10 Do the same rules apply to central and local governments?**

Generally similar Rules apply. However, these may not be identical (local government is understood as provincial government).

The Constitution identifies the various subjects on which the Federal Government may legislate (which includes the making of any rules/regulations by way of delegated legislation). These subjects appear on the Federal List. There is also a Concurrent List where all such subjects have been mentioned on which both the Federal Government and Provincial Governments are competent to legislate. However, the Federal legislation will take precedence over the Provincial legislation in case of any conflict or the same item of this List being the subject matter of Federal as well as Provincial legislation. Finally, all those subjects which do not find mention in either the Federal List or the Concurrent List fall within the exclusive domain of the Provincial Legislatures.

It is thus obvious that on subjects which fall within the exclusive jurisdiction of the Provinces, the Federal Government can not make any rules, much less enforce them. However the usual legislative/administrative practice is that the Provincial Governments make and enforce rules/regulations which closely, if not exactly, follow any earlier Federal Government rules/regulations on the subject.

*Public procurement is not a separate item. It is, thus, arguable that it is neither on the Federal List nor on the Concurrent List and, therefore, within the exclusive jurisdiction of the Provinces.*

**A-1.11 Are there procurement rules established for parastatals? Describe.**

No. For Agencies/Departments under the direct control of the Government, Federal or Provincial, the same Rules as are applicable to such Government, apply. However, for autonomous bodies/statutory corporations, the body/corporation generally enjoys the power to frame and enforce its own rules/code. These have been generally so framed and enforced.

**A-1.12 Is the procurement function decentralized? If so, describe basic structure, name the main decentralized procuring entitles and indicate whether their role, rights and responsibilities are clearly delegated in writing.**

There has been a recent decentralisation of the procurement of goods function. Previously, the Supplies Department used to be exclusively responsible for all such procurement. However, now “Cells” have been created in all departments which are doing in-house procurement of goods for that particular department. The Financial Rules and the Purchase Manual contain the detailed procurement procedure/financial powers of the different levels of procurement officers.

It may once again be indicated that these Rules/Manuals are, at best, a set of administrative instructions and not a duly enacted piece of legislation or a case of delegated legislation.

As regards procurement of works, there are different modes being followed in different departments/agencies. Basically, works have been divided into different categories, price-wise. The authority to procure works up to the limit in a particular category vests in an identified level of officials. Decentralisation of procurement of works, therefore, reflects the estimated value of the works to be procured. Procurement of services is a comparatively recent development and is in the process of evolution, so to say.

**A-1.13 Is there an entity(ies) with oversight responsibilities for procurement functions throughout public administration (e.g. with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure. Is it operationally involved in procurement? Is it the Central Tender Board?**

No. There is no such entity. However, the following Bye-law in Pakistan Engineering Council’s Construction & Operation of Engineering Works Bye-laws, 1987 regulates an aspect of the procurement of works:

***“7. Selection and tendering process:***

*(1) All construction and management and supervision of operations of engineering works shall be entrusted only to the constructors or operators as the case may be licensed as such by the Council.*

*(2) Foreign firms or companies wishing to perform any construction or operation of engineering works in Pakistan shall have to obtain an appropriate licence from the Council before embarking upon any activity which is a subject of these bye-laws. Foreign applications for licence can be granted licenses only for specific Projects which need expertise and specialised technology of construction or operation not available with Pakistani constructors and operators. Any such foreign constructors or operator shall, however, enter into a joint venture or subcontractor agreement with a Pakistani constructor or operator in which the share of foreign constructor or operator shall be limited to the expertise and technology not available with the Pakistani constructor or operator. The establishment of a joint venture/sub-contract shall be a pre-requisite for grant of a license to a foreign constructor or operator.*

*(3) The client or employer shall adopt an equitable method of selection of constructor or operator for a particular project and will ensure that the following basic requirements are met namely:*

*(a) An engineering work falling under a certain category must be entrusted only to those constructors or operators who are licensed by the Council in accordance with these bye-laws, either in the same category or in a higher category.*

*(b) A uniform system of credit points for the purpose of evaluation of the applicant's capabilities in the respect of vital elements of applicant's organisation and capacity to perform shall be established before tenders or proposals are called from prospective bidders. The various vital elements to be covered are:*

*(i) net worth of the applicant as on the date of application.*

*(ii) current ability to obtain finances and bonds (i.e. total ability less existing commitments).*

*(iii) Current availability of applicant's construction equipment or tools required for the project (total equipment and tools owned as well as equipment irrevocably committed to be leased to the application on demand less current commitment and the period of their commitment).*

*(iv) professional experience of construction or operation of the type of proposed project, including professional personnel of required experience in full time employment of the applicant less the personnel committed on projects in hand.*

*(v) Previous performances of the applicant on other projects and similar projects.*

*(vi) Current licence issued by the Council; and*



(vii) *Any other relevant factors.*

*(c) A provision is made in the proposed contract with the constructor or operator for the settlement of any difference by arbitration under the Arbitration Act, 1940, before recourse to any other legal action.*

*(d) Selection is done through open and fair competition and no preference is given to any contractor or operator for reason of his being in the public or private sector."*

**A-1.14 Is there a Central Tender Board or a similar institution? What are its duties and responsibilities? Do the procuring entities or the Central Tender Board issue the award recommendation?**

No. There may be an identified authority/official/body within any department/agency competent to receive all Bids above a certain financial limit but even this practice may not be of universal application.

**A-1.15 Does the system allow/facilitate the introduction of new and innovative techniques and contracting practices without compromising basic principles?**

No. On the contrary, the presence of the audit function and the way it has expanded (though such expansion is not warranted by the definition of this role) has positively discouraged introduction of any new and innovative techniques. There is a clearly dissemble liking for adherence to tested and traditional practices even if the same are obviously irrelevant and even wasteful. The undeniably useful practice (of audit) has thus prevented progress and development of expertise through bold and innovative initiatives based upon latest developments on the subject.

By way of illustration , it is not unknown for the Audit Department to have objected to the payment of Mobilisation Advance to the Contractor on interest free basis, there being some Government rule that all advance payments should be interest/mark-up bearing. The argument of the concerned Agency/Department to the effect that the Contract provided for such interest free payment of Mobilization Advances rarely, if ever, impresses the auditors who insist upon enforcement of the said Government rules. Similar undue interference with contract administration policies and techniques may be regularly seen while these auditors examine the critical powers of ordering and approval of extra works, granting of time extension for completion and payment of increased costs of execution of work. The precise and detailed contractual provisions are ignored/disregarded while the audit department undertake this transgression of mandate.

**A-1.16 Are there rules/procedures regarding bidder suspension and debarment?**

Yes. There are procedures for the suspension/black listing of the registered contractors/suppliers if they are guilty of any of the prescribed offences. References may be made to the provision contained in paragraph 15 of the Punjab Purchase Manual wherein it is provided that the Contractor who refuses to pay liquidated damages for delayed supplies should be removed from the list of approved contractors.

The Registration Certificate issued by the Chief Purchase Officer under the said Manual contains the following grounds on which the registration is liable to be suspended/withdrawn/cancelled “with or without blacklisting.”

- (i) *“Failure to observe at the time of submitting tenders the instructions given in Tender Enquiries including schedule thereto.*
- (ii) *failure to quote in response to invitations to tender on four successive occasions;*
- (iii) *submission of four successive quotations all of which are fifty per cent or more above the quotations accepted;*
- (iv) *failure to secure any contract against twelve successive tender; which have been submitted by a registered firm or during a period of three years, whichever is earlier’*
- (v) *failure to execute a contract or contracts satisfactorily;*
- (vi) *any ground which, in the opinion of the Chief Purchase Officer; renders removal of the firm’s name from the list of approved contractors.”*

Unfortunately, these procedures are operated by the same officials who generally are themselves involved in the transactions which form the basis of such adverse action. This robs the procedure of all objectives.

**A-1.17 Is the country a member of regional trade/customs agreements? (If so, specify).**

Yes. Pakistan is a member of SAARC (South Asian Association for Regional Cooperation) which contemplates preferential trading status for its member countries.

**A-1.18 Are there primary/secondary boycotts? (Specify).**

Yes. Israel.

**A-1.19 Are there provisions regarding preferences for particular categories of supplies of goods and services? (Specify). Is the purchasing entity compensated by the government for awarding contracts to higher cost national or local firms?**

There is a rule requiring that in a tender participated by local/foreign tenderers, the bids of the local tenderers vis-à-vis the foreign tenderers should be treated as lower of 15%.

*The rule is contained, for example, in paragraph 36 of the Sindh Purchase Manual, 1991 and is as under:*

**“Price Preference for Indigenous Products.** In pursuance of the instructions issued by Ministry of Industries and Natural Resources, Government of Pakistan, vide their letter No. C&F-3(15)/63, dated preference in rupees up to 20% of the lowest quoted landed cost of an item of foreign origin with similar specifications provided that:-

- (a) the saving in foreign exchange is at least equal to the price preference.
- (b) it is ensured that in case of such preference, the total import requirement for producing the supplies tendered for locally has been duly indicated by the bidders.
- (c) the above mentioned price preference will not be admissible for those items of local manufacture which have been given protection by the Government on the recommendations of the Tariff Commission.

The above decisions will, however, not apply to the cases involving Foreign Aid, Loan or Grant.”

**A-1.20 Are provision on domestic/international arbitration codified? (If so, specify in which statute) Are the arbitration rules applicable to procurement contracts? Do they incorporate international rules?**

Yes. Arbitration Act, 1940, codifies the domestic arbitration provisions. Usually, the procurement contracts do contain arbitration clauses obliging the parties to resolve their disputes under the contract through arbitration. The thrust of the policy in this regard is that even in international procurement contracts (ICB) the arbitration clause should be for arbitration under the Arbitration Act. However, these contracts do often contain an international arbitration clause, usually under the ICC Paris Rules of Reconciliation & Arbitration – In some departments of the Federal/Provincial Governments, the arbitration clause has been either deleted from or not incorporated at all in the procurement contracts.

**A-1.21 If domestic arbitration rules are in force, are they generally in line with established principles such as those embodied in the UNCITRAL rules? (Highlight major differences).**

Yes, These provisions in the Arbitration Act require a fair, unbiased and predictable procedure for resolving the disputes. The courts have the power to review the awards

given thereunder for any gross improprieties such as misconduct, illegality or error apparent on the face of the award. Although the procedural laws such as the Civil Procedure Code or Qanoon-e-Shahadat (Evidence Act) do not apply to arbitration proceedings, the general principles underlying these procedural laws do apply. Any arbitration proceedings wherein a party can show that principles of natural justice were ignored and/or fair and reasonable opportunity to pursue its case was denied to such party is most likely to be struck down and the award made therein set aside.

**A-1.22 Is the country a member of the New York Convention on the Recognition of Foreign Arbitral Awards?**

Yes.

**A-1.23 Are there laws or regulations governing policies and procedures for awarding concessions/contracts for private sector provision/operation of power, water or other infrastructure facilities? (BOO, BOT, etc.) Do any general conditions of contract apply as a matter of law or regulation?**

There are no laws or regulations as such. However, there are some policy guidelines in place which are to be followed or at least ought to be followed. These are, however, ambiguous, imprecise and far too general to lend themselves to any meaningful enforcement.

The policy guidelines are at best directory (as distinguished from mandatory). The guidelines in question relate to the “BOT-type operations”. These policy guidelines differ from department to department and are internal documents not intended for circulation. The laws regarding disclosure of official policy documents in Pakistan are not the same as in USA. With some effort it may be possible to procure these policy papers informally.

**2. BASIS OF TRANSPARENCY**

**A-2.1 Is there a legal or regulatory requirement for public disclosure of procurement legal texts?**

There is no legal or regulatory requirement for public disclosure of procurement of legal texts. However, all agencies/departments who are regularly involved in procurement function do regularly publish and up-date their procurement legal texts. It is quite easy to obtain these standard legal texts, either from the concerned agency/department or from the local market. It is unusual to meet any resistance or obstacle from the relevant agency/department in this regard.

**A-2.2 Are there mandatory requirements for maintaining written records of procurement? Are they available to the general public?**

The records of procurement are usually maintained since the audit department invariably carries out the audit of this function. There are no known mandatory requirements to that effect though for the aforesaid reason the record is properly maintained. General public does not have any access to these records.

**A-2.3 Are requirements for advertisement of contracting opportunities adequate? Is the country's national gazette published in a timely fashion? Is it available to the general public?**

The procurement of goods, services and works is usually well-advertised. The national gazette is published in a timely fashion and is freely available. The procurement is advertised in the national press (and not in the national Gazette). There is usually requirement in the Rules/Bye-laws relevant to procurement in an agency/department regarding the nature and extent of publication of procurement opportunities in that particular agency/department. While such requirements are generally observed, it is not unusual to find that these requirements are unadhered to especially when obliging a favourite bidder/supplier.

**A-2.4 Are requirements regarding public bid opening, if any, appropriate?**

Yes. All agencies involved in procurement invariably have a detailed and objective procedure for bid opening. It allows participation by the authorised representatives of the bidders in the process. The bid-opening statement is prepared and duly signed by the officials who do the bid opening. There are very few complaints regarding the bid opening procedures.

**A-2.5 Are negotiations after bid opening or award selection generally forbidden?**

Post-bid and pre-award negotiations are not forbidden under any law or regulation. Such negotiations are invariably held during the procurement process. The general impression is that such negotiations usually lend themselves to unethical and non-transparent deals between the Employer/Purchaser and the Contractor/Supplier. During the course of such negotiation it is not uncommon to find that an unfair opportunity was provide(d) to a particular bidder/supplier to procure award of a contract though his position at the time of bid opening did not justify such award. Similarly limited re-tendering is resorted to as part of such post-bid negotiations which is most unfair to the left out bidders and renders the entire procurement process arbitrary. ("Limited retendering" means retendering among only some of the bidders who had participated in the original tendering.)

**A-2.6 Do rules on negotiated procurement, if any, provide the basis for a fair and transparent process? Detail.**

No. Firstly, there are no rules governing negotiations during the bid-opening and award stage. At best there are some guidelines by way of administrative instructions.

Secondly, it is obviously a contradiction to talk about negotiated procurement on a transparent and fair basis.

**A-2.7 Are conditions for use of various procurement methods clearly established and is there an explicit requirement that open competitive bidding is the preferred or default method?**

Yes. The conditions for various methods of procurement are clearly established in the various Codes, Manuals and Rules. Open competitive bidding is the preferred method of procurement in most of the cases, it is in fact mandatory.

**A-2.8 Is there a requirement for public notice of contract awards?**

There is no requirement, as such, of public notice of contract awards.

**A-2.9 Are requirements for bid and contract securities clear and appropriate? Are they required of all bidders?**

The requirements of bid and contract securities are quite clear and appropriate. Any bidder failing to submit the bid security is unlikely to be considered for award and such bid is most likely to be declared unresponsive. As regards the contract securities, the most important is the performance guarantee. It is usually 10% of the value of the contract. The experience suggests that the usual requirement that such security be by way of a bank guarantee (and not an insurance guarantee) results in the Contractor having to pay a very high price for the procurement of such a guarantee. The banks in Pakistan usually insist upon very harsh terms for issuing such guarantees. *(By harsh terms for the issuance of bank guarantees by Pakistani banks, it is meant unusually steep cash margins (anything between 40% - 75%) and the further requirement that for the balance amount collateral (worth at least twice the amount) be charged in favour of the Bank.* This obviously drives up the bid price. Thirdly, and most importantly, there are no safeguards against misuse of such security. There are several instances where the unconditional nature of the performance (bank) guarantee was used by the Employer/Purchaser to extract undue concessions out of the Contractor/Supplier. The level of various securities i.e. 10% Performance Guarantee and 10% Retention Money together with the usual billing cycle of more than two months and the inevitable delays in the issuance of variation orders means 30 to 35% security exposure for the Contractor, a very high cost considering that the contract is awarded after thorough scrutiny and is constantly and regularly monitored/supervised.

**A-2.10 Are qualification requirements for bidders, if any, fair and appropriate for the purpose of the contract?**

The qualification requirements are usually fair and appropriate. However, more often than not, these procedures result in unfair selection of some unqualified bidders. The reason being that the time available for thorough checking of the qualification papers

is invariably inadequate. In the absence of any general standards, the qualification process does not keep the unqualified bidders out all the time. Pakistan Engineering Council has introduced a licensing system under its Construction & Operation of Engineering Works Byelaws, 1987. Byelaw 4 of these Byelaws deals with this subject.

**A-2.11 Do requirements for bid examination and evaluation provide the basis for a rational and fair process?**

These requirements, on paper, appear to be rational and objective. They are usually indicated in the bid documents to put the prospective bidders on notice. However, the entire exercise of bid examination and evaluation is done secretly (rather surreptitiously) which results in accusing fingers being raised by the unsuccessful bidders and with some justifications (in some if not all the cases). The evaluation criteria often leave some room for exercise of discretion by those doing the evaluation. This has generated a lot of controversy and debate which, to some extent is attributable to the secrecy surrounding the exercise. Also, it is an open secret that the so-called secret Evaluation Report is the most open document. Literally every bidder succeeds in procuring a copy thereof as soon as it is signed by the members of the Evaluation Committee.

**A-2.12 Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, names of successful bidders)? If so, describe scope and frequency.**

No. As a matter of fact, this data are not being compiled on a regular basis, and therefore not published.

**A-2.13 Does government hold regular meetings with the business community to discuss public procurement issues?**

Rarely and never of its own initiative.

**A-2.14 Is there a conflict of interest policy in effect? (If so, describe its essential features).**

There is no such policy in effect.

**A-2.15 Are the laws on bribery of government officials enforced? Do government bidding documents and contracts contain anti-bribery and anti-corruption conditions?**

The following is a list of some of the laws which are currently on the Statute Book:

The Prevention of Corruption Act, 1947.  
The Federal Investigation Agency Act, 1974.

The Government Servants (Conduct) Rules, 1964.  
Punjab Anti-Corruption Establishment Rules, 1974.  
Punjab Anti-Corruption Establishment Rules, 1975.  
The Sindh Prevention of Bribery & Corruption Ordinance, 1991.  
The Pakistan Criminal Law Amendment Act, 1958.

A typical provision regarding embargo on payment of any bribes, commission etc. to any officials of the Department/Employer which is to be found in standard contract formats is as under:

**“Clause 63:**

**Contract may be rescinded and security deposit for subletting, bribing, or if contractor becomes insolvent**

If the contractor shall, in defiance of the engineer-in-charge’s instructions to the contrary or without his written approval, assign or sublet his contract or attempts to so; or become insolvent, or commence any insolvency proceedings or make any composition with his creditors, or attempts so to do; or if any bribe, gratuity, gift loan prerequisite, reward or advantage, pecuniary or otherwise, shall either directly or indirectly be given, promised or offered by the contractor, or his servants or agents to any way relating to his office, or employment; or if any such officer or person shall become in any way directly or indirectly interested in the contract; the engineer-in-charge may thereupon by notice in writing rescind the contract, and the security deposit of the contractor shall thereupon stand forfeited and be absolutely at the disposal of Government and the same consequence shall ensue as if the contract had been rescinded under clause 60 hereof and in addition to the contractor shall not be entitled to receive or be paid for any work therefor actually performed under the contract.”

**3. BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICIALS**

**A-3.1 Are government employees expected to follow a published code of ethics? If so, describe its basic features.**

There is no published Code of Ethics for government officials. There are, however, anti-corruption laws which cover and apply to Government officials. Efficiency and Disciplinary Rules are also to some extent, on this subject. Some of these Rules are as under:

Prevention of Corruption Act, 1947.  
The Government Servants (Conduct) Rules, 1966.  
The Government Servants (Efficiency and Discipline) Rules, 1973.  
The Railway Servants (Efficiency and Discipline) Rules, 1975.  
The Punjab Civil Servants (Efficiency and Discipline) Rules, 1975.



The Sindh Prevention of Bribery and Corruption Act, 1950.  
The Sindh Enquiries and Anti-Corruption Ordinance, 1991.  
The Sindh Civil Servants (Efficiency and Discipline) Rules, 1973.  
The Balochistan Civil Servants (Efficiency and Discipline) Rules, 1981.  
The North West Frontier Province Government (Efficiency and Discipline) Rules, 1973.

**A-3.2      How easy is it for bidders to report bribes by others and solicitation/extortion or bribes by government officials?**

“-----It is easy for bidders to complain. The evidence of corruption is rarely available because of lack of access.

----- There is usually a designated forum where bidders may lodge any complaints. They may not be able to Pursue these complaints any further as these are mostly examined in-house without any open enquiry.

----- The forum where complaints may be lodged by the bidders is invariably within the procuring entity. Selectively the office of the Federal / Provincial Ombudsman may also act upon a complaint received from a bidder in which case an open enquiry/investigation is held. This, however, is very rare and the bidders are generally discouraged on the plea that in matters of procurement particularly during the pre-award stage there is no enforceable legal right which may justify the making of such a complaint.

