

# Procurement and Service Delivery in South Asia:

Improving Outcomes through Civic Engagement

## Strengthening Procurement Practices in Pakistan

## Table of Contents

Executive Summary	3
1. Introduction.....	7
2. Background.....	7
3. Procurement by Tehsil Municipal Administration .....	11
4. The Reforms process and Water and Sanitation Program (WSP) support .....	13
5. Issues and Problems Identified .....	16
6. The Way Ahead .....	19

## **Executive Summary**

Since 2001, water supply and sanitation services in Pakistan were devolved to the newly created Tehsil Municipal Administrations (TMAs). The capacity of TMAs to deliver efficient and effective services remains a challenge under the new provisions. One important constraining factor lies in the lack of clarity and high degree of complexity of local procurement procedures. Various initiatives are underway to improve the legal and regulatory framework, and to impart skills at the required level of service delivery. The Local Government Ordinance (LGO) also encourages public participation in all areas of local government.

This paper presents the findings of a study of procurement processes in four Tehsil Municipal Administration (TMA) offices in the North Western Frontier Province (NWFP) of Pakistan. The study is based on interviews with key stakeholders and reviews of procurement cases to examine both *de jura* and *de facto* practices at the local level. The study highlights the need to develop simplified guidelines for local level procurement, as well as the need to supplement capacity building of TMAs with more active participation by civil society to enhance transparency and accountability.

## **Acknowledgement**

This activity is supported by the Norwegian Governance Trust Fund on 'Procurement and Service Delivery: Monitoring Procurement Outcomes. The trust fund was implemented by the South Asia Agriculture and Rural Development Unit, in collaboration with the South Asia Procurement Hub of the World Bank. The task was jointly managed by a Team led by Asmeen Khan, Joel Turkewitz and Benjamin Powis.

This working paper is based upon the study by the Water and Sanitation Program – South Asia (WSP-SA) of the World Bank Pakistan office in Islamabad. The paper was prepared under the supervision of Masroor Ahmad, Water and Sanitation Specialist, WSP-SA Pakistan by a study group comprising of Mr Zeeshan Tariq and Mr Zaighan Khan.

Detailed comments from Asif Ali, Senior Procurement Specialist of World Bank office in Pakistan are gratefully acknowledged. The authors would also like to thank Secretary Local Government & Rural Development, Government of North West Frontier Province (NWFP), Nazims (elected Mayors) of Peshawar town, Abbottabad, Takht Bhai and Haripur municipalities.

The findings, interpretations, and conclusions expressed in this paper are entirely those of the author(s) and should not be attributed in any manner to the World Bank, to its affiliated organizations, or to members of its Board of Executive Directors or the countries they represent. The World Bank does not guarantee the accuracy of the data included in this publication and accepts no responsibility for any consequence of their use.

Cover design by Colorcom. Cover photos by Colorcom.

## Acronyms

AGP	Auditor General of Pakistan
AKRSP	Agha Khan Rural Support Program
CIP	Community Infrastructure Program
CBO	Community Based Organizations
CCB	Citizen Community Board
DFID	Department for International Development
IRSP	Integrated Rural Support Program
LFA	Legal Framework Order
LGO	Local Government Ordinance
LGRDD	Local Government and Rural Development Department
NGO	Non Governmental Organization
NUDP	NWFP Urban Development Project
NWFP	North West Frontier Province
PFC	Provincial Finance Commission
PID	Press Information Department
PIFRA	Project for Improvement in Financial Reporting & Auditing
PPP	Public Private Partnership
RWSSP	Rural Water Supply and Sanitation Program
TMA	Tehsil Municipal Administration
TMO	Tehsil Municipal Officer
TOF	Tehsil Officer Finance
TOI&P	Tehsil Officer Infrastructure and Planning
TOR	Tehsil Officer Regulations
UA	Union Administration
UC	Union Council
WASA	Water and Sanitation Authorities
WATSAN	Water Supply and Sanitation
W&S	Water and Sanitation
WSP	Water and Sanitation Program

## List of Boxes and Figures

Box 1: The Legal Situation at a glance	10
Box 2: TMA profiles	15
Figure 1: Evolution of Local Government Structure in Pakistan	8
Figure 2: Responsibilities of the District, Tehsil and Union Councils	10
Figure 3: Stages of the Research	14



## 1. Introduction

Local governments in Pakistan have had a discontinuous history. The current structure was put into place by the Musharraf Government under the devolution plan that envisaged a three-tiered local government at the union, *tehsil*<sup>1</sup> and district levels. Since 2001, water supply and sanitation services were devolved to the newly created Tehsil Municipal Administrations (TMAs). The provision of water and sanitation (drainage, sewerage & solid waste) facilities forms the largest components of overall municipal services. Most of the development-related budget allocation of TMAs is for procuring infrastructure utilities pertaining to Water Supply and Sanitation (WATSAN).