-----The bidders can never lodge complaint against the procurement entity “without fear.” That would run contrary to human nature.

-----Very few complaints are actually made against the pre-award acts of misprocurement and any corrective action thereon is the exception rather than the rule.”

**A-3.3      Do bidders have adequate access to administrative or judicial review/appeal?**

There is no system in place to provide a proper forum for resolution of any grievances regarding any procurement transaction. The usual remedy of complaining to the same or a bit higher level of officials *within the same agency/department* is as meaningless as it is frivolous. Except in cases where the grievance discloses on obvious case of misprocurement (whether in terms of the conduct of the officials involved or the policy adopted for that particular case) there may be some kind of action taken to rectify the wrong but such cases are, at best, an extremely rare exception.

The negotiations/evaluation process in the post-bid and pre-award period is invariably a secret process (for not entirely transparent reasons). That makes it that much more difficult to lodge any precise and specific complaint against any impropriety

committed during this critically important phase. Any independent procedure before an independent forum for the hearing of any misprocurement complaints is unknown to the Procurement Process in Pakistan.

The bidders are always at liberty to seek recourse to the courts of law for judicial review of any governmental decision making including any procurement decision. The problem is that in the absence of any procurement legislation and in the face of the inadequacy of the existing legal framework to effectively deal with such matters, the courts lack an appropriate yardstick by which to adjudicate upon such complaints. For example, the remedy of judicial review (through recourse to Constitutional (Writ) Jurisdiction) is limited to security of the petitioner's grievance on law points alone (as distinguished from any factual controversies or disputes). The other remedy of filing of civil suit is not effective either because of the time frame currently relevant thereto. Moreover, the strict requirements of the procedural laws render this remedy inappropriate for the aggrieved. There is yet another possible forum for the ventilation of such grievances viz. the office of Hon'able Wafaqi Mohtasib (Federal Ombudsman) where the agency involved is controlled by the Federal Government and, in some cases the office of the Hon'able Provincial Mohtasib (Provincial Ombudsman) where the agency/department concerned is controlled by the relevant Provincial Government (Provincial Mohtasibs are functioning in only some of the provinces). Here again the same difficulty of absence of any precise law comes in the way of effective adjudication/disposal of the grievances and more often than not the complainants are directed to approach the courts of law for seeking redress. This absence of any effective remedy has understandably encouraged proliferation of all sorts of procurement mal practices and disregard for basic norms of fair play and propriety.

*In a writ petition, an aggrieved party may complain about any illegality committed by a Government Functionary (which includes practically all government departments/agencies and entities controlled and/or owned by the Government, Federal or Provincial). Monetary compensation in a writ petition is not envisaged, however. Moreover, disputed facts which may need evidence are also not allowed to be raised in this jurisdiction. However, in a suit an aggrieved party may seek a declaration that any action that has been wrongly taken thereby infringing a legal right of such party with or without monetary compensation where such party can establish that it has been put to loss on account of such wrongful conduct of the other party. Moreover, a civil suit may be filed against a functionary of the government, a government department or agency or entity controlled or owned by the government as well as against any private parties. The nature of damages which may be claimed in a suit may include all kinds of damages which the aggrieved party can prove it has suffered and that party in breach knew or ought to have known that such would be the ordinary and inferable consequence of the breach.*

*As regards the actual practice there are various, though rather few, judgments of the Hon'able Supreme Court of Pakistan and various High Courts of the country where these Courts have interfered with the procurement process on the ground that the*

*exercise of discretion available to the concerned government agency was not exercised properly and on a sound basis, or was exercised in an unduly discriminatory manner. In such matters, some kind of interim orders were also passed in some of these cases restraining implementation of any contract falling within the above category and even formalisation of an award after the departmental formalities have been completed. The remedy of a civil suit in the same circumstances is rarely resorted to because of the undesirable time span involved in pursuing such remedy. As regards taking cases before the Federal or Provincial Ombudsman, the impotence of that office is to implement its own decisions, makes bidders reluctant to file complaints. It is really up to the concerned department/agency to implement or to ignore the decision of the Federal/Provincial Ombudsman, judging from experience todate.*

**A-3.4 Are there measures/initiatives to curb/control corruption, e.g. anti-corruption statutes and/or bodies, whistle-blower statutes, comprehensive reforms of the civil service/judiciary, regional initiatives, provisions in the criminal law, anti-bribery provisions, etc? (if so, describe).**

There are anti-corruption laws/accountability procedures which contemplate taking of punitive action against government officials found to be guilty of the offences defined in these laws. There are government statements for introduction of reforms/improvements in the existing bureaucratic structure. Unfortunately, the effect of these set of laws, policies and declarations has not helped to reduce corruption, maladministration and malafide exercise of official powers. The whole responsibility for this has to be on the shoulders of those who apply, administer and exercise powers under these laws/policies. The application of these laws is clearly selective and subjective. Hence no positive results.

*The Federal Investigation Agency is also vested with powers to investigate and prosecute cases of corruption. Anti-corruption departments also exist in all the provinces.*

**ANNEX B – TRADE PRACTICES**

**B-1. Are foreign firms engaged in trade with the country required to use a national agent?**

There is no statutory requirement that foreign firms should use national agents. However they, out of their own, may form an association or joint venture with local concerns, establish a branch office in the country, enlist as a local company under the companies act or partnership act, or appoint an agent/representative in Pakistan.

**B-2. Are there indications that over-invoicing and/or under-invoicing are common practices?**

Quite a few cases of under-invoicing and over-invoicing are detected in importation of goods by the private sector. However, a sound system exists for detection of such cases and handling them under the relevant legal provisions. The government has also controlled it with fixation of Import Trade Practice(s) (ITP) values of commodities prior to importation, which are revised on quarterly basis but are often subject to revision on shorter periods as well. The Central Board of Revenue (CBR) feels that this system has been successful to curb the practice to some extent. However, this is still a major issue for the government which remains unable to close the loopholes causing loss of revenue collection in this field. Informal discussions have revealed that such tactics can succeed only with connivance of the customs staff.

**- For which purposes?**

Over-invoicing is resorted to on some occasions to inflate the cost of goods etc. and pay less income, property and corporation taxes. It is also done to transfer the funds abroad. Under-invoicing is done to evade import duties and taxes/other related expenditures at the expense of the national ex-chequer.

However, there is no evidence of either under-or over-invoicing under publicly financed projects.

**B-3. Are goods frequently described incorrectly on the invoices?**

Incorrect description of goods on the invoices, though not very frequent, is sometimes practiced by importers. The system of handling the import-export does not require hundred percent checks/physical inspection of commodities. While the overall system/rules and regulations are sound, mal-practices are still possible with the help of the related customs staff.

**B-4. Are there indications that import documents are falsely labeled?**

There is a feeling in the CBR that invoices/packing lists are tampered with to mis-declare the imported goods, though it may not be a common or general practice since the regulatory laws are quite strict.

**B-5. Is there evidence of any other trade malpractice affecting public sector procurement?**

Feedback on this question does not identify any trade mal-practices for public sector procurement. The customs department reply is also 'no' because they do not have evidence of any such occurrences.

**B-6. Is there a pre-shipment verification program?**

- Who conducts the inspections?
- What goods are included?

Presently, there is no pre-shipment inspection or verification program in practice. However, the public sector goods high-tech equipment are inspected at manufacturer's yards with focus on technical issues to ensure conformance to specifications. Focus is not on commercial aspects. There is no law to this effect.

**B-7. Is there a threshold for pre-shipment inspection?**

- What is the amount?

Not applicable in the light of statement under B-6.

**B-8. If pre-shipment inspection is conducted by a private company, what is the duration of the contract with the company?**

- Was the contract awarded following a competitive process?

Not applicable in the light of statement under B-6.

**B-9. Is pre-shipment inspection, if any, conducted according to generally established procedures?**

- Are there indications that the inspection is not effective?

Not applicable in the light of statement under B-6.

**B-10. Are goods also normally inspected upon arrival?**

There is no law or instructions that all goods must necessarily be inspected. However, sometimes it happens on buyer's demand, if there is any dispute.

**B-11. Are inspection procedures in conformance with established practice?**

Yes, generally.

**B-12. Do pre-shipment/post-shipment inspections, if any, unduly increase the procurement lead time?**

Generally not, because inspection is not a regular/mandatory feature. However, in case of some commodities, if it is adopted, it can add to procurement lead time.

**B-13. Is counter-trade used?**

- Barter agreements?
- In which percentage of the country's total trade?
- For which commodities?

No barter trade exists in Pakistan since its becoming a signatory to WTO which does not permit barter trade.

**B-14. Are the ICC's INCOTERMS generally understood and commonly used in the Country?**

- Are other trade terms used?
- What are the most commonly used INOCTERMS?
- FOB?
- CIP?
- CFR?
- DDP?

The departments/related parties effecting and handling trade are knowledgeable and experienced in international trade which includes the customs department and the clearing agents, importers/exporters. They generally understand these terms.

The most commonly used trade terms in Pakistan are:

FOR – Free on Rails (For local procurement under Purchase Manuals).

FOB – Free on Board.

C&F – Cost and Freight

CIF – Cost, Insurance & Freight

**B-15. Are there indications suggesting price-fixing in open bidding?**

Collusion between the Bidders which is also known as “Pooling or Ring” in local terms is a frequent practice in procurement of goods and works in smaller sized packages, especially in the engineering departments. However the worst part is that it occurs in the full knowledge of the Procuring Officials in the public sector. It has been alleged that some un-scrupulous elements in the public sector encourage this practice on small works contracts. In fact, in procurement under Public Sector

Development Programme (PSDP) the curse has been widely reported in the “Percentage Rate” Bidding System of Procurement.

**B-16. Are licensing and customs procedures generally transparent and efficient?**

The customs procedures are generally transparent and efficient. Practices may have their deficiencies.

**B-17. Are “facilitation” payments normally necessary to clear goods through customs, obtain work permits for expatriate labor, process monthly payment certificates/invoices?**

Views may differ on this issue since no definite information has formally been made available by the respondents. However, practice of releasing payments to contractors/suppliers in public sector for procurement of goods/works, especially on locally financed projects, is a tainted issue in the light of informal discussions.

The issue of payments and delays in payments was one of the main discussion points during the Second Mission. Informal reports confirm it as an institutional curse and say that it could, in some provinces be as high as Ten percent of the total bill which also includes share of the Audit staff in cases where pre-audit of bills before payment is practiced.

**B-18. Are local staff familiar with shipping and other trade documents? With documentary credits?**

Yes. The customs staff, customs clearance agents and others related with trade are familiar with trade documents and documentary credits.

**B-19. Are local staff experienced in import planning and importation procedures?**

Yes. Local staff in almost all ministries and autonomous agencies involved in handling these functions are familiar with import planning and importation procedures.

## **ANNEX C - FINANCIAL FRAMEWORK**

**C-1. Are banks capable of issuing Letters of Credit?**

Yes, Section 7(1) of the Banking Companies Ordinance, 1962, regarding form of business in which a banking company may engage, inter alia, provides authorization to banks to issue Letters of Credit.

**C-2. Are banks generally creditworthy?**

Yes, the scheduled banks which are being affiliated with the State Bank of Pakistan (SBP), are credit-worthy. None of the scheduled banks has failed to meet its obligations to-date.

**C-3. Can bid, performance and advance payment securities be obtained easily locally?**

- **What formats are permitted?**
- **Bank guarantees?**
- **Bonds?**
- **Other? Provide details on cost, if available.**

Yes, bid, performance and advance payment securities are available locally, issued by all commercial banks subject to certain under-takings, conditionalities and suppliers/contractors creditworthiness.

Generally the implementing agencies feel safe only with bank provided security, and not with performance bonds issued by insurance companies because some insurance companies failed to meet their obligations when contractors failed to perform. These securities are issued by the scheduled banks.

**C-4. Are the requirements for issuance of bid, performance and other securities to local suppliers/contractors reasonable?**

The requirements of the banks are based on the business relationship and assessment of the risk. In the case of high risk, the banks are believed to require 80% cash in the contractors/suppliers account and the remaining 20% as non-cash collateral.

**C-5. Do local suppliers/contractors have reasonable access to credit?**

The local suppliers/contractors can obtain credit from local banks provided they can produce acceptable collateral as a guarantee against the credit.

**C-6. Do implementing agencies obtain budgetary authorizations for contract payments falling due beyond the current financial year?**



The budgetary provisions for the approved projects are made in the Fiscal Year Budget on a yearly basis and unspent amounts lapse at the end of the year. Budgetary allocations are normally provided for the unspent amount on request from the implementing agencies.

**C-7. Are major projects or programs clearly identified in government budget estimates?**

GOP has adopted a five-year (development) plan for which all departments/agencies, acting as executing agencies, prepare/submit their proposals for consideration by high level committees/P&D divisions. After that the projects are approved in a logical order i.e. firstly a concept clearance by the government, secondly a PC-II form approval for feasibility studies of the projects and finally PC-I form approval for actual project costs which specifically lay down the annual requirements for works etc. during the projected currency of its implementation.

The annual budgets, accordingly contain the budgetary requirements for each sector and each project. However, since the actual implementation schedule may not necessarily conform to the PC-I schedules, the implementing agencies have to submit their financial requirements for each fiscal year.

**C-8. What procedures are followed to ensure the procuring entity obtains budget authorization prior to inviting bids?**

Bids cannot be invited and contracts awarded without budget authority.

**C-9. Do procuring entities reliably receive the monies authorized? Or is the budget subject to revision during the year by a restrictive cash release system?**

The procuring entities generally receive the allocated funds. However, on occasion budgetary allocations have been reduced due to unforeseen financial constraints faced by the government or due to commitments exceeding resources.

**ANNEX D-1 – PUBLIC SECTOR PROCUREMENT OF GOODS/WORKS**

**D-1 - GENERAL RISK ASSESSMENT**

**D-1.1 Is the public sector procurement profession held in high regard?**

- **Contractors**
- **Suppliers/Manufacturers**
- **Employers/Clients**

Procurement as a separately identified cadre/profession does not exist in Pakistan especially in the Public Sector. Government officials responsible for other functions also carry out procurement duties in almost all the Government executing agencies.

Some autonomous agencies have a procurement cell. Staff to this cell are appointed on a rotating basis for about 3 years and transferred to other duties, as is normal for civil servants.

Consultants normally do not employ procurement specialists. However, on large externally funded projects they employ professionals, who inter alia, also have expertise in procurement.

Contractors, suppliers and manufacturers, in general do not employ permanent procurement staff.

Staff responsible for procurement are considered important (especially those evaluating bids) but given the corrupt environment they are not held in high regard, as they are prone to temptations given their very low salaries. (See D-1.2 below.)

**D-1.2. Are pay levels for procurement professionals comparable to that for other public and private sector technical specialists?**

There is no procurement cadre in Public Sector Organizations, this function is carried out by other professionals including engineers, accountants and managers. Hence all of them draw salaries under a common pay scale. The salaries in Government service are inadequate and highly out of line with the cost of living as well as with remuneration being paid by the consultants to their employees.

- **Give current range of monthly salaries.**

The salary structure for middle level managers to senior managers in government departments ranges between Rs. 8,000 –15,000 net which is equivalent to US\$160-300 per month. The remuneration paid by the consultants to similar level employees ranges between Rs. 30,000 to 60,000 which is equivalent to US\$600-1,200. The contractors pay similar salaries to those of consultants.

**D-1.3. Is the procurement profession generally staffed with honest and capable individuals?**

Since procurement is not a recognized profession, and generalists who carry out these functions are regularly transferred to other positions, expertise in procurement has not been developed on par with expertise in other professions. Also, central government/provinces/private sector have not given enough importance to training in procurement.

Opinions vary considerably on the integrity of procurement staff. Many believe that procurement staff would carry out their work honestly if allowed to do so without indirect/direct pressure by contractors/consultants, managers and politicians, and if they were paid reasonable salaries. Sometimes honest procurement staff are not given decision making responsibility or over-ruled or side-lined.

**D-1.4. Does a code of ethics exist that procurement professionals are expected to follow?**

Several laws exist which deal with the code of ethics, etc. These are:

- (a) Presentation of Corruption Act, 1947
- (b) Government Servants (Conduct) Rules, 1964
- (c) Government Servants (Efficiency & Discipline) Rules, 1973
- (d) Ehtesab (Accountability) Ordinance, 1996
- (e) PEC Code of Ethics for Engineers & Contractors
- (f) National Accountability Bureau (NAB) Ordinance, 1999

In addition, provinces have their own laws, e.g.

- (i) Sindh Prevention of Bribery and Corruption Act, 1950
- (ii) Sindh Engineers and Anti-Corruption Ordinance, 1991

These laws define, inter alia, the offences with respect to criminal misconduct, possession of property disproportionate to known sources of income, etc.

The present military government has promulgated a special law, the National Accountability Bureau (NAB) to provide legal framework for its fight against corruption. It has been given wide powers to arrest persons accused of involvement in corruption, to undertake investigation of corruption cases, etc.

Although there are many laws/code of ethics, they have not been enforced adequately.

**D-1.5. Are the authorities relating to procurement clearly delegated to the entities carrying out the process?**

- Are the applicable procedures clearly defined?

The authorities relating to procurement activities are clearly delegated to the entities responsible for procurement in the public sector and are detailed in the form of Book

of Financial Powers. The level of delegation varies within the government departments. The autonomous departments like WAPDA, SNGPL, OGDC and NHA have their own Boards of Management (BOM) which are authorized to take decisions on procurement beyond specified limits in terms of cost of the contracts. Their lower tiers have also been empowered to take decisions commensurate with their positions in the hierarchy. However, because of very low approval limits delegated decision making is over centralised and causes considerable delay in award of contracts.

The autonomous agencies as well as the government departments have defined and laid down procurement procedures. They operate under their Financial Rules and Procurement Manuals/Procedures. For externally financed projects guidelines and procedures are explicitly laid down in their agreements.

This causes considerable delays in decision making due to limited capacity at the highest level.

- D-1.6. Are procurement decisions ever overridden by higher governmental agencies?**
- If so, by whom?
  - To what degree is the procurement decision-making process independent from politics?

Normally the procurement decisions by the delegated authorities are not subject to any reviews by higher governmental agencies. However, procurement decisions are sometimes influenced prior to completion of evaluation or recommendation.

The decision making process is not totally independent from politics/agents/high officials/donors.

- D-1.7. Does the highest level of government encourage/support/enforce compliance with existing procurement regulations?**
- Are violations investigated and procurement/other responsible officials held accountable?

The response to this question from almost all the stakeholders is “Yes”. The Government oversees these issues, though belatedly, through the Public Accounts Committee (PAC), a parliamentary body, on the reporting of the office of the Auditor General of Pakistan.

Violations in the procurement process, if detected are investigated and respective officials held responsible. Their cases are referred to appropriate forums/courts for proper judicial action and meting out punishment, if found guilty. In addition, the Auditor General prepares an Annual Report to the Parliament. The Public Accounts Committee of the Parliament reviews the findings of the Auditor General and agrees action against violations. In practice, however, little action has been taken on the findings of the Auditor General.

## **D-2 – ORGANIZATION**

**D-2.1. Is appropriate information on procurement adequately disseminated (i.e. procurement staff are aware of updated rules and thresholds, and other issues relevant to their assigned responsibilities)?**

There is no systematic dissemination of information on procurement in most of the government departments. In only very few organizations the information about updated rules etc. reaches the level of staff actually involved in procurement activities. Even when such information is made available little or no effort is made in training the concerned staff. Most procurement staff implementing Bank projects are not aware of the procurement requirements under Credit Agreements, neither are they aware that Bank procurement procedures supersede local rules and regulations. This is in spite of the fact that the Federal Government has issued a memo to this effect.

**D-2.2. Are the procurement and supply management functions clearly distinguished?**

The procurement and supply management functions are clearly distinguished in the Federal and provincial governments, and in the autonomous agencies. Within their organizational structures there are departments responsible for the purchase of goods, storage, record keeping, delivery, etc. The rules and regulations are detailed in the Federal, provincial, and autonomous agencies purchase manuals.

**D-2.3 Is contracting authority reasonably delegated (i.e. there are no unnecessary levels of approvals or cumbersome procedures)?**

The contracting authority is not reasonably delegated. Because of the very low thresholds (see ) the decision making process is over centralized causing unnecessary delays and loss to the economy.

**D-2.4. Are thresholds for contracting powers regularly updated?**

There is no established mechanism for regular updating of thresholds in Pakistan, in the government or in the autonomous agencies. For example, in provincial departments, the powers of executive engineers, superintending engineers are the same as those of over a decade ago. There is no updating on regular, periodic basis. Even the progressive public sector autonomous agencies take over a decade to carry out such an exercise, which normally is made quite a lengthy activity. It can accordingly be stated that no established mechanism for regular updating of contracting power thresholds exists in the Public Sector in Pakistan.

**D-2.5. Do procuring entities have internal quality control mechanisms?  
- Are they regularly audited?**

There is no quality control mechanism for monitoring the procurement process in the Public Sector. The word “audit” is synonymous only with the financial audit, normally carried out by the office of the Auditor General (AG). The AG’s office is now reportedly focussing also on performance audit of projects but not on the procurement process.

**D-2.6. Are procurement staff experienced in international procurement?**

Staff responsible for implementing externally financed projects either have some expertise in international procurement or employ consultants to carry out this work on large contracts. Development of a procurement cadre and continuous training is required to ensure availability of this expertise in the country.

**D-2.7. Is career advancement primarily based on job-related accomplishments and factors?**

Since the procurement profession is not recognized there is no career advancement in this field per se. Career advancement is solely based on seniority.

**D-2.8. Do adequate formal and on-the-job training programs exist for entry- and higher-level procurement staff that contribute to proper professional career development?**

No. This is one of the most serious shortcomings in the field of procurement.

**D-2.9. Are there additional training resources in the country which are currently utilized or that could be utilized to complement Government/donor-administered programs (e.g. universities and private institutions)?**

The National Institute of Public Administration (NIPA), Management Association of Pakistan (MAP), Staff Colleges offer short courses in procurement. The World Bank is trying to build sustainable procurement training in two private sector universities GIKI and LUMS, which have offered short courses with the assistance of the Bank. In addition, provincial engineering institutions and autonomous entities offer capsule courses, which need to be updated to provide quality training. These institutions can be utilized for procurement training provided government can be persuaded, training material prepared and procurement specialists trained as trainers.

On the whole procurement training is very inadequate to meet the needs. This is mainly due to the fact that the Federal Government, provincial governments, the private sector and PEC have not yet given much importance to building this important expertise.

**D-2.10. Did previous training programs lead to an obvious improvement in the quality/productivity of procurement work?**

Since the setting up of the Procurement Unit in the World Bank Field Office in Islamabad 3 years ago, considerable effort has been made in providing training all over the country in World Bank procurement procedures. This has resulted in some improvement. However, the training needs are considerable and unless the government and the private sector recognize procurement as a profession and give it the same importance and resources little improvement is likely and uneconomic and inefficient procurement will continue to result.

**D-2.11. Do procurement staff have adequate project/contract management capabilities?**

Expertise in project and contract management is generally provided by consultants on the large externally financed projects. Autonomous agencies normally provide counterpart staff, some of whom have adequate expertise whilst the others learn on the job. On smaller locally funded projects, staff normally do not have the expertise. Specialized training at basic and advanced level is therefore needed.

**D-2.12. Are procurement agents used? Under what circumstances?**

- How are they selected?
- Describe normal basis for compensation and contract duration.

Procurement Agents are not normally used unless required by donors. Consultants carry out procurement on large donor and locally funded projects. Goods procurement is normally carried out by the supply departments.

**D-2.13. Is procurement monitoring and administration computerized?**

- How adequately do procurement entities track the key steps in the procurement process and collect appropriate project-related cost and schedule information?

Computerized monitoring is a relatively new concept, practiced by consultants on large locally and externally financed projects, and sometimes by few of the autonomous agencies. In most of the government departments, monitoring is through monthly/periodic progress reports and bar charts, except for nationally important sensitive projects, where progress is monitored weekly/fortnightly.

**D-3 - PROCESS - PLANNING**

**D-3.1. Are project implementation units adequately staffed with trained procurement, planning, scheduling, expediting and cost estimating personnel?**

Most of the project implementation units (PIU) have adequately qualified staff but, with very few exceptions, have little or no experience in this important area of

procurement. Hence, these functions are carried out by consultants who provide the required information to PIUs, government and the donors on larger locally and the externally financed projects.

In the smaller projects, these functions are not given adequate importance. Also, because of low salaries and limited training and advancement in the technical field (especially procurement), professionals with potential and expertise are simply not available or move to higher administrative positions, the private sector or abroad.

**D-3.2. Is overall planning for complex goods, works and other contracts done in sufficient detail to produce realistic project definition, achievable completion schedules and accurate cost estimates?**

**- What methods and basis are adopted for preparation of cost estimates?**

This is normally done in large locally and externally financed projects by consultants. The quality of planning, scheduling, packaging and detailed definition depends on the consultant staff and the quality of supervision provided by the implementing agencies and donors. In general, not enough time is spent on realistic planning with the result that for many projects implementation schedules are overly optimistic requiring extension of time for completion and additional financing.

The cost estimates are based on a consolidated schedule of rates (CSR) for small works, especially in all the provincial governments and some autonomous bodies. On the large works, estimates are normally based on recent contracts for similar works if available or a combination of market rates and CSR as appropriate.

**D-3.3. Is the early technical and financial planning well coordinated so that projects are fully funded when work needs to begin, based on accurate cost estimates?**

GOP has a good system for technical and financial planning and budget allocation. PCII and PCI contain all the technical and financial details, source of funding including local and foreign, implementation activity schedules and annual financial requirements for each project for the MOF to approve and allocate the resources to. However, since budget allocations for capital expenditures are made on an annual basis, there is no assurance that funds will be available on time in the next fiscal year.

Cost estimates for large projects are generally prepared with care. However there have been instances in the past of poor design resulting in major changes and considerable cost increases causing delays in additional allocation and payments to contractors.

The cost estimates for the smaller projects in the provinces and in some of the autonomous agencies are normally based on inadequate feasibility studies and hence deficient design. Also, these estimates are based on CSR which are used for budget as well as for awarding contracts. However, CSRs are not updated regularly and ad-hoc premiums are used for revising estimates and negotiating contracts.



CSR was designed as a ready tool to prepare cost estimates for simple works contracts and was to be revised every year by a Standing Rates Committee after collecting data on all elements used in the development of this rate. The objectives of the CSR cannot be met as:

- The Standing Rates Committee do not carry out their assigned tasks regularly.
- CSR generally uses inputs from the Government's statistical bulletin as the basis of prices, whose figures are often unrealistic, and generally low.
- Standard Rates Committee/Finance Departments like to keep low rates rather than realistic market based rates.

As an example, it was reported by one of the Government of Sindh officials that the total premium for the past seven years, i.e. from 1992 – 1999 is only 15% which is 2.5% per annum. This increase is obviously, more so when the GOP's annual inflation rates. This could explain why some projects are not completed, contractors cheating on quality and officials artificially increasing quantities, freight charges, etc.

On the other hand, GOP officials contend that in the present corrupt environment there is a possibility that CSR can become over compensatory and not reflect actual market increases. This does not seem to be the case.

**D-3.4. Are appropriate methodologies used to plan multiple inter-related procurement activities on large projects (e.g. the critical path method (CMP))?**

For large and externally financed projects using local and international consultants, CPM is normally used. However, the bid evaluation does not normally review this in detail prior to bid award to ensure that CPM is realistic and the contractor will deliver as planned. For most of the locally funded projects, bar charts are used which is a requirement for PCII & PCI.

**D-3.5. Are project components appropriately packaged for procurement purposes?**

Normally yes for large projects. However, for locally funded smaller projects the tendency is for dividing into smaller packages for one of the following reasons:

- (i) Provincial governments/politicians prefer to reserve the work for small local contractors/suppliers with limited capacity.
- (ii) Lack of forward planning and late release of funds require completion within short period of time, and this can only be done by subdividing contracts.
- (iii) Award decisions are quicker for smaller contracts.

**D-3.6. What is the General Volume of packages and its relationship with the status of contractors/suppliers capability?**

General volume of packages for the externally funded projects varies and can be as large as US\$500 million. For example, in the Ghazi Barotha Power Project there are 3 packages each more than US\$300 million. There is also considerable variation in the locally funded smaller projects, where a package can be as little as US\$2000.

**D-3.7. Are completion schedules generally met for goods, works and consultant services contracts?**

- **If not, what is the major cause for slippage?**
- **Is sufficient time generally allowed for external reviews/clearances?**

Completion schedules are generally not met for construction contracts due to one or some of the following:

- (i) Unrealistic and overly optimistic time frame.
- (ii) Delays in contract award.
- (iii) Weak project management and decision making.
- (iv) Inadequate contractor capacity to meet the contracted scheduled completion date.

Completion for off-the-shelf goods contracts are generally met.

There is generally considerable delay in awarding consultancy contracts because the evaluation is somewhat subjective and pressures are brought to bear by consultants as well as others to influence award recommendations. This results in compressing the completion cycle, including programming unrealistic completion time, thereby increasing costs. Because most of the works contracts are not completed on schedule consultants contracts also have to be extended.

Generally, sufficient time is given for external reviews/clearances for the externally financed projects. However, the problem lies mainly with the implementing agencies, which often do not meet deadlines due to inexperienced staff and slow decision making.

**D-3.8. Do procurement units regularly conduct market surveys to update their knowledge of prevailing prices for goods and works?**

- **Are some standard rate schedules available which are periodically updated?**

Procurement units do not have a monitoring or a tracking system of commonly used commodities and unit costs and hence it is reasonable to assume that costs are not totally market based.

For unit and standard rate schedules see para. D 3.3 above.

**D-3.9. Are procedures and methodologies for planning procurement of recurrent items (i.e. inventory control, forecasting of future requirements, classification, coding,**

**accounting/financial management, spare parts management, and delivery systems) adequate?**

Generally no. The procedures and methodologies used are generally outdated. Also, uncertainty of budgetary resources makes planning more of a theoretical exercise.

#### **D-4 – PROCESS - DOCUMENT PREPARATION**

**D-4.1. Do standard documents exist for goods, works and other types of contract? List. Are other international contract formats used? If so, identify**

Under externally financed projects, PIUs use documents approved/mandated by the financing agencies.

For locally financed projects there are no standard documents used country-wide. In fact, there is a wide variety of standard documents for procuring works and goods in various departments and autonomous agencies (See Annex H.)

For *works*, funded locally, almost all engineering departments have their own standard documents, (e.g. C&W, railways, MES, WAPDA, NHA, OGDC, PTCL) which are based on the old basic PWD document.

In addition, PEC constituted a committee comprising of representatives of the employers, consultants and contractors and mandated the committee which has so far produced the following documents:

1. Pakistan Standard Bidding Documents (Civil Works)
2. Pakistan Standard Form of Documents for Procurement of Works (Electrical and Mechanical)
3. Pakistan Standard Form of Contract for Engineering Consultancy Services (for large projects) - Time-Based Assignments
4. Pakistan Standard Form of Contract for Engineers Consultancy Services (for large projects) - Lump Sum Assignments
5. Pakistan Standard Form of Bidding Documents for Procurement of Smaller Works
6. Pakistan Standard Form of Contract for Procurement of Engineering Consultancy Services for Small Works

The last 2 documents mentioned above are yet to be approved by the Executive Committee of the PEC, while the earlier 4 documents have been approved and adopted. The Standards and Quality Committee of PEC deals with the subject within PEC and is currently exploring ways and means to effectively notify the public and implement these standard documents within the country.

All the large internationally bid contracts are based on FIDIC documents adapted as necessary to suit specific works, but are already out of date.

For purchase of goods and supplies, Federal Government, and autonomous agencies use the Federal Purchase Manual dated 1972 while provincial governments use their own Purchase Manual which are:

Punjab Purchase Manual of 1985

Balochistan Purchase Manual of 1991

Sindh Purchase Manual of 1989

North West Frontier and Azad Jammu and Kashmir use the Federal Purchase Manual.

**D-4.2. Are these documents, if any, readily adaptable to specific contract situations (i.e. by modifications made through a Bid Data Sheet, Special Conditions of Contract or similar)?**

For locally and externally financed projects (except Bank's SBDs), there are no bid data sheets or contract data sheets. Modifications are normally made through special conditions of contract. A section titled special conditions is provided in the Purchase Manuals as well as in the B&R contract forms. Changes to general conditions require approval of the highest authority of the department/agency.

Most officials using local documents are not aware of data sheets and their purpose.

**D-4.3. Are there separate documents for international and national competitive bidding not financed by the Bank?**

There are no separate standard documents for international and national bidding documents not financed by the Bank. Locally financed projects are normally procured through national competitive bidding procedures using one of the above documents. However, some autonomous agencies like WAPDA have used FIDIC based bidding documents.

**D-4.4. Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application?**

Yes, for internationally and large locally financed projects. For small locally financed projects, ITBs are deficient especially in the area of bid evaluation criteria and method of application. Bidders are required to strictly agree to the conditions of bidding otherwise they are declared non-responsive. Bid award is generally based on price alone it being assumed that registered contractors/suppliers are qualified to undertake the work. There is no post qualification.

**D-4.5. Do they contain other necessary information, such as eligibility requirements, basis of bid, language and currency of bids, common currency for purposes of**

**evaluation, source/date of the exchange rate and evaluation procedure, criteria, etc.?**

- **Are sample forms and other appropriate sections of the documents provided?**

This information and forms etc. is provided only in the bidding documents used for procurement under internationally financed projects or large locally financed projects bid internationally.

**D-4.6. Are bidders required to provide bid security in an appropriate amount as a condition of responsiveness of their bid?**

- **Any restrictions on source of bid security?**

Yes, the bid security in an appropriate/designated amount is one of the main conditions of responsiveness of the bid. However, purchase manuals of some provinces allow exception from bid security to registered suppliers for procurement of goods and supplies. (See Annex H.)

The bid security must be in one of the following forms (all or some of these forms are in vogue in various departments):

- Bank Guarantee
- Certified Cheque
- Pay Order
- Demand Draft
- Call Deposit

**D-4.7. Is pre- or post-qualification provided for?**

Pre-qualification is carried out for large projects only. For smaller works projects and goods procurement under externally financed projects post qualification is a normal requirement.

For locally small financed projects, registration (which is considered as a form of prequalification criteria) is mandatory for bidding for works contracts. Government departments and some autonomous entities, maintain this register. In addition, contractors must be registered with PEC in specific categories which is a legal requirement.

Categories for registration are based on estimated cost of works and differ in various provinces and autonomous bodies. A sample of categories in NWFP is as follows:

A-class Contractors	Rs. 25 million
B-class Contractors	Rs. 10 million
C-class Contractors	Rs. 5.0 million
D-class Contractors	Rs. 0.5 million

**D-4.8. Are qualification criteria appropriate and clearly described?**

On internationally financed projects, especially under the World Bank/ADB financing, use of their standard pre-qualification documents is mandatory which contains an explicitly detailed criteria.

The registration criteria of PEC, departments and autonomous agencies is not very specific and does not list the requirements or evaluation methodology.

**D-4.9. Are conditions of contract equitable?**

Conditions of Contract for all local bidding documents used on PSDP projects are one-sided and do not adequately cover contractors risk.

Notwithstanding this, most engineering departments do not wish to change the conditions of contract to be more equitable.

**- Any relevance to FIDIC or other conditions of contract?**

Some of the documents including the one drafted and finalized by the PEC are FIDIC based as are some others prepared by local consultants and some progressive autonomous entities like WAPDA.

**D-4.10. Are conditions of contract generally equitable?**

- Do they provide adequate coverage for most important commercial and legal issues (for the method of procurement, size, nature and type of contract used) and provide adequate protection to the Government, without putting undue risk on bidders?**

As mentioned above, the bidding documents used for locally financed projects are not equitable. They are designed to protect the procuring agencies at the cost of contractors/suppliers.

**D-4.11. Do these documents contain equitable clauses in respect of:-**

- unforeseen physical conditions,**
- Employer's Risks, Insurances,**
- Suspension,**
- Time extension,**
- Liquidated Damages and Bonuses,**
- Variations,**
- Claims,**
- Payment to Contractors including mobilization and other advances,**
- Remedies ,**
- Settlement of Disputes,**
- Default and**

**- Changes in Cost and Legislation.**

These clauses are part of the documents used on externally funded projects and large locally financed projects bid internationally. For small contracts, clauses like unforeseen physical conditions, insurances, bonuses, employer's default, changes in cost due to legislation are not in most of the standard documents used by autonomous agencies and departments. The clause "Settlement of Disputes" is completely one sided where the department officers act as Engineer and also as arbitrators. Example of a sample from a modified bidding document is provided below.

**SETTLEMENT OF DISPUTES**

**Procedures in disagreement**

**Clause 65:** In the event of any disagreement between the engineer-in-charge and the contractor arising out of the contract, the matter shall first be referred to the Superintending Engineer for decision who shall, after making such enquiries, as he may deem fit, give his decision in writing not later than three months after the references are made to him. The period for decision of the case by the Superintending Engineer may, however, be extended by the Chief Engineer under special conditions according to the circumstances, justification, available in each case. The contractor shall forthwith give effect to the decision of the Superintending Engineer and shall proceed with due diligence, whether arbitration is intended or not.

**Contractor dissatisfied with the decision of the Superintending Engineer.**

If the contractor be dissatisfied with the decision of the Superintending Engineer or if his decision is not forthcoming within the stipulated or extended period/periods and desires arbitration under the arbitration clause as hereinafter provided, he shall give notice in writing of such intention to the Superintending Engineer within a period of twenty eight days of the receipt of the Superintending Engineer's decision or in case no decision is given, at the end of the period or periods within which the Superintending Engineer was to give his decision. The said notice shall contain the cause of action, material facts of the case and relief sought, failing which the decision of the Superintending Engineer shall become final, conclusive and binding, and the contractor shall be deemed to have forfeited or departed from the claim in excess of that allowed by the Superintending Engineer.

**Increase in amount of claim once preferred not allowed.**

The subsequent inflation/increase in the amount of claim once preferred in the said notice shall not be allowed nor shall any other claim in respect of the same work be entertained from the contractor at any later stage.

**Reference to arbitration**

A reference to arbitration shall be made by the contractor in writing not later than three months after the completion of the work. Failure to make such a reference within this period shall be deemed to mean that the contractor has waived all claims in respect of all disputes.

**Dispute for arbitration limited**

- a) Disputes which may be referred to arbitration shall be limited to:
- i) Any question, difference, or objection, whatsoever which shall arise in anyway, connected with or arising out of the contract; or/and
  - ii) The meanings of the operation of any part of the contract; or/and
  - iii) The rights, duties and liabilities of other party to the contract ; and
  - iv) Whether the contract should be terminated or has been rightly terminated and as regards the rights and obligations of the parties as a result of such termination.

Provided that those matters for which provision has been made in the contract for final and binding decision by the Superintending Engineer or the Engineer incharge shall be excluded from arbitration.

- b) The venue of arbitration shall be in Punjab.



**Arbitration**

- c) In the event of any dispute arising in accordance with the limitations provided in sub-clause (a) of this clause, the same shall be referred to the decisions of a sole arbitration to be appointed by the Chief Engineer, Incharge of the region, from among Superintending Engineer, and other than the Superintending Engineer, Incharge of the work. In case the claim preferred is for an amount upto half a million rupees, the decision of the sole arbitration in such cases shall be final and binding on the parties concerned.
- d) In case the amount of the claim preferred is over half a million rupees (US\$100,000), the dispute shall be referred to the award of two arbitrators, to be appointed from the Superintending Engineers of the department, other than the Superintending Engineer Incharge of the work, one to be nominated by the Chief Engineer of the region concerned and the other by contractor. In case of the said two arbitrators not agreeing, the case shall be referred to the award of an umpire who shall be an Officer of the department not below the rank of Chief Engineer to be appointed by the government in the administrative department. The decision of the two arbitrators/umpire, as the case may be shall be final and binding on the parties concerned. Where the matter involves claim for the payment of recovery or deduction of money only, the amount, if any, awarded in the arbitration shall be recoverable in respect of the matter so referred.

**D-4.12. Are standard purchase orders used for shopping?**

Yes, standard purchase orders are provided for in the Purchase Manuals, and used when appropriate.

**D-5 – PROCESS - PRE-QUALIFICATION**

**D-5.1. Is pre-qualification carried out when appropriate? What types of contracts is it used for? Works? Goods? Other?**

Pre-qualification is normally carried out for large internationally and locally financed projects. For smaller works, contractors must be registered with PEC as well as with the departments in the required category to bid.

For procurement of supplies all suppliers are allowed to bid, except that registered suppliers are exempt from providing earnest money/bid security in all provinces, except Sindh, as well as in the Ministry of Supplies.

**D-5.2. Is pre-qualification notice properly advertised?**

- Are the intending applicants provided adequate time for finalization/submission of applications?

Notices for pre-qualification for externally financed projects are advertised in accordance with the donors requirements, and adequate time provided for preparation and finalization of applications.

**D-5.3. Is the pre-qualification process fair and transparent?**

- Are decisions made promptly?
- Are foreign firms allowed to apply?
- Is there any restriction on number of firms to be pre-qualified?

The pre-qualification process for externally financed projects is generally fair and transparent. There does not appear to be undue delay in processing prequalification on large projects. Foreign firms, who normally participate in large contracts are allowed to apply and are prequalified if qualified. There is, however, a valid concern that some of the foreign firms provide inaccurate /fake documentation which is difficult to check due to lack of resources/time frame and this has caused problems in the past.