The capacity of TMAs to deliver efficient and effective services remains a challenge under the new provisions. The Federal and Provincial Governments are making efforts to improve capacity at all three levels of local government consisting of District Governments, Tehsil Municipal Administration (TMAs) and Union Councils (UCs). Various initiatives are underway to improve the legal and regulatory framework, enhance capacity in terms of resources to deliver and impart skills to reach the required level of service delivery. The Local Government Ordinance (LGO) encourages public participation in all areas of local government. This is especially true in the case of development activities. The involvement and ownership of the communities is essential for the sustainability of projects and for the delivery of quality services.

In order to improve ‘value for money’ for procurement, there is a need for creating a well focused, transparent, user friendly and simplified procurement framework to deliver desired outcomes. The Water and Sanitation Program of the World Bank, Pakistan Office, aided by the Norwegian Trust Fund supported a study of *de jure* and *de facto* procedures followed by four Tehsil Municipal Administration (TMA) offices in the North Western Frontier Province (NWFP) of Pakistan to develop simplified guidelines for procurement in WATSAN.

## 2. Background

### 2.1. History of Local Government in Pakistan

When Pakistan was formed in 1947, there was no developed system of local governance. The military government of General Ayub Khan (1958-69) dissolved the national and provincial governments, which gave rise to the Basic Democracies System. This provided for a new local government system across the country through which members were elected. Under this system, urban areas with a population less than 14,000 were declared as *town committees* entrusted with 37 tasks ranging from social welfare and health to maintenance of infrastructure facilities. The committees could also levy taxes on 29 items, including vehicles and trade. In rural areas, *union councils* comprising a group of villages were formed with the same tasks and powers as were given to town committees. Their functions were coordinated by *tehsil councils* that had no taxation powers. Chairmen of union councils, town and union committees constituted district councils, which had 28 obligatory and 70 optional functions and the power to levy taxes. Its main purpose was to coordinate the activities of all local councils and municipal committees under its jurisdiction.

---

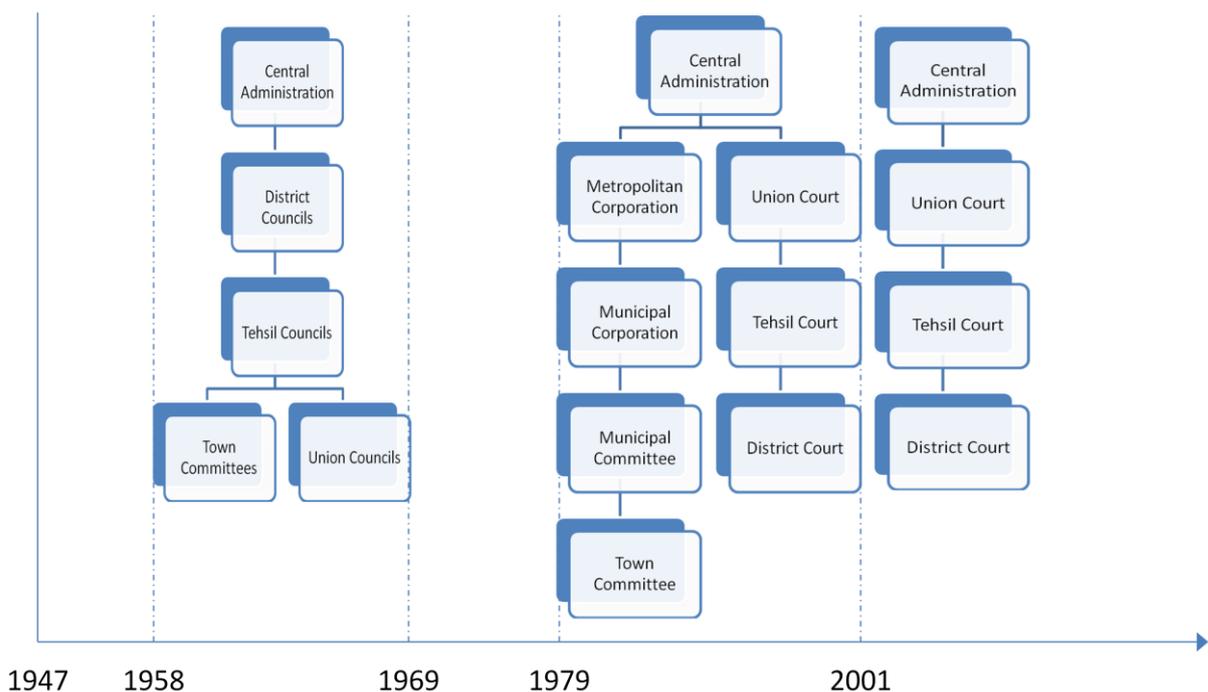
<sup>1</sup> *Tehsil* is a district subdivision

The system fell into disfavor with the fall of the Ayub regime. There was no effective local government until about 1979 when elected local governments came into being again under the second martial law regime of Gen Zia-ul Haq. This law, with certain amendments, remained in force up until 2001. It introduced four tiers of municipal government in urban areas: town committees, municipal committees, municipal corporations and metropolitan corporations. In rural areas, there was a three-tier system: union, *tehsil* and district councils. Later, the provincial governments abolished the *tehsil* councils as an administrative tier.

In the absence of national and provincial assemblies, local governments remained popularly elected bodies playing a significant role in political and development spheres. However, after elections to Senate and National Assembly began, their role and status was marginalized.