There is no restriction on the number of firms to be prequalified for works/supply and erect.

**D-5.4. Are standard pre-qualification documents used?**

- Do they clearly and completely describe all the pre-requisites for submitting responsive applications for pre-qualification?
- Is financial/other information routinely requested and critically evaluated to assess an applicant's financial capacity to perform?

Yes, standard pre-qualification documents are used in donor financed projects and also by some of the autonomous agencies for large projects. They generally describe all the essential requirements including financial requirements.

For locally financed smaller projects the government and autonomous agency register contractors, in different categories, based on a questionnaire, a sample of which is given below.

**REQUIREMENTS LIST FOR ENLISTMENT IN PUDB, NWFP, PESHAWAR****Requirements for “A” Class****Annual Fee 10,000/-<sup>6</sup>****Limit 20 Million**

- |   |   |
|---|---|
| 1. Property.  | 60 Lacs photocopy Ist Class                           |
| 2. Bank Balance.  | Magistrate duly attested.                             |
| 3. Enlistment copy with other Department<br>copy of Renewal.              | 12 Lacs. Original Certificate with<br>Bank Statement. |
| 4. Registration with Registrar of company<br>Certificate.                 |   |
| 5. Form “H” with Partnership deed.  |   |
| 6. Pakistan Engineering Council<br>Registration.                          |   |
| 7. Engineer’s Degree’s undertaking &<br>NIC.                              |   |
| 8. List of Machinery on / 10 Rupees.                                      |   |
| 9. List of Staff on / stamp paper.  |   |
| 10. Works done certificate above 80 lacs<br>with photocopy of work order. |   |
| 11. N.I.C.  |   |
- 

**Requirements for “B” Class****Annual Fee 5,000/-<sup>3</sup>****Limit 50 Lacs only.**

- |   |   |
|---|---|
| 1. Property.  | 50 Lacs photocopy Ist Class                           |
| 2. Bank Balance.  | Magistrate duly attested.                             |
| 3. Enlistment copy with other Department<br>copy of Renewal.              | 10 Lacs. Original Certificate with<br>Bank Statement. |
| 4. Registration with Registrar of company<br>Certificate.                 |   |
| 5. Form “H” with Partnership deed.  |   |
| 6. Pakistan Engineering Council<br>Registration.                          |   |
| 7. Engineer’s Degree’s undertaking &<br>NIC.                              |   |
| 8. List of Machinery on / 10 Rupees.                                      |   |
| 9. List of Staff on / stamp paper.  |   |
| 10. Works done certificate above 40 lacs<br>with photocopy of work order. |   |
| 11. N.I.C.  |   |
- 

<sup>6</sup> Exchange Rate is US\$1 = Rupees 50.  
One Lacs is Rupees 100,000 (US\$2000)

**Requirements for “C” Class****Annual Fee 3,000/-<sup>3</sup>****Limit 25 Lacs only.**

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Property.</li> <li>2. Bank Balance.</li> <li>3. Enlistment copy with other Department.</li> <li>4. Registration with Registrar of company Certificate.</li> <li>5. Form “H” with partnership deed.</li> <li>6. Engineer’s Diploma/undertaking on Rupees Stamp Paper &amp; NIC.</li> <li>7. List of Machinery / List of Staff on Rupees Stamp Paper.</li> <li>8. Works done certificate above 15 lacs with photocopy of work order.</li> <li>9. N.I.C.</li> </ol> | <p>25 Lacs photocopy Ist Class Magistrate duly attested.</p> <p>8 Lacs. Original Certificate with Bank Statement.</p> |
|--|---|

**Requirements for “D” Class****Annual Fee 1,500/-<sup>3</sup>****Limit 5 Lacs only**

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Property.</li> <li>2. Bank Balance.</li> <li>3. N.I.C.</li> </ol> | <p>10 Lacs photocopy Ist Class Magistrate duly attested.</p> <p>4 Lacs. Original Certificate with Bank Statement.</p> |
|---|---|

Registration for supply contracts is regulated by provisions contained in respective Purchase Manuals. Section G of the Purchase Manual, Punjab (see Paras 90 to 100 refers).

**D-5.5. Do procuring entities verify prior to contract award if a successful bidder continues to meet pre-qualification requirements?**

Verification is generally a requirement under donor financed projects, but is not always strictly adhered to. For locally financed smaller projects there is no such requirement in the bidding documents, and hence some registered contractors filed cases in the courts of law when they were disqualified for genuine reasons, and they won. Therefore, no verification of successful bidder is carried out.

**D-5.6. If pre-qualification is used for procurement of Goods/erection services, Are suppliers required to have a local agent in order to qualify to bid for goods or services?**

No, there is no such requirement.

**D-5.7. Do procuring entities maintain updated lists of qualified suppliers and contractors and updated market information on commonly procured goods, including spares and consumables?**

- **Is supplier and contractor performance routinely evaluated and are any standing lists of pre-qualified suppliers and contractors updated and modified based on this information.**
- **Can newcomers readily apply and be qualified?**

Registered contractors/suppliers are required to get their registrations renewed annually or bi-annually, which amounts to updating of lists.

There is no indication/evidence that procuring entities maintain and update the market information/list of goods including spare parts and consumables.

There is no formal system to carry out the performance evaluation of contractors/suppliers.

New comers can apply and get registered provided they meet the qualification criteria. However, there is a concern that some unqualified contractors/suppliers have been registered because of political pressure.

One of the problems in some districts and provinces is that registration is restricted to local contractors, resulting in pooling, collusion and higher prices.

## **D-6 – PROCESS – ADVERTISEMENT**

**D-6.1. Are contracts to be awarded by competitive bidding publicly advertised?**

Yes the PEC Bye-Laws and the rules and regulations of government departments require that bidding opportunities should normally be publicly advertised and contracts awarded through competitive bidding.

However, some contractors have complained that in very small contracts (e.g. 2 classroom schools in districts) the advertisement is a farce, and bidding documents are given to a minimum number of contractors (as required by regulations) favored by officials, a couple of days prior to bid closing. They collude with the official concerned to fix prices and decide on the winning bidder. No contractors dare complain officially/formally as they are afraid of being punished by officials on existing works or on future works.

**D-6.2. Is sufficient time allowed to obtain documents and prepare bids?**

Generally sufficient time is given to obtain and prepare bids, except for some of the very small contracts in districts. This is done to restrict bidding and allow collusion.

Many officials, however, complained that the 30 day period required by World Bank for submission of bids after notice in press was too long and should be reduced, especially for small works, bid on percentage based rates, which does not require much time to prepare.

**D-7 -PROCESS – COMMUNICATIONS BETWEEN BIDDERS AND THE PROCURING AGENCY**

**D-7.1. Is there any time limitations for requesting clarifications?**

Bidding documents for smaller locally financed projects do not have any provision for seeking clarification in writing or a formal site visit.

In case of externally financed funded projects and large locally financed projects provision exists for seeking clarifications and time limitation is generally 4 weeks prior to bid submission date.

**D-7.2. Are requests for clarifications answered promptly and completely in a written form?**

In case of externally financed projects and large locally financed projects clarifications are generally reasonably, promptly, and answered in writing. In the case of locally financed small contracts, there is no provision for seeking clarification in writing. Bidders generally examine data/documentation/drawings at a specified office and pose questions. Questions and answers are not communicated in writing to all potential bidders.

**D-7.3. Are clarifications, minutes of the pre-bid conference, if any, and modifications of the documents promptly communicated to all prospective bidders?**

Yes, in the cases of externally financed and locally financed large projects.

**D-7.4. Are bidders afforded sufficient time to revise their bids following a modification of the documents?**

Generally, yes.

**D-7.5. Do procuring entities maintain accurate records of all communications with the bidders (before and after the deadline for submission)?**

Generally, yes.

**D-8 – PROCESS – RECEIPT OF BIDS AND OPENING**

**D-8.1. Are bids received prior to the deadline securely stored?**

Paragraph 19 of the Federal Purchase Manual gives detailed procedure for receiving tenders prior to bid opening for the purchase of goods, which are believed to be also followed for civil works. Normally, in the provincial departments tenders are required to be placed in locked tender boxes, key of which is kept by the Assistant Director of Administration. Receipt of tenders by hand (except bulky tenders) is forbidden.

**D-8.2. Are public bid openings conducted?**

Bids are required to be opened in public in the presence of representatives of the bidders who chose to attend.

**D-8.3. If so, are they conducted at a specified place closely following the deadline for submission?**

- Generally how long after are they scheduled for opening after receipt?

It is generally the practice to open bids at a specified time and place closely following deadline for submission. Delays are unacceptable in large international tenders.

**D-8.4. Do bid opening procedures generally follow those specified in the Guidelines?**

- What information is read out at the opening ceremony?

For large externally and locally financed projects, the Bid Opening Committees follow procedures in accordance with guidelines/instructions to bidders. They normally read out the following information.

- Name of the Bidder
- Bid Price
- Presence or absence and amount of bid security
- Any discounts offered
- Modifications, if any

Generally, bidders representatives are also asked to confirm the read out information by the bid opening committee.

In the case of small packages, it is normally the practice to read out the name of the bidder, bid price and the presence and absence of a bid security although this is not a requirement under the Purchase Manual Regulations. Para. 20 of this manual requires inter alia that 2 authorized officials should open the bids in public and initial and date each tender serially and note down the number of tenders received to avoid the possibility of suppression, substitution or addition to any bidder.

**- Are minutes kept?**

Minutes of the bid opening are generally kept and the information is recorded in registers to be signed by the Bid Opening Committee members and in the case of small works also by the bidders' representatives. A formal roll call is also prepared and the presence of bidders representatives with their names and signatures recorded.

**D-8.5. Do bid opening procedures differ for goods, works or other types of contracts?**

**- If so, how?**

No, they do not.

**D-9 – PROCESS - BID EXAMINATION AND EVALUATION**

**D-9.1. Are evaluations conducted by qualified evaluating committees?**

- What is normally the constitution of the evaluation committees?**
- If there are consultants employed for implementation of the Projects, what is their role?**

The implementation agencies claim that their staff involved in evaluation of bids is qualified, but the bidders do not perceive it as such. Since most agencies do not have specialist procurement staff some credence has to be given to their views.

In small works contracts price is generally the main consideration, especially as the bidders are normally registered contractors and audit normally insists on the lowest bidder getting the award. Negotiations are normally carried out by administrators with the lowest bidder.

In the government departments for supplies, evaluations are normally carried out by purchase cell staff for goods. Works contracts are normally evaluated by engineers and accountants.

For large international contracts, basic evaluation of technical and commercial aspects is carried out by consultants, subject to review by the implementing agencies committees drawn from experienced staff, prior to submission to the approving authority. At times, there have been disagreements between the consultants evaluation and those of the approving authority.

**D-9-2. Are evaluating committees appointed ad hoc for each evaluation?**

There is, normally no Tender/Contracts Cell in most departments except the Purchase Cells for supplies of goods procurement. Therefore, all departments in the provinces appoint their own evaluation committees as required. Some autonomous project implementing entities do have such cells for procurement of works and goods (e.g. WAPDA).



- D-9.3. Is responsiveness determined on the basis of the documentary requirements described in the documents and according to established practice?**

Yes.

- D-9.4. Are bid evaluations carried out thoroughly and on the basis of the criteria specified in the documents?**

Generally yes for large local and externally financed projects. For smaller works, contract price is generally the main criteria, as generally deviations are not allowed nor considered.

- D-9.5. Are there communications between the procuring entities and the bidders, other than appropriate requests for clarification of a bid made by the evaluating committee?**

Normally no.

- D-9.6. Is the successful bidder's qualification to perform the contract determined solely on the basis of the criteria stated in the documents? (See above)**  
**- If not, what other criteria are considered?**

In general yes for large projects bid on a competitive basis internationally. For local, smaller projects all registered contractors are considered qualified.

- D-9.7. Are evaluations normally completed within the original bid validity period?**  
**- Are bid-evaluation reports prepared on some specific format?**

For large externally financed projects, consultants normally prepare their evaluation reports well before the expiry of the bid validity. However, there are delays in finalization of the evaluation committee's (specialist procurement cell) recommendations for consideration of the Final Approving Authority due to lack of expertise and hence lack of confidence, considerable amount of direct and indirect interference, use of influence, and incentives from the bidders and other interested parties.

Bid evaluation reports for World Bank projects are prepared on standard formats which are mandatory. All other agencies have their own formats, which are not similar to one another. For smaller local works contracts, the reports are prepared on simple formats.

**D-9.8. Are bid evaluation reports prepared containing all essential information (i.e. a clear and complete description of the evaluation process, including the reasons for rejecting any bid as non-responsive, how the stated evaluation criteria were applied, and how the successful bidder's qualifications were verified)?**

Yes, normally in accordance with the bidding documents for large externally financed projects.

For supply contracts the evaluation criteria is generally not detailed or specific enough and can result in subjectivity and hence there is potential for abuse, e.g. the Federal Purchase Manual on Page 34 inter alia, states as follows:

- No contract involving an uncertain or indefinite liability or any condition of an unusual character should be entered into without the previous consent of the competent financial authority.
- Any quotation received with a delivery period which is not specific and does not permit the purchase of the supplies within the specific period, should ordinarily be rejected.
- As far as possible, contract should be placed only after tenders have been openly invited.
- In the case where the lowest bidder is not accepted, the financial status of the individuals and firms tendering must be taken into consideration in addition to all other relevant factors.

For smaller works/rate contracts price is generally the only consideration.

**D-9.9. Describe any significant differences between goods and works procurement relating to the above?**

Civil works evaluation criteria is generally more specific. All bidders are normally required to bid on the implementing agency's design and specification.

Goods evaluation is much more difficult especially for unqualified procurement/technical staff. Specifications from different manufacturers are not easy to evaluate and this normally causes a lot of problems.

For larger civil works, the invitation to bid is restricted to prequalified contractors. For smaller works normally registered contractors bid.

For large goods procurement any manufacturer/supplier/agent can bid subject to post qualification. For smaller procurement only the bid of a non-registered firm is subject to post qualification if it is the lowest priced.

**D-10 - PROCESS – CONTRACT AWARD AND EFFECTIVENESS**

**D-10.1. Are contracts required to be awarded to the lowest evaluated responsive bidder who has been determined to be qualified to perform the contract satisfactorily?**

Normally, yes. Generally to registered bidder quoting the lowest price for locally financed small procurement. For large externally financed and locally financed contracts to lowest evaluated responsive bidder as defined in the bidding documents.

**D-10.2. Are price negotiations conducted with bidders, before or after selection?**

For externally financed projects this is not normally permitted. For locally financed projects negotiations are carried out when prices are too high compared to estimates or fall outside the limits imposed by the finance department. It was also reported that Audit departments create problems if negotiations are not carried out with a view to reducing price even if the price is within the estimate or within the limits imposed by the finance departments.

**D-10.3. Are additional Government approvals required before contracts can be made effective?**

Once the evaluation report is approved by the competent authority no further government approvals are required to sign or make the contract effective.

- **Generally how many tiers of authority are involved in approval of evaluation report?**

The number of tiers may be as little as ONE and vary up to FOUR. Some contractors however think it is much more in some cases.

**D-10.4. Is performance security required in an appropriate amount and in an appropriate format?**

- **Any preferences for sources of performance securities?**

Yes, normally performance security in the form of a bank guarantee from a scheduled Bank is required (usually 10%) in an appropriate standard format. In some departments, performance security issued by a foreign source is required to be underwritten by a local scheduled bank (except for World Bank financed projects where this is not permitted).

In some contracts, performance bonds issued by bonding companies have also been accepted.

In some cases, no performance security is required for small contracts. Instead a bid security is retained and additional security is provided through retention money.

Some executing agencies also accept performance securities from local insurance companies in the amount of 20 %- 30% of the contract price instead of the usual 10% performance security in the form of a Bank guarantee.

**D-10.5. Describe any differences between goods and works relating to the above.**

Performance guarantees for goods are generally lower than those of the works for internationally financed projects (5% for goods against 10% for works).

**D-11 - PROCESS - CONTRACT ADMINISTRATION**

**D-11.1. Are there manual or computerized procurement and/or contract monitoring systems?**

For very small procurement there are hardly any monitoring systems. For larger local contracts, agencies have manual monitoring systems. For externally financed large projects, consultants normally use computerized systems.

Some autonomous agencies are now trying to convert from manual to computerized systems.

**D-11.2. Are suppliers and contractors generally paid on time? What is the normal time lapse from invoice submission to final payment?**

- **Do appropriate provisions exist and are they used to compensate the contractors/suppliers for delayed payments**

The interim payments are usually made in time but other payments such as payment of claims and final payments can be delayed. The payment time varies between 7 to 45 days depending upon the size of contract and payment release agency (longer periods are applicable when payment is released by international funding agencies). It was stated by some engineering departments that they release the interim payments within three days and even the same day, if the contractors are faced with cash flow problems.

In the externally financed projects there is always a clause to cover payment of interest on the delayed payments. However, the interest rate is inadequate (except in the World Bank SBDs) as compared to commercial borrowing rate of interest. In the smaller PSDP contracts no such provisions exist in the contracts for works and supplies.

**D-11.3. Are there appropriate procedures to monitor delivery of goods and services to verify quantity, quality and timeliness?**

Yes. Appropriate clauses in contracts and procedures exist in this regard. Provisions in smaller percentage rate contracts are very stringent and contractors can not afford to delay the project implementation. Same applies to the supplies contracts under the Purchase Manuals.

**D-11.4. Are contract changes or variations handled promptly in accordance with the contract conditions and established practice (i.e. change/variation orders are given and/or confirmed in writing, constructive change orders are avoided, unit rates in the contract are honored but the supplier or contractor is allowed to agree to any new unit rates introduced and the completion schedule for each change or variation, etc.)?**

In international contracts the variations are generally handled promptly by consultants but there are invariable approval delays by the implementing agencies.

In local contracts the situation may not be the same especially when an employee of the Employer is also acting as the Engineer. In that case the contractors/suppliers are disadvantageously placed.

**D-11.5. Do procuring entities normally make a good faith attempt to resolve disagreements through informal negotiations?**

The response of the Public Sector agencies is that they do. The contractors/suppliers do not endorse this viewpoint. The environment does not permit good faith agreement in favour of the contractor as the officer conducting the negotiations could be accused of corruption. Therefore, the matter is generally referred to departmental arbitration in the case of small contracts. For large contracts, attempts are made to settle disagreements through negotiations, but managers generally prefer to pass on responsibility to the dispute resolution boards.

**D-11.6. If this fails, are the resulting disputes handled in accordance with the contract conditions?**

The dispute resolution mechanism is generally loaded against local contractors in small contracts. Executive Engineer i/c of design, award and implementation has the final authority and his decision is final and binding on the contractor.

Some authorities like the Public Health Engineering Department in the province of Punjab have modified/improved the documents to provide a fairer mechanism for resolution of disputes (Clause 65 of their bidding document, pages 59 to 61). Under this clause, dispute is first decided by the engineer of the employer. In case of disagreement by the contractor, for small contracts, one other engineer of the department decides and in the case of a larger contract two engineers of the same

status decide. In the case of difference in opinion between the two, the Chief Engineer of the department decides. Even this system is loaded against the contractor.

If the dispute persists, the contractor can go to arbitration under the Arbitration Act of 1940, which is lengthy and expensive and not normally used by local contractors.

Large contracts financed externally have a dispute resolution mechanism somewhat similar to FIDIC or World Bank Standard Documents.

**D-11.7. Are supplier and contractor claims handled fairly based on a clear recognition of both parties' obligations under the contract?**

For smaller local contracts, the answer is generally no, (see previous para.) as government officials do not want to be suspected of corruption even in admitting valid claims.

**D-11.8. Are works contracts supervised by independent engineers?**

In all the smaller contracts, employer's staff, who supervise, are not considered independent. In the large externally financed projects consultants normally supervise the works. Since they are paid by the Employer and may not wish to jeopardize their future prospects for assignments, they are not perceived as totally independent either.

**D-11.9. Are contract managers/administrators skilled in resolving problems in a timely manner and dealing with unforeseen circumstances arising during the life of the contract?**

The Public Sector believes that their staff is skilled. The contracting community generally do not agree.

The Bank's experience is that expertise varies from department to department. On the whole there is a shortage of skilled managers/administrators who are capable of resolving contractual matters in a timely manner, and this results in additional delays/cost to the economy.

**- Do they adequately document all actions of contractual import taken by the purchaser/employer during implementation?**

Yes, Audit requires to see all documentation. However, in practice, documentation is not always complete for smaller projects.

**D-11.10. Are contractual remedies utilized only when appropriate and in accordance with the contract conditions?**

Generally yes in the case of large externally financed projects. In the case of smaller contracts provisions are generally one sided and loaded against contractors. Also, smaller contractors normally do not always pursue remedies even when they are entitled, for fear of reprisals in future contracts.

- D-11.11. Are contracts generally completed on schedule and within the originally approved contract price?**
- **Or are cost and time overruns frequent?**
  - **If so, in which sectors and for which particular kinds of contracts?**
  - **Are fair final acceptance procedures used and certificates issued in a timely fashion?**

Large public sector works contracts are normally not completed on schedule and within originally approved costs. Contracts for off the shelf goods are generally completed on schedule and within the originally approved contract price. Final contract price for small works are sometimes higher than the original contract price because of variations orders due to inadequate design or collusion between the engineer and the contractor.

Views on final acceptance procedures used and certificates issued differ considerably. Public Sector officials say that the procedures used are fair and in accordance with the contract documents. The private sector disagrees and says Public Sector officials create considerable problems in releasing final completion certificates and retention money forcing the bidders to jack up their prices.

Both views are not totally correct. On the whole, there are unnecessary delays in the issuance of final completion certificates.

- D-11.12. Are contracts generally administered in a fair and equitable manner (e.g. the purchaser/employer grants extensions of time when delays are attributable to its untimely action, fair compensation is provided to offset additional costs caused by its mistakes, etc.)**

In the large externally financed projects, contracts are generally administered in a fair and equitable manner, especially when they are supervised by reputable consultants and when the contracts contain a dispute resolution mechanism.

In the smaller contracts, government officials are afraid of audit in giving extension of time or compensation and the tendency is not to admit mistakes or extend time/pay compensation. Since the existing dispute resolution mechanism is one sided and court action/arbitration costly, the contractors are forced to jack up their prices or cheat on specification.

- D-11.13. Are under-inspection, over-inspection and/or improper rejection of goods, materials or methods of carrying out the works a common problem?**

For large externally financed projects, supervised by well reputed international consultants, the quality of supervision and quality of work is generally satisfactory. In smaller works, the quality of work varies considerably from poor to good. For example, the quality of buildings in Punjab is generally better than in the other provinces. Off the shelf goods procured are generally of satisfactory quality. The quality of pharmaceuticals procured varies considerably notwithstanding the test certificates.

**D-11.14. Are disruptions of the supplier's or contractor's orderly performance common?**

Generally, no. Disruptions have taken place mainly on some of the smaller road projects where contracts have bid on very low and unworkable CSR rates, or unqualified contractors were awarded contracts after registration through political pressure or other influences.

**D-11.15. Can any of the improper contract administrative practices identified above, be attributable to a problem identified in the local procurement environment? Specify**

Almost all the major problems identified in the previous paras are due to poor procurement environment. The main problem identified by many officials, during the CPAR, is corruption in which government officials, contractors, consultants and suppliers are all generally involved.

In addition, lack of advanced planning, inadequate design and supervision, unrealistic CSR rates, use of political influence in prequalification and award, inexperience in project and contract management contribute to higher costs and low quality.

Some public sector/private sector officials estimate that the cumulative cost of public sector inefficiency and rent seeking results in increase of between 20% - 70% of project cost without commensurate benefits.

**D-11.16. Are procurement evaluations/audits conducted? If so, describe scope, frequency, who carries them out, etc.**

Performance audit of the Procurement process is not carried out. The Auditor General's office only carries out financial audits. The AG's office does not have audit staff specializing in procurement. Consequently, they sometimes raise unreasonable queries.

For instance, it was reported by a Project Director of a major project that a draft para had been prepared by the AG's staff on account of a change in specification of a work item under clause 12.2 "Not Foreseeable Physical Obstructions and Condition" and acceptance by the autonomous body to pay for that item on the rates fixed by the Engineer under the relevant clause (clause 52.2 of the contract). They insisted that



payment should be on the basis of original rates provided for in the BOQ item which were not relevant. These kind of queries, which sometimes go to the Public Accounts Committee, result in reasonable claims not being paid and ending up in arbitration.

**D-12 - PROCESS - RECORD KEEPING**

**D-12.1. For contracts to be awarded on the basis of competitive bidding, does the procuring entity maintain a complete record of the process? This would include e.g.**

Yes, the records are normally maintained on almost all projects. It is a legal requirement of the Audit also. However, see para. D 11.9.

- |   |      |
|---|------|
| - copies of all public advertisements,  | Yes. |
| - pre-qualification documents (if used),  | Yes. |
| - the pre-qualification evaluation report documenting any decisions not to pre-qualify certain potential bidders, | Yes  |
| - the bidding documents and any addenda, a record of any pre-bid meetings,  | Yes. |
| - the bid opening minutes,  | Yes. |
| - the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid,  | Yes. |
| - copies of bids, appeals against procedures or award recommendations,  | Yes. |
| - a signed copy of the final contract and   | Yes. |
| - any performance and advance payment securities issued, etc.   | Yes. |

**D-12.2. Are adequate contract administration records maintained? These would include:-**

Yes, adequate contract administration records are maintained by the procuring entities.

- **contractual notices issued by the supplier, contractor, purchaser or employer;** Yes
- **a detailed record of all change or variation orders issued affecting the scope, quantities, timing or price of the contract;** Yes.
- **records of invoices and payments;** Yes.
- **certificates of inspection, acceptance and completion;** Yes.
- **records of claims and** Yes.
- **disputes and their outcome; etc.** Yes.

**D-12.3. For small contracts or purchase orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items?**

Generally no data base is maintained. This is the major reason for the CSR becoming redundant so quickly

**D-12.4. Are periodic reports prepared on overall procurement activities? By and for whom?**

Yes, by consultants/autonomous agencies/departments for GOP, provinces and funding agencies as appropriate and as required.

**ANNEX D-2 - LIST OF BIDDING DOCUMENTS**

- a) Pakistan Standard Bidding Documents (Civil Works)
- b) Pakistan Standard Form of Documents for Procurement of Work (Electrical and Mechanical)
- c) Pakistan Standard Form of Contract for Engineering Consultancy Services (for Large Projects) – Time Based Assignments
- d) Pakistan Standard Form of Contract for Engineering Consultancy Services (for Large Projects) – Lumpsum Assignments
- e) Pakistan Standard Form of Bidding Documents for Procurement of Smaller Works
- f) Pakistan Standard Form of Contract for Procurement of Engineering Consultancy Services for Small Works

The first 4 documents have been approved by the Executive Committee of the PEC while the rest have not. PEC has so far not prepared a standard document for prequalification. The Standards and Quality Committee of the PEC deals with this subject and is currently exploring ways and means to effectively notify the public, and implement these standard documents within the country. Also, since the larger works documents are primarily based on FIDIC, and since FIDIC has been revising its standard conditions of contract, these documents will also require updating and revision. It would appear that PEC does not have the expertise or the resources to produce internationally acceptable procurement documents.

## **ANNEX E – PUBLIC SECTOR SELECTION OF CONSULTANTS**

### **E-1. Is employment of consultants mandatory for implementation of projects in Public/Private Sector?**

According to sub-paras 2.2 (3) and (4) of the B&R Department code, design for residences costing more than Rs. 15,000/- (1942 price indices) should be prepared by a Consulting Architect and if cost of any public building is more than Rs. 75,000. However, under the Pakistan Engineering Council Act, no such provision exists which makes the employment of consultants mandatory for implementation of projects financed under Public Sector Development Programme (PSDP) Projects.

The Government of Punjab Rules require employment of consultants in top-supervisory role (i.e. at critical stages) on all projects costing Rs. 10 million and for projects costing more than Rs. 20 million, consultants have to be employed in Resident Supervision role.

Employment of consultants is mandatory for externally funded large projects.

#### **- Any limitations?**

Most of the Government departments which were operating under the old British system like Irrigation and Power, Public works Department etc. are well staffed and also organized. Their ability to design and construct projects may have eroded over the passage of time yet these departments feel that employing consultants is interference in their territory. It can accordingly be stated that the general environment for the use of consulting firms, is to some extent, hostile in these departments.

### **E-2. Are procuring entities generally well staffed, experienced and capable of carrying out a professional selection process for consultant services?**

Many of the autonomous agencies like WAPDA, NHA, OGDC, who have worked with international agencies for a long time, have experienced staff capable of processing consultant services. Most of the provincial staff do not have the expertise due to lack of exposure and training.

#### **- Do they administer consultants contracts effectively?**

With the exception of autonomous agencies, administration of consultants is not very effective due mainly to inexperience resulting in more than normal change in scope of work and delays in approving interim and draft reports. Consultants are normally not paid for changes nor for delays caused by employers. Also, interim payments are generally delayed. Consultants are generally afraid to complain for fear of not being shortlisted for future projects.

**E-3. Are there any restrictions on practicing consulting profession under the local laws for the expatriate firms?**

Pakistan Engineering Council (PEC) has been mandated by law to regulate the engineering profession in Pakistan. It's Bye-Laws of 1986 with respect to the Conduct and Practice of Consulting Engineers requires:

- i. that all local consulting firms should be registered with PEC {sub-para 6(1)}
- ii. the services of the expatriate consultants be allowed when specific expertise is not available in Pakistan, except for services under Technical Assistance programs for technology transfer on short term durations {sub-para 6(2)}.
- iii. that expatriate services must be used under the leadership of local firms {sub-para 6(3)}.
- iv. that expatriate consulting firms can only practice if registered with the PEC. This registration is for specific projects in association with some local firms.
- v. that expatriate firms are considered foreign even if they are registered in Pakistan under the local Companies Act.

**E-4. Do implementing agencies issue notices in the press for Expression of Interest to provide equal chances to all firms, local as well as expatriate?**

In the case of Bank financed projects, this is a requirement. In the case of other externally financed projects the EOI system is also generally followed.

The practice varies with locally financed projects. Some provincial departments advertise and others use a list of consultants from their register. Foreign consultants are not allowed to participate (see para. E-3 above).

One of the main problems identified is, that under locally financed projects, very short time is given for preparing proposals, the excuse given is that the work is urgently required. This results in poor proposals or limited responses with generally unsatisfactory work.

**E-5. Is the winning consultant firm normally chosen by comparing competitive proposals submitted by a short list of qualified firms?**

Yes, the winning consulting firm is normally chosen through evaluation of proposals submitted by shortlisted firms.

- **Where do implementing agencies obtain the information necessary to develop short lists?**

The implementing agencies develop their long and short lists as follows:

**For Externally Financed Projects through:-**

- Advertising in press & Development Forum of the UN
- The World Bank's DACON
- Own experiences i.e. firms which have performed satisfactorily on previous projects.

**PSPD Financed Projects through:-**

- An open advertisement in the Local Press
- Their own register of consultants

**E-6. Do requests for proposals clearly describe the selection process and evaluation criteria?**

Yes, for externally financed projects. Due to lack of standardization and training, RFPs for locally financed projects do not adequately describe the selection process and are invariably silent on the evaluation criteria. Most agencies do not have adequate expertise in drafting TORs or RFPs. They normally define the duties of the consultants and sometimes deliverables. Most of the agencies do not have standard RFPs/Guidelines and their personnel require extensive training to do a satisfactory job.

**E-7. Do the Terms of Reference describe the requirements of the assignment clearly and completely, including background, scope and objectives, deliverables, time frame, anticipated staff-time, and government contributions?**

Yes, for externally financed projects. Normally, no for locally financed projects (see para. E-6 above).

**E-8. Is selection based only on technical considerations or also on price?**

For World Bank projects, both systems are in use, but the most common is the Quality and Cost Based Selection (QCBS). For ADB Quality Based Selection (QBS) is mandatory.

For locally financed projects, Least Cost Selection (among qualified proposals) is mandatory in GOP P&D Divisions, and Government of Punjab. Although not mandatory in other provinces, this system is normally used.

**E-9. Are technical criteria detailed and appropriate and their relative weights reasonable?**

The evaluation criteria for ranking of technical proposals for WB/ADB funded projects is adequately detailed, appropriate and their relative weights are reasonable. However, there is wide variation in the evaluation criteria adopted by the departments. For example it has been noticed that P&D Department of NWFP assign as high as 35 percent

weightage to experience of the firms and as little as 25 percent weightage to the key personnel and even give 10 percent additional marks for having registered office in NWFP. This is in the evaluation forms of P&D department of NWFP. In addition some of the sub-criteria items are not very realistic and give considerable discretion to the evaluation committee members.

The guidelines for selection of consultants issued by the P&D Board of the Government of Punjab also has unrealistic provisions. The relative weights are the same for all types of assignments i.e. pre-investment studies, design etc, construction supervision or training (Para 3.6). The RFP does not contain the details about Key Personnel and number to be evaluated which is to be decided by the selection committee after receipt of proposals thus assigning the committee discretionary powers (Para 3.17).

**E-10. If price is also a selection factor, are technical evaluations completed before opening and consideration of price proposals?**

Yes. The evaluations of Technical proposal are completed before opening and consideration of price proposals.

**- Are the relative weights chosen for each factor appropriate?**

Weightages are generally fixed. In Punjab, the weightage is fixed at 15%. The P&D Division of GOP has a system where all proposals falling within 10 percent of the No. 1 ranked proposal are considered and the least cost proposal is accepted.

**- Are financial proposals opened in public and compared to include all required cost items before awarding the points in QCBS (Quality and Cost-Based Selection) evaluation?**

The financial proposals of firms meeting the minimum qualifying marks/threshold are opened in public in the presence of the representatives of firms choosing to attend. No definite answer is available to the second part i.e. comparison to ensure inclusion of all the required cost items before awarding points for cost element. In Punjab, the qualifying consultants are required to bring by hand their financial proposal on the day of opening of financial proposals instead of submitting these with the technical proposal.

Under the PEC's rules the client opens the financial proposals of the three top-ranked firms only and invites the top ranking consulting firm to negotiate a contract. It may be understood that "negotiation" here means reduction in price without any reference to the requirements of the TOR or the quality. In case of disagreement the negotiations start with the next firm and so proceeds until "agreement" is reached with the firm accepting the client's terms of price.

Under the Government of Punjab Guidelines the financial proposals of all the qualifying firms are opened and marks are awarded on the basis of weightages for

Technical-Financial aspects for ranking of the proposals on QCBS system. However, the firm ranking first is asked to lower its price according to the Consultant's Selection Committee's (CSC) estimate/lowest price quoted by any firm ( Para 4.7 of the Guidelines). In case no agreement is arrived at, CSC may terminate the negotiation and invite the second ranked firm for negotiation and so on. The CSC is authorized to reject even the lowest price if it is considered unreasonable / unrealistic (Para 4.8 of the Guidelines).

In case of P&D Division of the GOP the threshold for opening of financial proposals is required to be within 10 percent of the first ranked firm. After opening of the financial proposals of the qualifying firms the contract is awarded to the firm submitting the lowest price without any price negotiations (reductions). Para 7 of Annex-3 of P&D Division's instructions contained in "Procedures for the Engagement of Consultants".

**E-11. Are there standard forms of contract?**

Yes. There are standard forms of contract for procurement of services in use by the entities procuring the consultant's services. However these are standard only within these entities.

**- Are they fair and equitable to the consultant?**

The conditions of contract in these forms are generally not equitable to the consultants because these are frequently one-sided in favour of the client.

**- Do they adequately protect the interests of the client?**

The focus of these standard forms of contract is generally on protection of client's interests.

**E-12. What form of compensation is used?**

- Unit rates?**
- Lump sum based on milestones?**
- Other?**

In most of the externally financed projects unit rate payment system is normally used but exceptionally lump sum payments are made based on agreed outputs or milestones. Some autonomous agencies, which have had experience with Bank's Guidelines, also use both systems.

P&D Division of the GOP, however, follows the practice of payments in installments bound to various milestones. See Para 21 of the "Procedures for the Engagement of Consultants".



Most interesting mode of payment to the consultants is in vogue on the projects being implemented by the Government of Punjab. There the client asks the consultants to propose their cost as a percentage of the cost of works shown in the annual programme of the contractor. However, the payment is tied-up with the cost of works actually finished and paid to the contractors, which may not even be, in some cases, 50 percent of the work shown in the annual program. This can cause considerable cash flow problems for the consultants, especially if the contractor is way behind schedule, and the consultant has a full complement of staff, or if the contractor goes bankrupt/abandons work.

**E-13. Are consultants required to submit proposal, performance and/or advance payment securities?**

Proposal security is generally not required except by the Privatization Commission to ensure commitment to deliver. It also requires a fixed processing fee to ensure consultants seriousness.

The P&D Division and some other departments demand a 20% performance security. In some departments, a percentage of the interim fee is deducted as retention money which is released on satisfactory completion of the assignment.

Advanced payment security is normally mandatory for all advances.

All securities are required to be issued by scheduled banks as a bank guarantee.

**E-14. Is there a conflict of interest policy provision included in the conditions of contract? (If so, describe)**

In the standard forms of contract for externally financed projects this is invariably included. The PEC Bye-Laws clause 4 (5) also covers this aspect and is supposed to be part of all consulting services contracts but is not normally included in all the local contracts. Sample forms of P&D Division GOP are silent on this issue. The sub-clause 4(5) of the PEC Bye-Laws is reproduced below:-

“No individual consulting engineer or sole proprietor, a partner, Managing Director, a Director or an executive of a consulting engineers firm or company or any of his direct dependents shall without disclosing the fact in writing to his employer, be a share-holder, or have financial interest in any firm or company carrying on any commercial, manufacturing or construction business dealing with the field of work to which his practice relates.”

**E-15. Are evaluations conducted by committees with appropriate expertise?**

The public sector procuring entities claim that evaluations are generally conducted by committees with appropriate expertise. However, there are indications that the expertise considered appropriate is not necessarily so and the consultants have serious reservations on this issue. An interesting comment on the issue relates to a declaration by a client that

normally all short-listed firms of consultants are more or less the same (capability wise) so the assignment is awarded to the one showing maximum interest on the basis of the maximum number of follow-up visits to the client.

**E-16. Are general criteria broken down into appropriate detailed criteria agreed by the evaluating committee before conducting the evaluation?**

The committees carrying out evaluation are the only source of information on this question and says, yes. However, there is a perception that this is not always so.

**E-17. Are all criteria applied consistently, fairly and impartially by the evaluators?**

Reply from all public sector procuring entities is yes while the consulting firms are not in a position to reply.

The World Bank experience is that this is not always the case and external pressures are put on the evaluators to influence the evaluation.

**E-18. Are evaluations conducted individually by each member of the committee and the results averaged?**

The indications are that not all evaluations are carried out individually, e.g. P&D Department of the Government of NWFP prepares a comparative statement. Where evaluations are carried out individually they are generally averaged. The P&D Department of GOP disallows inclusion of individual scores by a member which differs by plus/minus 20% of the average of the score of the remaining evaluators (Para. 15 of their Procedures).

Records are normally kept of all scores as these are required as part of the procurement record and for audit.

**E-19. Are new factors or weights added after the issuance of the request for proposals which are considered during the evaluation?**

The client's offices say that no new factors or weights are generally added after the issuance of RFP.

However, since evaluation criteria is not part of the RFPs for the locally financed projects, the evaluation criteria are understood to be decided prior to or after receipt of proposals (e.g. number and type of key personnel to be evaluated).

**E-20. Are evaluation reports prepared containing essential details of the process, results, and matters to be taken up during contract negotiations?**

Generally yes in the case of externally financed projects, but not so in locally financed projects where the main focus during negotiations is reduction in price.

**E-21 Are evaluations normally completed within the time originally requested for the validity of proposals?**

Generally no on the externally financed projects. There are abnormal delays due to variety of reasons, particularly outside pressure to influence evaluation and award.

With regard to small local consultancy contracts detailed information was not available to make a judgement.

**E-22 Are financial negotiations carried out in Quality and Cost Based Selection (QCBS)?**  
- Does it involve review of TOR and adjusting consultants time/cost inputs or is the focus only on reduction in costs?  
- Any other special features in consultant's contract/financial negotiations?

Financial negotiations are generally the main focus in all consultancy contracts even when they are Bank financed QCBS.

During the financial negotiations, the focus of the client's negotiation teams is generally on reduction in cost.

Even the PEC Bye-Laws clause 7(4) and (5) allows negotiation of the contract (cost) with the top ranked firm.

In addition to the above the clients simply ask the consultants to bring their cost down to the estimates provided in the PC-II's and PC-I which are generally unrealistic.

**E-23. Are there any irritants encountered during the currency of the Services Contract?**

Generally, the accounting/audit staff of the clients over indulges in interpreting the clauses and assigning their own meanings to the contract clauses, which are a serious source of delays in payment to consultants. Sometimes the clients withhold payments unilaterally especially the final bills, securities and retention monies. The other irritant reported by consultants relates to delays in grant of approvals to staff changes, which are reasonable.

A major irritant is delay in getting client's comments on draft deliverables. At times the clients are known for seeking clarifications well after the completion of the assignment.

- **How are amendments for additional services or delay in project implementation due to other reasons handled?**

The amendments to consultant's contract as well as delays in project implementation quite often are delayed inordinately. In fact the handling of the consultant's contract equitably by the implementing agencies is generally unsatisfactory.

**E-24. Are there frequent instances when negotiations with the qualitatively highest ranked Firm or highest ranked on basis of Quality and Cost Firms are not awarded the consulting assignments?**

In case of foreign financed projects it is not so. However, winning consultants have sometimes refused to accept assignment when they have been asked to reduce their price to that of the lowest qualified consultants' cost or to the departments estimate.

**- If yes, what are common reasons?**

The common reason is disagreement on cost element between the parties due mainly to lack of appreciation of realistic costs by the implementing agencies.

**ANNEX F - PROCUREMENT PERFORMANCE**

**VOLUMES**

1. What are the approximate annual values of public procurement for goods, works, and consultant services, respectively? If possible, distinguish between procurement for projects and ongoing programs.

A total budget of USD. 2.7946b is reserved for public procurement in a fiscal year, out of which USD 250.00m (approx.) is allocated to Federal Government. The Federal Government spends about 28% for procuring goods, 65% for works and 7% for consultant services. Information was not available for provinces.

2. What are the approximate percentages of goods, works, and consultant services financed by external donors?

*Not available.*

3. What percentage of public procurement follows competitive bidding procedures? Other methods?

*Not available.*

4. What percentage of competitively bid procurement is donor financed?

*Not available*

**GENERAL EXPERIENCE**

1. Are government organizations generally perceived by suppliers/contractors/consultants/the public as fair and efficient in their procurement practices?

*The government organizations are perceived as unfair and inefficient in their procurement practices because of their inefficiency, outdated laws, poor procurement planning and lack of capacity.*

- |   |     |    |
|---|-----|----|
| 2. Which of the following factors are considered to be problems by persons familiar with public procurement in the country? | Yes | No |
| Inappropriate or outdated laws and regulations  | ✓   |    |
| Poor compliance with and enforcement of existing laws   | ✓   |    |
| Poor information about procurement needs  | ✓   |    |

<b>ANNEX F - PROCUREMENT PERFORMANCE</b>		
Shortage of experienced professional staff	✓	
Poor training of procurement staff	✓	
Low pay for procurement staff	✓	
Poor procurement training	✓	
Weak procurement planning	✓	
Poor procurement methods and procedures	✓	
Lack of good standard procurement documents	✓	
Poor technical specifications (Goods only? Works?)	✓	
Cumbersome contract approval procedures	✓	
Lack of clear delegation of contracting authority	✓	
Interference by higher level officials	✓	
Inadequate appeals mechanism	✓	
Lack of anti-corruption measures and enforcement	✓	

## EXPERIENCE WITH WORLD BANK-ASSISTED PROJECTS

1. How many Bank projects have been completed in the country? Are now underway? In which sectors?

*Since 1952 the World Bank has approved 96 loans and 141 credits for Pakistan, totaling more than \$11 billion. The composition of Bank lending has shifted significantly in recent years, reflecting an increasing emphasis on power generation and distribution, human resource development, and agricultural development.*

*The Bank's portfolio of active operations in Pakistan, at the end of FY00, totaled 15 projects representing outstanding commitments of US\$1.4 billion (net of cancellation); about 70% of this is IDA Credit of \$943 million, while \$403 million is IBRD, and \$13 million is MP. Of the total commitment value, \$488 million has been disbursed while \$822 million (63%) remains undisbursed.*

2. Which organizations have been responsible for procurement on these projects?

*For World Bank funded projects, it is the responsibility of the Implementing Agency (IA) to handle procurement related issues. Generally, Project Director is the key official responsible for procurement and sometimes holds additional responsibility of a Procurement Officer.*

3. What thresholds for ICB, IS, NS, prior review for goods, works and consultant services are currently in effect for ongoing projects? Are they the same for all projects? How long have they been in effect?

*The prior review thresholds vary from project to project. Generally, the thresholds are project specific and are imposed by the RPA. For some of the ongoing projects, thresholds were established as listed in the table below.*

*Mostly, the prior review threshold for hiring an individual consultant is set to US\$ 50,000.*

<b>Bank-Funded Projects in Pakistan</b> <b>Thresholds for Procurement Methods</b> <b>Thresholds for Prior Review</b>					
Loan/ Credit No.	Project Name	Credit Amount in USD	Thresholds		
			Works	Goods	Consultancy
Cr 2584	Balochistan Natural Resource Management Project	10,700,000	125,000	50,000	
Cr 2410	Fardwah Eastern Sadiquia Irrigation & Drainage Proj	39,600,000	200,000	100,000	
Cr 2240	Family Health Project	31,800,000	100,000	100,000	
Cr 2464	Second Family Health Project	35,000,000	200,000		
Cr 2102	Sindh Primary Education Project	77,700,000		1,000,000	
Cr 2992	Northern Education Project	16,400,000	200,000	200,000	100,000
Cr 2228	Rural Water Supply & sanitation Project	96,400,000	1,000,000		
Cr 2383	Env. Protection & Resource Conservation Project	21,400,000	70,000	50,000	50,000
Cr 2780	Baluchistan Community Irrigation & Agr. Project	18,500,000	200,000	50,000	100,000
Cr 2747	Punjab Forest Sector Development Project	16,000,000	200,000		100,000
Cr 2354	Punjab Middle Schooling Project	80,500,000	200,000	200,000	
Cr 2688	Population welfare Program	45,000,000		200,000	100,000
Cr 2883	Northern Health Project	18,400,000	200,000	200,000	100,000
Cr 2687	NWFP Primary Education Project	104,000,000	200,000		100,000
Cr 2482	Baluchistan Primary Education Development Project	76,400,000	200,000		
Cr 3808	Financial Sector Deepening & Intermediation Project	216,000,000		5,000,000	100,000
Cr 2999	National drainage Programme	198,600,000	5,000,000	3,000,000	100,000
Ln 3950	Telecom Regulation & Pri Support Project	35,000,000	200,000	200,000	100,000
Cr 2901	Punjab Private Sector Groundwater Dev. Project	38,500,000	200,000	200,000	100,000
Cr 3030	Second Social Action Plan	184,500,000	200,000	200,000	100,000
Cr 2829	NWFP Community Infra. & NHA Agri. Project	13,700,000	150,000	150,000	100,000
Cr 3764	Power Sector Development Project	230,000,000	5,000,000	1,000,000	100,000
Cr 3812	Second Private Sector Energy Development Project	250,000,000	100,000	5,000,000	100,000
Cr 2921	Improvement to Financial Reporting & Auditing Proj	20,100,000	100,000	100,000	100,000
Cr 3248	Pakistan Poverty Alleviation Fund Program	66,500,000		100,000	100,000



4. Do project audits/completion reports/supervision reports indicate significant procurement problems? Have any cases of misprocurement occurred? Describe.

*Yes, procurement problems have been highlighted by the audits and other reports, but there is a trend showing improvement. Major deviations found in ex-post audits include: documents not properly prepared, procedures not followed, lack of procurement planning, bid evaluation criteria not specified and post-bid negotiations. Some cases of misprocurement in the World Bank funded projects are given below:*

- The procurement of Medical Equipment (Microscopes) under Family Health Project, NWFP (FHP-NWFP) was declared misprocurement because tenders were opened on May 16, 1996 and after more than one year, IA could not complete the evaluation in accordance with the pre-specified criteria.
- Under Balochistan Natural Resource Management Project (BNRMP), tractors were procured but agreed procurement procedures were not followed resulting in misprocurement.
- Under Northern Education Project (AJK), misprocurement of vehicles was declared due to non-compliance with the agreed procurement procedures.

5. Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe.

*Following problems are reported and have caused delay in project/contract implementation and have often resulted in cost over-runs:*

- (i) *Poor procurement planning;*
- (ii) *Inability of the IA to hire qualified professionals because of low pay of civil servants;*
- (ii) *Poor technical specifications;*
- (iii) *Not following given procedures, like negotiating with the lowest evaluated responsive bidder which is not allowed under WB guidelines;*
- (iv) *Failure to maintain records.*
- (v) *Inordinate delays in decision making on award of contracts and approval of variation orders.*

6. Does the Bank receive a large number of complaints about procurement procedures, selection decisions in the country?

*The ratio of complaints has increased in the last few years. Since January 1999, about 118 complaints have been received. Almost 90% of the complaints are from local firms, while, expatriate firms (including China, Netherlands, and Iran) bidding in Pakistan have also complained.*

7. Are contracts generally awarded within the planned, usual time frame that would be required for similar operations by other experienced and efficient organizations?

*Contract awards are generally delayed due to a variety of reasons: unfamiliarity with procurement procedures, low level of delegation, outside pressures to influence contract award. Even an efficient and experienced organisation is not immune to political pressure and corruption. These delays can be avoided if anti-corruption measures are enforced and staff held accountable for timely decision making.*

8. Are there serious problems or conflicts between national and/or local practices and World Bank Guidelines which should be addressed on an interim basis pending implementation of recommended long-term action plans?

***Yes, there are conflicts. To avoid conflicts, deficiencies and irrationalities of government procurement guidelines, World Bank has agreed with the GOP on the following rules which are included in the Development Credit Agreements (DCAs) to make NCB procedures acceptable to the Bank.***

**National Competitive Bidding**

**Improvement of Bidding Procedures**

In order to ensure economy, efficiency, transparency and broad consistency with the provisions of Section 1 of the Guidelines:

- (aa)** invitation to bid shall be advertised in at least one national newspaper with a wide circulation, at least 30 days prior to the deadline for the submission of bids;
- (bb)** bid documents shall be made available, by mail or in person, to all who are willing to pay the required fee;
- (cc)** foreign bidders shall not be precluded from bidding and no preference of any kind shall be given to national bidders in the bidding process;
- (dd)** bidding shall not be restricted to pre-registered firms;
- (ee)** qualification criteria shall be stated in the bidding documents;
- (ff)** bids shall be opened in public, immediately after the deadline for submission of bids;
- (gg)** bids shall not be rejected merely on the basis of a comparison with an official estimate without the prior concurrence of the Association;
- (hh)** before rejecting all bids and soliciting new bids, the Association's prior concurrence shall be obtained;
- (ii)** bids shall be solicited and contracts shall be awarded on the basis of unit prices and not on the basis of a composite schedule of rates;
- (jj)** contracts shall not be awarded on the basis of nationally negotiated rates;
- (kk)** contracts shall be awarded to the lowest evaluated responsive bidder; and
- (ll)** post-bidding negotiations shall not be allowed with the lowest evaluated or any other bidders.

## **ANNEX G - PRIVATE SECTOR PROCUREMENT**

**G-1. Is there a reasonably well-developed private sector which freely trades goods and procures works and other services?**

The private sector in Pakistan freely trades goods and procures raw material, works and occasionally services.

**G-2. What is the approximate volume of such procurement?**

Reliable figures are not available because there is considerable amount of informal trade/smuggling between Iran and Afghanistan. However, it is estimated that formal exports and imports amount to between US\$15.0 and US\$20.0 billion.

**Are any private sector contracts comparable in size to those in the public sector?**

Private sector contracts vary considerably from design and construction of small buildings (US\$10,000) to very large procurement of Power Plants costing over US\$500 million.

**Are they for goods, works or other types of contracts?**

Most of these contracts are for goods, commodities and for works. Procurement of Services as a separate item is rare.

**G-3. Who are the main importers of raw materials and finished goods?**

Raw materials and finished goods are normally imported by the commercial traders/indenting agents or directly by the industrial concerns who account for a fairly large percentage of total volume. The major share of these imports is in the pharmaceutical, automobile, industrial machinery/equipment and in the textile sector. The food items like tea and palm-oil also account for large volume of imports. As stated earlier the finished goods imports are far more in volume than the officially recorded figures due to illegal/informal imports.

**Are they traded/imported on the basis of the INCOTERMS?**

The formal trading/imports are generally on the basis of INCOTERMS.

**Do they allow payment through documentary credits?**

The payments for the formal inland/external trading is on the basis of documentary credits. The ICI sells its produce in the local market against inland letters of credit. Payments against imported items are necessarily through irrevocable Letters of Credit as per the relevant rule UCP 500. However payment under the State Bank of Pakistan

regulated documentary credits is exempt for imports valued below US\$10 thousand per annum.

**G-4 Do private sector companies purchase commodities through brokers and/or by competition linking price to the international commodity market?**

Private sector companies usually procure raw materials after comparing prices in the international market with those available locally. The capital equipment is normally procured directly from the original manufacturers while the assorted items, which are manufactured by different manufacturers, are procured from stockists/importers through indentors at the best offered prices. The local raw materials are procured through agents and brokers. Normally the smuggled items are available at a lower price than through normal channels of importation and procured informally.

**G-5 What kind of procurement practices do private sector purchasers and employers generally follow? Do they differ for goods, works or services?**

There are no standard procurement practises. Small purchasers usually use indentors/agents/brokers for the procurement of goods/equipment after hard negotiations. The large well established firms have established relations with foreign manufacturers and generally purchase their goods/equipment from them, but after checking the cost through market analysis and internet. They also negotiate. Multinationals normally procure through their Head offices.

Civil works are normally procured by negotiating consulting contracts for design and supervision and construction contracts with contractors. Large multinationals sometimes ask for competitive prices from a limited number of contractors prior to negotiations.

**G-6 Is private sector procurement planning adequate?**

Only large/multinationals carefully plan their procurement well in advance. Smaller purchases do not have adequate capacity to plan and consequently end up procuring inefficiently.

**Do firms carry out market surveys and use other available information when they prepare their cost estimates?**

The private sector generally carries out market surveys and uses internet to finalize cost estimates.

**Is packaging done well?**

Quality of contract packaging varies and depends upon the market awareness of the purchaser.

**What level of technical, schedule and other detail goes into their procurement plans?**

Except for large entities and multinationals the quality of procurement planning is almost non-existent.

**G-7. Do firms ever carry out open bidding preceded by advertising?**

No.

**G-8. Are bids invited from short lists (as for LIB)?**

Bids are generally not invited except occasionally by large multinationals.

**If so, describe what criteria are used to develop the short lists?**

No reliable information was available on this matter.

**Are standing lists developed by use of periodic pre-qualifications?**

Not normally.

**Are reasonable technical and financial criteria used?**

Not normally.

**How often are standing lists updated?**

Since no standing lists are prepared no updating of these lists is relevant.

**G-9. Under what circumstances is sole source/direct contracting permitted?**

Private sector does not need permission for sole source/direct contracting unless it is using public sector financing.

**G-10. How detailed are the bidding documents used to invite bids for goods, works or services?**

Except for large purchasers and multinationals procuring large equipment, works and consulting services, detailed bidding documents are not used. Multinationals normally insist on the state of the art design and bidding documents.

**G-11. What criteria are used to determine the winning bidder? Cost, quality/compliance with specs? Time of delivery or completion? Familiarity?**

The criteria varies. It is generally cost and time of delivery or completion.

- G-12 Do private sector procuring entities usually carry out price negotiations with the apparent winner after bids are submitted?**

Yes.

- G-13 Do private sector companies monitor procurement and contract implementation efficiently? Do they utilize modern computerized methods?**

All formally or informally monitor procurement. Multinationals normally use computerized monitoring systems.

- G-14. Are employees required to follow corporate ethics, policies and procedures? Describe.**

No detailed information was available.

- G-15. Could some private sector procurement practices be adopted by the public sector? Indicate which.**

Yes, quick decision making for efficient and cost effective procurement.

- G-16. Has there been any experience with private sector contracts for the provision, operation, maintenance of infrastructure for various public services (BOO/BOT/BOOT/etc.)? Describe.**

Private sector procurement under BOO/BOT/BOOT are of recent origin and enough data is not available to provide a meaningful response.





Annex H - Checklist Comparing National Competitive Bidding Procedures and World Bank Policy						
Sr. No.	Description	Bank Policy	NCB Policy		Practice	
			Yes	No	Yes	No
1.	Are there eligibility restrictions based on nationality of bidder and/or origin of goods (other than primary boycotts)?	<u>Not allowed</u>		No		No
2.	Are there primary boycotts which are established by law? <b>Comment: In Pakistan Boycott of trade/procurements is effective with countries which do not have diplomatic relations with this country.</b>	Only primary boycotts are acceptable.	Yes		Yes	
3.	Do procuring entities use some Standard Bidding Documents. Do these conform to International SBDs? <b>Comment: Procuring entities have standard documents for the procurement of goods and works which are outdated and not consistent with good procurement practise. (Israel)</b>	Use of World Bank's appropriate SBDs is mandatory.	Yes	No	Yes	No

FOR MORE DETAILS ESPECIALLY ON ALL ITEMS REFERRED TO IN SR. NO. 27, PLEASE SEE ANNEX H.

**ATTACHMENT 1 TO PART 1**

	<b>Comment:</b> <ul style="list-style-type: none"> <li>All engineering departments have their own SBDs for procurement of works. They are based on PWD bidding documents and used for percentage rate and item rate contracts. However, the Provincial Government of Punjab has modified that document which is titled as "Original Revised Contract Form for Execution of Works" and is in use in all engineering departments of Government of Punjab. All the standard documents are outdated and not consistent with good international practise. WAPDA, Pakistan Railways and Military Engineering Services also have their own SBDs out of which WAPDA and Railways SBDs are based on FIDIC sample documents.</li> <li>None of these SBDs contain Bid Data Sheets (BDS) to allow changes in Instruction to Bidders (ITB). In PWD/C&amp;W documents, even ITB are extremely sketchy and incomplete.</li> </ul>					
4.	Are bidding opportunities advertised in the local press?	Required	Yes		Yes	
	<b>Comment:</b> <ul style="list-style-type: none"> <li>In case of procurement under provisions of all the four Purchase Manuals, all procurement in excess of about US\$1,000/- for federal and US\$2,000/- for the other three Purchase Manuals i.e. Punjab, Sindh and Balochistan, must be advertised in the Press.</li> <li>For small packages procurement of works under the PWD/C&amp;W SBDs, adopted by all the provincial departments except in Punjab, is required to notify the proposed works for invitation to tender through a Notice Board at his office. Normally only the registered bidders are invited to participate. However in actual practice, presently all works are also advertised through the press.</li> </ul>					
5.	Are prospective bidders allowed at least 30 days for bid preparation (except for commodities/small goods contracts)? <b>Comment: In theory yes, but the practise varies considerably and at times as little as a couple of days are allowed.</b>	Required.	Yes		Yes	No
	To accommodate time constraints.					
6.	Are contractors/suppliers pre-qualified for large/specialized contracts?	Required.	Yes		Yes	

ATTACHMENT 1 TO PART 1

7.	<b>Are minimum experience, technical and financial requirements (for pre –or post-qualification) explicitly stated in the documents?</b>	Required.	Yes		Yes	
8.	<b>Is an invitation to pre-qualify advertised for each procurement involving large or complex potential contracts?</b>	Required.	Yes		Yes	
9.	<b>Are joint ventures with local firms required for foreign firms' eligibility?</b>	Not allowed.	Yes		Yes	
10.	<b>Are joint venture partners jointly and severally liable?</b>	Required.	Yes		Yes	
11.	<b>Are there set limitations to the number of firms who can bid for a contract?</b>	Not allowed.		No		No
12.	<b>Are parastatals allowed to bid?</b> <b>Comment:</b> <ul style="list-style-type: none"> <li>• <b>Parastatals are allowed to bid while not meeting the requirements contained in the World Bank Guidelines.</b></li> <li>• <b>The Parastatals are, additionally, allowed some benefits which effectively reduce the cost of bidding/execution of contracts, such as supply of goods/materials.</b></li> </ul>	Acceptable only if they (i) are financially autonomous, (ii) operate under commercial law and (iii) are independent from borrower and its purchasing/contracting authority.	Yes		Yes	

**ATTACHMENT 1 TO PART 1**

13.	<p>Are bidders required to register with a local or federal authority as a prior condition for bidding?</p> <p><b>Comment: All contractors/operators of Engineering Works are required to register and obtain license from the PEC. Accordingly, it is a prior condition to practice their profession for firms, which are registered under the following six categories.</b></p> <table><tr><td>C-1</td><td>No limit</td></tr><tr><td>C-2</td><td>10,000,000 Rs.</td></tr><tr><td>C-3</td><td>upto 5,000,000 Rs.</td></tr><tr><td>C-4</td><td>upto 2,000,000</td></tr><tr><td>C-5</td><td>upto 1,000,000</td></tr><tr><td>C-6</td><td>250,000 – 500,000</td></tr></table>	C-1	No limit	C-2	10,000,000 Rs.	C-3	upto 5,000,000 Rs.	C-4	upto 2,000,000	C-5	upto 1,000,000	C-6	250,000 – 500,000	<p>Should be discouraged.</p> <p>Acceptable only if registration criteria, process and cost reasonable/efficient and qualified foreign firms not precluded from competing.</p>	Yes		Yes	
C-1	No limit																	
C-2	10,000,000 Rs.																	
C-3	upto 5,000,000 Rs.																	
C-4	upto 2,000,000																	
C-5	upto 1,000,000																	
C-6	250,000 – 500,000																	
14.	<p>Are communications between the bidders and the Procuring Agency what guidelines exist for such communications?</p> <p><b>Comment:</b></p> <ul style="list-style-type: none"><li>• There is no such specific provision in any of the SBDs regulating formal communications between the bidders and the Procuring Agency.</li><li>• In case of PWD/C&amp;W the bidders are advised to inspect the specifications, design and drawings of the works at the office of the Engineer-in-charge. It is the only occasion for seeking clarification.</li><li>• None of the SBDs provide for a Pre-Bid Conference.</li><li>• Accordingly, the time limitations for seeking clarifications, formal replies to all those who obtained the Bid documents and maintenance of its record is not relevant.</li><li>• Extension of bid submission date is normally given if bid documents are amended.</li></ul>	<p>The Bank's policy requires that prospective bidders be entitled to seek clarifications which must be responded if sent a fixed time before bid opening to all the bidders. Procuring Agency can also make amendments to Bid Documents and extend the bid submission date.</p>		No		No												

**ATTACHMENT 1 TO PART 1**

15.	Are extensions to bid validity allowed?	Acceptable only if justified by exceptional circumstances.	Yes		Yes	
16.	Are there restrictions on the means of delivery of bids? <b>Comment:</b> <ul style="list-style-type: none"> <li><b>All the Purchase Manuals provide that all bids should be submitted through a Tender Box except the Bulky ones which cannot be put in the Box through a slit. These bids shall be delivered by hand to the person holding the custody of the Tender Box.</b></li> <li><b>There is otherwise no restrictions on the means of delivery of the bids.</b></li> </ul>	Not allowed, except when bidders have to submit physical samples. Then they can be required to deliver bids by mail, by courier, by hand, etc.		No		No
17.	Is preference given to suppliers or contractors based on region or locality of registration, small size, ethnic ownership, etc.? <b>Comment:</b> <ul style="list-style-type: none"> <li><b>Except in the province of Sindh, where only the local firms are registered and allowed to bid, there is no preference to the local suppliers/contractors.</b></li> </ul>	Not allowed.		No	Yes	No
18.	Are there restrictions on sources of labor and material?	Not allowed, except for unskilled labor, if available locally.		No		No
19.	Is public bid opening required? Does it occur immediately or closely following the bid submission deadline?	Required.	Yes		Yes	
20.	Is a "two envelope" bid opening procedure permitted for procurement of goods or works? <sup>7</sup>	Not allowed.		No		No

<sup>7</sup> All technical envelopes are opened first and, after review, price envelopes of all or only qualified/responsive bids are opened in the second round.

**ATTACHMENT 1 TO PART 1**

21.	Is automatic re-bidding required if too few bids are received? <b>Comment: Automatic rebidding is not required, unless the price quoted by the lowest bidder is much higher than the estimate and cannot be negotiated downwards to an acceptable level.</b>	Acceptable, provided all responsive bidders are allowed to bid, the process is efficient and no serious delays result.	No		No	
22.	Is "bracketing" used in bid evaluations? <sup>8</sup>	Not allowed		No		No
23.	Bid Examination and Evaluation.	The Bank requires Examination/ Evaluation of Bids in an organized, prefixed manner using the provisions of ITB and records are maintained for each action.	Yes		Yes	
24.	Is award made to lowest evaluated qualified and responsive bidder? <b>Comment: Definition of responsiveness does not exist in the bidding documents. Since all bidders are registered and, therefore, considered qualified, contracts are normally awarded to lowest priced bidder.</b>	Required.	Yes		Yes	

<sup>8</sup> Rejection of bids outside a range or "bracket" of bid values.

25.	<p>Are price negotiations conducted with “winning” bidders prior to contract signature?</p> <p><b>Comment: There is no provision for negotiations in works contracts. Price negotiations are not allowed in the Federal and Sindh Government Purchase Manuals. The Punjab and Balochistan Purchase Manuals allow negotiations to safeguard against exorbitant prices. Notwithstanding the above provisions, negotiations have become the norm rather than an exception and is required on by the Audit Department.</b></p>	<p>Not allowed, except where the bid price is substantially above market or budget levels and then only if negotiations are carried out to try to reach a satisfactory contract through reduction in scope and/or reallocation of risk and responsibility which can be reflected in a reduction in Contract Price. (See Guidelines para 2.60).</p>	Yes	No	Yes	
	<p>The practice of awarding the contract to other than lowest at the price of the lowest bidder is also practiced in some of the departments.</p>					
26.	<p>Are price adjustment provisions generally used?</p> <p><b>Comment: No price adjustment is provided for in the PWD/C&amp;W Works documents for small contracts, duration of which is normally less than one year. None of the Purchase Manuals provide for price adjustment, because contracts are generally for less than one year. The Punjab Government SBD for Works provides for price adjustment for specified items listed in the bidding documents which excludes labour. Large autonomous agencies like WAPDA include price adjustment clauses consistent with international practise.</b></p>	<p>Not required, but recommended for works contracts of 1 year or more in duration when domestic inflation rate is high.</p>	Yes	No	Yes	No

27.	<p>Are the terms and conditions used in goods and works procurement generally appropriate for the size and nature of contract intended?</p> <p><b>Comment: The bidding documents are outdated and generally allocate almost all the risks to the contractors/suppliers, e.g. they require contractors to indemnify the employer by taking all necessary insurance, do not compensate the contractor due to changes in legislation or additional cost due to unforeseen site conditions, are overly one sided in the case of settlement of disputes. They, however, contain acceptable provisions, e.g. in respect of payments, extension of time, liquidated damages.</b></p>	<p>Required (to be acceptable they should be balanced, reasonable and clearly address the most important issues that lead to problems during performance, e.g.</p> <ul style="list-style-type: none"> <li>i) Risk allocation,</li> <li>ii) Payment,</li> <li>iii) Inspection,</li> <li>iv) Completion/acceptance,</li> <li>v) Insurance,</li> <li>vi) Warrantees,</li> <li>vii) Changes,</li> <li>viii) Claims</li> <li>ix) Contract remedies,</li> <li>x) Force majeure,</li> <li>xi) Governing law,</li> <li>xii) Termination,</li> <li>xiii) Settlement of disputes</li> <li>xiv) Cost adjustment,</li> <li>xv) Effect of change in legislation,</li> <li>xvi) Un-foreseen physical conditions,</li> <li>xvii) Extension of time,</li> <li>xviii) Liquidated damages,</li> <li>xix) Bonus</li> </ul>	Yes	No	Yes	No
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ATTACHMENT 1 TO PART 1

28.	<p>Are modifications made during implementation of the project/contract in:</p> <ul style="list-style-type: none"><li>- contract scope</li><li>- conditions</li></ul> <p><b>Comment: Normally changes in conditions of contract are not made and if at all warranted, they can be made only with the mutual consent of the parties to the contract.</b></p>	<p>Acceptable, but advance Bank approval of changes subject to prior review needed if required under the Loan Agreement.</p>	Yes	No	Yes	No
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**ANNEX I-1: List of Recipients of Questionnaire**

<b>Sr. #</b>	<b>Name</b>	<b>Designation</b>	<b>Department /Organization</b>	<b>City</b>	<b>Annexes</b>
1.	Mr. Mehr Dad	Secretary	Health, Education & Local Government Department	Gilgit	D
2.	Mr. Alvi		M/s Development Trading Co. Ltd.	Islamabad	C
3.	Haji Muhammad Yousaf		Muhammad Yousaf Adil Saleem & Co.	Islamabad	E
4.	Ch. Qamar-uz- Zaman	Chairman	Capital Development Authority	Islamabad	D
5.	Mr. Moinuddin	Chairman	Central Board of Revenue	Islamabad	B
6.	Mr. Abdur Rehman Balouch	Chairman-NHA	National Highway Authority	Islamabad	C, D, E
7.	Mr. Riaz Ahmad Khan	Chief Engineering Advisor/Chairman	Federal Flood Commission	Islamabad	D, E
8.	Mr. Umer Khitab	Chief Manager	State Bank of Pakistan	Islamabad	C
9.	Mr. Masood Hassan Kizilbash	Federal SAP Coordinator	Planning & Development Division	Islamabad	D
10.	Mr. Sajid Hassan	Joint Secretary (Banks)	Economic Affairs Division	Islamabad	B,C,D & E
11.	Mr. Zaka-ud-Din Malik	Managing Director	Oil and Gas Development Corporation	Islamabad	D
12.	Dr. Mutawakal Qazi	Member P&D Division	Member Planning Commission	Islamabad	C, E
13.	Sheikh Basir Daud	President	Chambers of Commerce	Islamabad	B
14.	Mr. Murat Tutan	Regional Director	Sezai Turkes Feyzi Akkaya Const. Co.	Islamabad	D
15.	Maj. Gen. (R) Javed Anwar Hashmi	Registrar	Pakistan Engineering Council	Islamabad	D, E
16.	Mr. Mansoor Elahi	Secretary	Ministry of Commerce	Islamabad	B
17.	Mr. Abu Shamim Arif	Secretary	Ministry of Industries	Islamabad	D
18.	Mr. Zafar Ali Khan	Secretary	Privatization Commission	Islamabad	B, D
19.	Mr. Khalid Jawed	Secretary	Ministry of Finance	Islamabad	B, C
20.	Dr. M. Akram Sheikh	Secretary	Ministry of Communications	Islamabad	D
21.	Mr. M. Zafar Ullah Khan	Secretary	Ministry of Housing & Works	Islamabad	D
22.	Dr. Zafar Altaf	Secretary	Ministry of Food, Agriculture & Livestock	Islamabad	D
23.	Mr. Masood Ahmed Dahir	Secretary Incharge	Ministry of Railways	Islamabad	D

**ANNEX I-1**

<b>Sr. #</b>	<b>Name</b>	<b>Designation</b>	<b>Department /Organization</b>	<b>City</b>	<b>Annexes</b>
24.	Mr. Chaw		China Harbour Engg. Co.	Karachi	D
25.	Mr. Ahmed Tasnim	Chairman	Karachi Port Trust	Karachi	D
26.		Chairman	Pakistan Steel	Karachi	D
27.		Chairman	Central Board of Revenue (CBR)	Karachi	D
28.	Mr. Allah Rakha Asi	Director General	Civic Centre	Karachi	D
29.	Mr. Zahir Muhammad Khan	General Manager	Pakistan Telecommunication Corporation Ltd.	Karachi	D
30.	Mr. Vermeulen	GM Admn./Finance	Siemens	Karachi	D
31.	Brig. Mansoor Ahmed	Managing Director	Karachi Water Supply & Sewerage Board	Karachi	D
32.	Mr. Javed	President	Chambers of Commerce	Karachi	B
33.	Mr. Duan	Project Manager	China Anneng Const, Corp.	Karachi	B
34.	Mr. Idrees Rajput	Secretary	Irrigation And Power Department (I&P)	Karachi	C, D
35.	Mr. Ali Muhammad Balouch	Secretary	Communication And Works Department(C & W)	Karachi	D
36.	Mr. Jamil Ahmed Siddiqui	Secretary	Housing And Physical Planning, Local Government	Karachi	D
37.	Mr. M. Aslam Sanjrani	Secretary	Public Health Engineering Department	Karachi	D
38.	Mrs. Mehtab Akbar Rashadi	Secretary	Education Department	Karachi	D
39.	Mr. M. Sharif Balouch	Secretary	Health Department	Karachi	D
40.	Ms. Rukhsana Saleem	Secretary	Finance Department	Karachi	C
41.	Mr. M. Zia ul Islam	Secretary	Planning and Development Department	Karachi	D, E
42.	Mr. Zaheer Mirza	Director/CEO/Chairman	Engg. Consultants International (Pvt.) Ltd.	Karachi 75350	D, E
43.	Mr. K. Waheedud Din	Managing Director	Associated Consulting Engineers (Pvt.) Ltd.	Karachi 754000	D, E
44.		General Manager	Pakistan Telecommunication Corporation Ltd.	Lahore	D
45.	Mr. Muhammad Hanif Tahir		M/S Campaigner Associates (Pvt.) Ltd.	Lahore	D
46.	Mr. Tariq Mahmood	Acting Secretary	Local Government & Rural Development Department	Lahore	D
47.	Mr. Rao Zulfiqar Ali Khan	Chairman	WAPDA	Lahore	C, D, E

**ANNEX I-1**

<b>Sr. #</b>	<b>Name</b>	<b>Designation</b>	<b>Department /Organization</b>	<b>City</b>	<b>Annexes</b>
48.	Mr. Asad Ali Khan	Chief Executive	Cooper & Lybrand	Lahore	E
49.	Mr. M. Yousaf Sheikh	Chief Executive	Husnain Construction Company (Pvt.) Ltd.	Lahore	D
50.	Mr. Vaseem Anwar	Chief Executive	Echo West international (Pvt.) Ltd.	Lahore	D
51.	Mr. Muhammad Akram Shad	Chief Manager	State Bank of Pakistan	Lahore	C
52.	Raja Muhammad Akhtar	Collector Customs	Custom Port	Lahore	B
53.	Mr. Tahir M. Sheikh	Director	Interhome (Pvt.) Ltd.	Lahore	D
54.	Mr. Shahid Khan	Director General	Lahore Development Authority	Lahore	D
55.	Mr. Shafiq ur Rehman	GM Marketing	Pakistan Electron Ltd. (PEL)	Lahore	D
56.	Mr. Zamir A. Khan	Managing Director	Syed Bhais	Lahore	D
57.	Mr. Habib Ahmed	Managing Director	Habib Rafiq (Pvt.) Ltd.	Lahore	D
58.	Mr. M. Aslam Chaudhry	Managing Director	Sui Northern Gas Pipelines Limited (SNGPL)	Lahore	D
59.		Managing Director	NESPAK	Lahore	D, E
60.	Mr. A. Razzaq Daud	Managing Director	M/s DESCON Engineers (Pvt.) Ltd.	Lahore	C, D
61.	Engr. S.N.H. Mashhadi	Managing Partner	National Development Consultants (Regd.)	Lahore	D, E
62.	Mr. Manzoor Ahamad Sheikh	Member Finance WAPDA	WAPDA House	Lahore	C
63.	Mr. Pervaiz Hanif	President	Chambers of Commerce	Lahore	B
64.	Mr. Suleman Ghani	Secretary	I&P Department	Lahore	C, D
65.	Mr. Muhammad Ismail Qureshi	Secretary	Health Department	Lahore	D
66.	Dr. Shahzad Qaiser	Secretary	Education Department	Lahore	D
67.	Mr. Mohammad Akram Malik	Secretary	Finance Department	Lahore	C
68.	Mr. Sami Saeed Khan	Secretary	Agriculture Department	Lahore	D
69.	Sh. Zahoor-ul- Haq	Secretary	P&D Department	Lahore	D, E
70.	Brig. Shadab Ali Khan	Secretary C&W	C&W Department	Lahore	D
71.	Mr. Anwar Ahmad Khan	Secretary H&PP	Housing & Physical Planning Department	Lahore	D
72.	Mr. Sohail Hassan	Senior Partner	Ferguson & Company /Price Water House	Lahore	E
73.		Secretary	Education Department	Muzaffarabad	D
74.	Mr. Kamran Ali Qureshi	Director General	Peshawar Development Authority	Peshawar	D

**ANNEX I-1**

<b>Sr. #</b>	<b>Name</b>	<b>Designation</b>	<b>Department /Organization</b>	<b>City</b>	<b>Annexes</b>
75.	Malik Asad Khan	Managing Director	Interconsult (Pvt.) Ltd.	Peshawar	D
76.	Mr. Ghulam Sarwar Khan	President	Chambers of Commerce	Peshawar	B
77.	Mr. Ghulam Dastgir Akhtar	Secretary	Irrigation & Power Department	Peshawar	C, D
78.	Mr. Akhtar Munir Marwat	Secretary	Housing & Physical Planning/Managing Director PUD	Peshawar	D
79.	Mr. Muhammad Saleem Jhagra	Secretary	Health Department	Peshawar	D
80.	Mr. Abdul Rauf Khan	Secretary	Education Department	Peshawar	D
81.	Mr. Ejaz Ahmed Qureshi	Secretary	Finance Department	Peshawar	C
82.	Mr. Iftikhar Ali Shah	Secretary	P&D Board	Peshawar	D, E
83.	Mr. Masood-ur-Rehman Mahsood	Secretary C&W	C&W Department	Peshawar	D
84.	Maj. Nadir Ali	Additional Chief Secretary Development	P&D Department	Quetta	D
85.	Mr. Abdul Salam Khan	Secretary	Irrigation & Power Department	Quetta	C, D
86.	Mr. Taufique Ahmad Khan	Secretary	Health Department	Quetta	D
87.	Mr. Ghulam Sarwar Mengal	Secretary	Elementary Education	Quetta	D
88.	Mr. Naya Agha	Secretary	Higher Education	Quetta	D
89.	Mr. Ata M. Jaffar	Secretary	Finance Department	Quetta	C
90.	Mr. Tauqeer Ahmed	Secretary	Environment, Forests & Wildlife Department	Quetta	D
91.	Mr. Muhammad Amin	Secretary	P&D Department	Quetta	D, E
92.	Mr. Ali Ahmed Baloch	Secretary Construction Works	Housing & Physical Planning	Quetta	D
93.	Haji Fazale Qadir Khan Shirani	President	Chambers of Commerce	Quetta Cantt	B
94.	Mr. Rafee A. Faruqi	Managing Director	Gammon Pakistan Limited	Rawalpindi	D
95.	General (R) Iftikhar Ali Khan	Secretary	Ministry of Defence	Rawalpindi	B, D



**ANNEX I-2: LIST OF OFFICIALS INTERVIEWED DURING SECOND MISSION  
(INCLUDING PROGRAM OF MISSION)**

**PROGRAM FOR  
COUNTRY PROCUREMENT ASSESSMENT REVIEW MISSION**

***Messrs. N.A.Rana, C.Walser, I.A.Khan, M.Iqbal and GOP Team comprising:  
Sajid Hassan, S.H.Niazi (EAD) and M.A.Malik (Ministry of Finance)***

***September 16 to October 7, 1999***

**ISLAMABAD**

**September 16, Thursday**

a.m. Mission arrives

1500 Team's initial meeting  
(*Venue: Small Conference Room, World Bank, Islamabad*)

**September 17, Friday**

0900 Meeting with Member (Central Excise), Central Board of Revenue, CBR House, Opposite Supreme Court, Islamabad, Tel: 9201938

1000 Meeting with Mr. Ashraf M. Hayat, Joint Secretary, Ministry of Communication, Block D, Pak. Secretariat, Islamabad, Tel: 9201252

1100 Meeting with Mr. Nazar Abbas Siddiqui, Secretary, Ministry of Food, Agriculture and Livestock, Block B, Pak. Secretariat, Islamabad, Tel: 9210351

1400 Meeting with Contractors/Suppliers (*Venue: World Bank Islamabad Office*)

1430 Meeting with Consultants (*Venue: World Bank Islamabad Office*)

1530 Presentation by Mr. Murat Tutan, Regional Director, Sezai Turkes Feyzi Akkaya Construction Company, Islamabad, Tel: 276563

**September 18, Saturday**

1000 Meeting with Mr. Ahmad Waqar, Joint Secretary, Privatization Commission, Constitution Avenue, Islamabad, Tel: 9222242

1130 Meeting with Dr. Mutawakkil Qazi, Member, Planning Commission, Block P, Pak. Secretariat, Islamabad, Tel: 9203615

1400 Meeting with Mr. Masood Hasan Kizilbash, Federal SAP Coordinator  
Planning & Development Division,, House # 1, St. House 1, St. 2, F-8/3, Islamabad  
Tel: 264547

1500 Meeting with Mr. Zaka-ud-Din Malik, Managing Director, Oil & Gas Development Corporation,  
C-6, Masood Mansion, Markaz F-8, Islamabad, Tel: 9209869

**September 19, Sunday**

1530 Depart for Lahore

**LAHORE****September 20, Monday**

- 0900 Meeting with Mr. Tariq Sultan, Chairman, Planning & Development Board, Government of Punjab, Civil Secretariat, Lahore, Tel: 9210002-4
- 1000 Meeting with Mr. Hassan Nawaz Tarrar, Additional Secretary, Finance Department, Government of Punjab, Civil Secretariat, Lahore, Tel: 9210086/9210091
- 1100 Meeting with Malik Ahmad Khan, Chief Engineer (Development), Irrigation & Power Department Government of Punjab, Civil Secretariat, Lahore, Tel: 7354993
- 1200 Meeting with Mr. Rana Nasim Ahmed, Secretary, Agriculture Department Government of Punjab, Civil Secretariat, Lahore, Tel: 9210130
- 1400 Meeting with Mr. Javed Iqbal Awan, Special Secretary (Schools), Education Department, Government of Punjab, Civil Secretariat, Lahore, Tel: 9212012

**September 21, Tuesday**

- 1000 Meeting with Mr. Mohammad Ismail Qureshi, Secretary, Health Department, Civil Secretariat, Lahore, Tel: 9210081
- 1100 Meeting with Mr. Manzoor A. Sheikh, Member (Finance), WAPDA, WAPDA House, The Mall, Lahore, Tel: 9202222-3
- 1200 Meeting with Mr. Munir Ahmad, Managing Director, Sui Northern Gas Pipelines Limited (SNGPL), 21, Kashmir Road, Lahore, Tel: 6306242

**September 22, Wednesday**

- 0900 Meeting with Sheikh Zahoor-ul-Haq, Secretary, Planning & Development Department, Government of Punjab, Civil Secretariat, Lahore, Tel: 9210109
- 1000 Meeting with Brig. Shadab Khan, Secretary, Communication & Works (C&W) Department, Government of Punjab, Civil Secretariat, Lahore, Tel: 9210439/9210441
- 1100 Meeting with Additional Chief Secretary, (S&GAD), Government of Punjab, Lahore
- 1130 Meeting with Mr. Shaheer Qureshi, Technical Advisor, Housing & Physical Planning Department, Civil Secretariat, Lahore, Tel: 7354521
- 1400 Meeting with Contractors/Suppliers
- 1430 Meeting with Consultants  
(Venue: *Pearl-Continental*)
- 2000 Depart for Islamabad

**September 23, Thursday**

- 0800 Depart for Peshawar



**PESHAWAR**

**September 23, Thursday**

- 1100 Meeting with Mr. Musharaf Rasool, Chief Economist, Planning & Development Department, Government of NWFP, Civil Secretariat, Peshawar  
Tel: 9210344
- 1400 Joint meeting with Messrs. Zia-ur-Rehman, Additional Secretary and Abbas Samad Khan, Joint Secretary, Finance Department, Government of NWFP, Civil Secretariat, Peshawar, Tel: 9210443
- 1500 Meeting with Mr. Masood-ur-Rehman Mashood, Secretary, Communication & Works (C&W) Department, Government of NWFP, Civil Secretariat, Peshawar, Tel: 9210859

**September 24, Friday**

- 0900 Meeting with Mr. Mujeeb Khan, Project Manager, NWFP Primary Education Program Project, Education Department, Civil Secretariat, Peshawar, Tel: 9210337
- 1000 Meeting with Mr. Ishtiaq A. Khan, Secretary, Housing & Physical Planning Department, Government of NWFP, Civil Secretariat, Peshawar, Tel: 9210841
- 1100 Meeting with Mr. Abdul Hameed Khan, Deputy Secretary, Irrigation & Power Department, Government of NWFP, Civil Secretariat, Peshawar, Tel: 9210845

**September 25, Saturday**

- 0900 Meeting with Dr. Jamil Bangash, Chief (Health Sector Reform Unit), Health Department, Government of NWFP, Civil Secretariat, Peshawar, Tel: 9210342
- 1030 Meeting with Mr. Amin ud Din, Director (W&S), Peshawar Development Authority, PDA House, Phase-V, Hayatabad, Peshawar, Tel: 9217035
- 1710 Depart for Islamabad

**September 26, Sunday**

- 1315 Depart for Quetta

**QUETTA**

**September 27, Monday**

- 0900 Meeting with Mr. Mohammad Amin, Secretary, Planning & Development Department, Government of Balochistan, Civil Secretariat, Quetta, Tel: 9202319
- 1000 Meeting with Mr. Ata Mohammad Jaffar, Secretary, Finance Department Civil Secretariat, Government of Balochistan, Quetta, Tel: 9201272
- 1100 Meeting with Chief Engineer, Irrigation Department Civil Secretariat, Government of Balochistan, Quetta, Tel: 9201074
- 1200 Meeting with Mr. Taufeeq Ahmed Khan, Secretary, Health Department Civil Secretariat, Government of Balochistan, Quetta, Tel: 9201954

**September 28, Tuesday**

- 0900 Meeting with Mr. Ahmed Bukhsh Lehri, Secretary, Environment, Forests & Wildlife Department, Civil Secretariat, Government of Balochistan, Quetta, Tel:9202380
- 1000 Joint meeting with Messrs. Ghulam Rasool Hasni, Secretary (Elementary Education), Tel: 9202865 and Nayyar Agha, Secretary (Higher Education), Tel: 9201622, Education Department, Government of Balochistan, Civil Secretariat, Quetta
- 1200 Meeting with Mr. Nasir Ali, Secretary, Housing, Physical Planning, C & W Department, Civil Secretariat, Government of Balochistan, Quetta, Tel:9202374

**September 29, Wednesday**

- 1000 Meeting with Haji Fazle Qadir Khan Sherani, President, Chamber of Commerce & Industry, Zarghoon Road, Quetta, Tel: 821943/835717
- 1545 Depart for Karachi

**KARACHI**

**September 30, Thursday**

- 0900 Meeting with Mr. M. Javed Ashraf Hussain, Additional Chief Secretary, Planning & Development Deptt., Government of Sindh, Tughlaq House, Karachi, Tel: 9211405
- 1000 Meeting with Mr. M. Idrees Rajput, Secretary, Irrigation & Power Department, Government of Sindh, Tughlaq House, Karachi, Tel: 9211445
- 1100 Meeting with Mr. Wajid Ali Sheikh, Additional Secretary, Communications & Works Department, Government of Sindh, Tughlaq House, Karachi, Tel: 9212992
- 1200 Meeting with Mr. M. Ziaul Islam, Secretary, Planning & Development Department Government of Sindh, Tughlaq House, Karachi, Tel: 9211421
- 1400 Meeting with Mr Wajid Rana, Secretary, Finance Department, Government of Sindh, Tughlaq House, Karachi, Tel: 9203114

**October 1, Friday**

- 0900 Meeting with Mr. Jameel Ahmed Siddiqui, Secretary, Housing & Physical Planning Department, Government of Sindh, Tughlaq House, Karachi, Tel: 9212957
- 1000 Meeting with Mr. Ishfaq A. Memon, Secretary, Public Health Engineering Department, Government of Sindh, Tughlaq House, Karachi, Tel: 9211904
- 1100 Meeting with Mrs. Mehtab Akbar Rashdi, Secretary, Education Department Government of Sindh, Tughlaq House, Karachi, Tel: 9211225/9211238
- 1400 Meeting with manufacturers (*Venue: Marriott Hotel*)

**October 2, Saturday**

- 0900 Meeting with Mr. Imtiaz A. Sheikh, Secretary, Health Department Government of Sindh, Tughlaq House, Karachi, Tel: 9211012

- 1030 Meeting with Brig. Mansoor Ahmed, Managing Director, Karachi Water Supply & Sewerage Board (KWSSB), Behind Subzazar Lawns 9th Mile, Shakra-e-Faisal, Karachi, Tel: 4545534/434315-17
- 1400 Meeting with Contractors/Suppliers  
(*Venue: Marriott Hotel*)
- 1430 Meeting with Consultants  
(*Venue: Marriott Hotel*)
- 1900 Depart for Islamabad

**ISLAMABAD**

**October 4, Monday**

- 1000 Meeting with Mr. M. Suleman, Additional Secretary, Ministry of Commerce, Block A, Pak. Secretariat, Islamabad, Tel: 9210277
- 1100 Meeting with Mr. Ismail Maarif, Sr. Additional Secretary, Ministry of Industries, Block A, Pak. Secretariat, Islamabad. Tel: 9211709 (*Whole team except CW*)
- 1100 Meeting with Mr. Aamir Kiani, Commercial Section, American Embassy, Diplomatic Enclave, Tel: 822114 (*Mr. Chris Walser*)
- 1200 Meeting with Mr. Saeed Anwar, Commercial Section, British High Commission, Constitution Avenue, Islamabad, Tel: (*Chris Walser and Naseer A. Rana*)
- 1400 Meeting with Auditor General, Opposite Supreme Court, Constitution Avenue, Islamabad, Tel: 9219160 (*Whole Team*)
- 1500 Meeting with Mr. Takahashi, First Secretary, Embassy of Japan, Islamabad  
(*Mr. Chris Walser*)

**October 5, Tuesday**

- 1000 Presentation by Chris Walser on Procurement Legal Aspects

**October 6, Wednesday**

- 0900 Meeting with Mrs. Nasir, Commercial Counselor, France Embassy, Islamabad, Tel: 278730
- 1030 Meeting with Commercial Counselor, German Embassy, Islamabad
- p.m. Open for follow-up meetings and preparation of Aide-Memoire

**October 7, Thursday**

Mission departs

**ANNEX I-3: LIST OF LAWS AND REGULATIONS AND OTHER DOCUMENTS  
COLLECTED/AVAILABLE WHICH DIRECTLY/INDIRECTLY INFLUENCE  
PROCUREMENT**

**[To be added by the Field Office.]**

**ANNEX J-1: LETTER FROM MR. MUKHTAR ALI MALIK, DEPUTY SECRETARY  
(EXPENDITURE) MINISTRY OF FINANCE, ISLAMABAD**

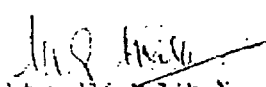
TO BE PUBLISHED IN THE GAZETTE OF PAKISTAN  
EXTRAORDINARY (PART - II)

Government of Pakistan  
Finance Division  
(Expenditure Wing)

Islamabad, the 25th February, 1994

NOTIFICATION

No. F:2(6)Exp-III/94 . For implementation of World Bank  
financed projects, the procurement procedures described in the  
project's Legal Agreement and the World Bank's Procurement  
Guidelines, will apply to all contracts for goods and works  
financed in whole or in part by the World Bank, and take  
precedence over any other conflicting procurement rules and  
procedures.

  
(Mukhtar Ali Malik)  
Deputy Secretary (Exp)  
Tele: 211079

The Manager,  
Printing Corporation of  
Pakistan Press,  
Islamabad.

Copy to :-

All Ministries/Divisions/Departments.

**Pakistan - Poverty Alleviation Fund Project**

**Credit/Loan/Guarantee No.:** C3248

**Borrower:** ISLAMIC REPUBLIC OF PAKISTAN

**Other Parties:**

**Sector:** FF - Finance/Financial Adjustment

**Lending Instrument:** FIL - Financial Intermediary Loan

**Program Objective:** PA - Poverty Alleviation

**Environment Rating:** T - To Be Determined

**Project Agreement**

CONFORMED COPY

CREDIT NUMBER 3248 PAK

Project Agreement

(Poverty Alleviation Fund Project)

between

INTERNATIONAL DEVELOPMENT ASSOCIATION

and

PAKISTAN POVERTY ALLEVIATION FUND

Dated July 7, 1999

CREDIT NUMBER 3248 PAK

PROJECT AGREEMENT

**AGREEMENT dated, July 7, 1999, between INTERNATIONAL DEVELOPMENT ASSOCIATION (the Association) and PAKISTAN POVERTY ALLEVIATION FUND (PPAF).**

**WHEREAS (A) by the Development Credit Agreement of even date herewith between the Islamic Republic of Pakistan (the Borrower) and the Association, the Association has agreed to make available to the Borrower an amount in various currencies equivalent to sixty-six million five hundred thousand Special Drawing Rights (SDR 66,500,000), on the terms and conditions set forth in the Development Credit Agreement, but only on condition that PPAF agree to undertake such obligations toward the Association as are set forth in this Agreement;**

## **SCHEDULE I**

### **Procurement and Consultants' Services**

#### **Section I. Procurement of Good and Works**

##### **Part A: General**

1. Goods and works shall be procured in accordance with: (a) the provisions of Section I of the "Guidelines for Procurement under IBRD Loans and IDA Credits" published by the Bank in January 1995 and revised in January and August 1996 and in September 1997 and January 1999, subject to the modifications thereto set forth in paragraph 2 of this Part A (the Guidelines); and (b) the provisions of the following Parts of this Section I.

2. In paragraphs 1.6 and 1.8 of the Guidelines, the references to "Bank member countries" and "member country" shall be deemed to be references, respectively, to "Participating Countries" and "Participating Country".

##### **Part B: Procurement Procedures**

##### **1. National Competitive Bidding**

(a) Except as otherwise provided in this Section, goods and works shall be procured under contracts awarded in accordance with the provisions of paragraphs 3.3 and 3.4 of the Guidelines.

(b) The following provisions shall apply to goods and works to be procured under contracts awarded in accordance with the provisions of subparagraph (a) of this paragraph 1.

##### **(i) Grouping of Contracts**

To the extent practicable, contracts shall be grouped in bid packages to attract national bidders.

##### **(ii) Improvement of Bidding Procedures**

In order to ensure economy, efficiency, transparency and broad consistency with the provisions of Section 1 of the Guidelines:

(aa) invitations to bid shall be advertised in at least one national newspaper with a wide circulation, at least 30 days prior to the deadline for the submission of bids;

(bb) bid documents shall be made available, by mail or in person, to all who are willing to pay the required fee;

(cc) foreign bidders shall not be precluded from bidding and no preference of any kind shall be given to national bidders in the bidding process;

(dd) bidding shall not be restricted to pre-registered firms;



- (ee) qualification criteria shall be stated in the bidding documents;
- (ff) bids shall be opened in public, immediately after the deadline for submission of bids;
- (gg) bids shall not be rejected merely on the basis of a comparison with an official estimate without the prior concurrence of the Association;
- (hh) before rejecting all bids and soliciting new bids, the Association's prior concurrence shall be obtained;
- (ii) bids shall be solicited and contracts shall be awarded on the basis of unit prices and not on the basis of a composite schedule of rates (CSR), except that a CSR may be used only for purposes of estimating costs, provided that such CSR is updated annually to reflect the prevailing markets prices;
- (jj) contracts shall not be awarded on the basis of nationally negotiated rates;
- (kk) contracts shall be awarded to the lowest evaluated bidders; and
- (ll) post-bidding negotiations shall not be allowed with the lowest evaluated or any other bidders.

## **2. National Shopping**

Goods estimated to cost less than \$50,000 equivalent per contract, up to an aggregate amount not to exceed \$600,000 equivalent, may be procured under contracts awarded on the basis of national shopping procedures in accordance with the provisions of paragraphs 3.5 and 3.6 of the Guidelines.

## **3. Community Participation**

For the purposes of carrying out Subprojects under Part A(ii) of the Project:

- (a) labor may be provided by the Beneficiaries at market rates or as part of their in-kind contribution towards the capital costs of the Subprojects; and

**World Bank**

INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT  
INTERNATIONAL DEVELOPMENT ASSOCIATION

Pakistan Resident Mission  
20-A, Ramna 5/1  
Islamabad, Pakistan

Telephone: (92 51) 819781-6  
Facsimile: 279648  
Telex: 5827 IBRD PK

January 7, 2000

Mr. Sajid Hassan  
Joint Secretary (Banks)  
Economic Affairs Division  
Pak Secretariat  
Islamabad

Dear Mr. Hassan:

***Re: PAKISTAN-Improving Procurement Processing Times***

This letter follows the earlier discussions held on this subject with the government, including discussions during the Procurement Focal Points meeting on August 23, 1999, and the CPPR meeting last year. Since delays in contract awards persist, a wider dissemination of this information is required. The Bank's policies are reiterated below, which we request you to send to all relevant implementing agencies. The purpose of these policies is to improve procurement processing times, particularly from the time of bid opening until contract award and signature, and to reduce procurement delays.

**Bank's Policy on Extensions of Bid Validity**

Para 2.56 of the Bank's "Guidelines for Procurement under IBRD Loans and IDA Credits" January 1995, revised in 1996, 1997, and 1999, states:

"Borrowers shall complete evaluation of bids and award of contract within the initial period of bid validity so that extensions are not necessary. An extension of bid validity, if justified by exceptional circumstances, shall be requested in writing from all bidders before the expiration date. The extension shall be for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract. In the case of fixed price contracts, requests for second extension and subsequent extensions will be permissible only if the request for extension provides for an appropriate adjustment mechanism of the quoted price to reflect changes in the cost of inputs for the contract over the period of extension. Whenever an extension of bid validity is requested, bidders shall not be requested or be permitted to change

the quoted (base) price or other conditions of their bid. Bidders shall have the right to refuse to grant such an extension without forfeiting their bid security, but those who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security.”

Additionally, Appendix 1, Para. 2 (d) states:

If the borrower requires an extension of bid validity to complete the process of evaluation, obtain necessary approvals and clearances, and to make the award, it should seek the Bank’s prior concurrence for the first request for extension, if it is longer than eight weeks, and for all subsequent requests for extension, irrespective of the period”.

This means that borrowers cannot ask bidders to extend the validity of their bids beyond 8 weeks after the original expiration of the bid validity without prior approval by the Bank which shall only be granted in exceptional circumstances (i.e. force majeure). If the Bank does not grant the approval for such extension, the only possible outcome would be declaration of **“Misprocurement”**, in which case the Bank would not finance the procurement of those items, and the respective amount would be cancelled from the available amount of Credit/Loan.

#### **Bank’s Policy on Procurement Planning**

The Bank will not negotiate projects unless the procurement arrangements are well defined and sufficient progress has been made so that disbursements are expected to occur immediately upon effectiveness of Credit/Loan. This carries the obligation to carry out procurement activities early. In connection with this, if the procurement capacity of the implementing agency is deemed inadequate, the appointment of qualified procurement agents will be a condition for presentation of Credit/Loans to the Bank’s Board for approval. The Bank will pay special attention during the appraisal process to determine if there is a need for procurement agents.

#### **Bank’s Policy on Due Diligence**

Whenever there is undue delay in preparation of bidding documents, or in issuing bidding documents, showing either lack of interest, lack of capacity, or poor institutional setup, the Bank may suspend the projects, or define conditionalities necessary to avoid suspension; the main conditionality would often be appointment of procurement agents or changes to the institutional setup.

#### **Actions by the Bank**

The Bank will include in every No Objection Letter (NOL) being issued for bidding documents, a paragraph reminding the implementing agency that it expects to receive the respective Bid Evaluation Report by a date specified in the same NOL. Similarly when issuing a NOL for award, the Bank will state the date for receipt of signed contract.

We look forward to the government’s cooperation in implementation of above noted measures to improve the procurement processing time for better project performance.

**Improvements in National Competitive Bidding (NCB) Procedures**

Since the Country Procurement Assessment Report (CPAR) has not been prepared for Pakistan, which is a requirement of the Bank, improvements in the National Competitive Bidding (NCB) procedures are required to be included in the legal agreements of all new projects for it to be acceptable for Bank financing. As you are aware, the CPAR exercise has been initiated with the participation of the government. A more comprehensive review of the procurement regime in Pakistan is being conducted under this exercise, and after its completion the required improvements in the NCB procedures will be revisited.

The current list of required improvements in NCB procedures to make these acceptable to the Bank is provided below:

- a. Invitation to bid shall be advertised in at least one national newspaper with wide circulation, at least 30 days prior to deadline for submission of bids.
- b. Bid documents must be made available by mail or in person to all who pay the required fee.
- c. Foreign bidders shall not be precluded from bidding and no preference of any kind shall be given to national bidders in the bidding process.
- d. Bidding shall not be restricted to pre-registered firms.
- e. Qualification criteria shall be stated in the bidding documents.
- f. Bids shall be opened in public, immediately after the deadline for submission of bids.
- g. Bids shall not be rejected merely on the basis of a comparison with an official estimate without the prior concurrence of the Bank.
- h. Before rejecting all bids and soliciting new bids, the Bank's prior concurrence shall be obtained.
- i. Bids shall be solicited and contracts shall be awarded on the basis of unit prices and not on the basis of a composite schedule of rates.
- j. Contracts shall not be awarded on the basis of nationally negotiated rates.
- k. Contracts shall be awarded to the lowest evaluated bidders.
- l. Post-bidding negotiations shall not be allowed with the lowest evaluated or any other bidder.

Yours sincerely,

**John Wall  
Country Director  
Pakistan & Afghanistan  
South Asia Region**

**Attachment: A/S**

**cc:**

- 1. Provincial ACS**
- 2. Heads of Projects Agencies Currently Implementing World Bank Financed Projects**

**ANNEX K – CPAR TEAM**

**Government Officials**

Mr. Sajid Hasan, in his former position as Joint Secretary, Economic Affairs Division, Islamabad

Mr. Mukhtar A. Malik, in his former position as Deputy Secretary, Ministry of Finance, Islamabad

Mr. Sharafat Hussain Niazi, in his former position as Section Officer, Economic Affairs Division, Islamabad

**Bank staff**

Mr. Naseer A. Rana, Procurement Specialist, Islamabad Field Office and CPAR Team Leader

**Locally Hired Consultants**

Mr. Ijaz A. Khan, Procurement Consultant, Lahore

Mr. Balal Khawaja, Legal Consultant, Lahore

Mr. Mujahid Iqbal, Mission Coordinator/Consultant, Islamabad

**Internationally Hired Consultants**

Mr. Hardy Singh, formerly Regional Procurement Adviser at the Bank's headquarters in Washington, now retired

Mr. Christian H. Walser, formerly Legal Adviser, Procurement, at the Bank's headquarters in Washington, now retired