With the martial law regime of General Pervez Musharraf, Pakistan embarked on a restructuring of the local government system (Figure 1), implementing a devolution plan that envisaged a three tier local Government, at the union, tehsil and district level. Restructuring was based on five fundamental principles: devolution of political power, decentralization of administrative authority, decentralization of management functions, diffusion of power-authority nexus and distribution of resources at different levels.

**Figure 1: Evolution of Local Government Structure in Pakistan**



## 2.2. The Administrative Structure of Local Government

The new system reoriented the administrative system to allow public participation in decision-making. The essence of this system was that the local governments are accountable to citizens for all their decisions. It enabled the proactive elements of society to participate in community work and development related activities.

At the top tier, the District, there is a single integrated local government called District Government. The district government consists of District Nazim and District Administration.

The middle tier, the Tehsil, has Tehsil Municipal Administration consisting of the Tehsil Nazim (mayor), Naib Nazim (deputy mayor), Tehsil Municipal Officer, four Tehsil Officers and other officials of the offices entrusted to the Tehsil Municipal Administration. A Tehsil Nazim is the head of Tehsil Municipal Administration and exercises all functions and powers as have been assigned to him under the Ordinance. The Tehsil Municipal Officer is acting as coordinating and administrative officer in-charge of the Tehsil Officers.

At the lower tier, the Union Council Administration consists of Union Nazim, and three Union Secretaries and other ancillary staff. Other than these tiers, the system has the following supporting structures that are institutional arrangements for community empowerment.

### **Village and Neighbourhood Councils**

The new Local Government System incorporated the village and neighborhood councils to promote participation in the democratic process. The council is an elected body that represents the interests of a particular village or neighborhood. They identify problems, develop and improve water supply sources, make arrangements for sanitation and solid waste management, mobilize resources and mobilize the community involvement in maintenance of public services. These councils facilitate the creation of Citizen Community Boards (CCBs) described below. However, these councils are yet to be established in most *tehsils*.

### **Citizen Community Boards**

The new local Government System also provides for the establishment of Citizen Community Boards (CCBs) in every local area. These boards are formed by a group of non-elected citizens to energize the community for development and improvement in service delivery through voluntary efforts, for proactive and self help initiatives and to take up the welfare of the poor. A Citizen Community Board is a non-profit organization that mobilizes local resources for development. It receives project-based cost sharing support from the local government.

## **2.3.Current situation of Local Government**

Elections were held in August 2001. The new local government ordinance entrusted functions, administration and financial management of Local Government and Rural Development department, Public Health Engineering department (PHED) and Housing and Physical Planning department to the Tehsil Municipal Administrations (TMAs). However, detailed rules and bye-laws are yet to be framed for these three tiers due to various political and administrative reasons.

The term of the elected representatives expired on October 16, 2009. Since the new dates of the election have not been announced, they continue to hold their position. The Legal Framework Order (LFA) that protects the LGO 2001 expires on December 31, 2009. Until its expiry, the President of Pakistan can amend the LGO 2001. Under the 1973 Constitution of Pakistan, the local government is a provincial subject. When the LFA

expires, it would automatically empower the provincial governments to legislate on the local government system.

Clearly, the structure of local government in Pakistan has yet to stabilize. Until the provincial governments make significant decisions, the future of the local government will remain extremely uncertain.

## 2.4. Tehsil Municipal Administrations

Tehsil Municipal Administrations are the main pillars of the new system for development related work. The NWFP Local Government Ordinance 2001, section 54, empowers TMAs to exercise control over land-use, land subdivision, land development and zoning by public and private sectors for any purpose, including agriculture, industry, and commercial, residential, recreational, passenger and freight transportation and transit stations. The Tehsil Municipal Administration (TMA) is responsible for spatial planning and municipal services, working closely with the Union Councils and other civil society and private organizations.

TMAs are responsible for providing, managing, operating, maintaining and improving the municipal infrastructure and services, including:

- Water supply and control and development of water sources, other than the systems maintained by the union and village councils;
- Sewerage, sewage and sewage treatment and disposal;
- Storm water drainage;
- Sanitation and solid waste collection and sanitary disposal of solid, liquid, industrial and hospital waste;
- Roads and streets, other than the ones under the jurisdiction of, and maintained by, the district government or government and streets maintained by the union administration or village council;
- Traffic planning, engineering and management including traffic signaling systems, signs on roads, street markings, parking places, transport stations, stops, stands and terminals;
- Street lighting;
- Fire fighting;
- Parks, playgrounds, open spaces; and
- Slaughter houses

Apart from the responsibilities listed above, TMA coordinates and supports municipal functions of union councils and villages. TMA has the power to collect taxes, user fees, tolls as well as fines and penalties.

**Figure 2: Responsibilities of the District, Tehsil & Union Councils**

<b>District</b>	<b>TMA</b>	<b>Union Council</b>
Primary Education Secondary Education Dispensaries Local Hospitals District Roads	Local Roads and Streets Water Supply System Slaughter Houses, Fairs, Cultural Events Street Lighting Signals	Local Streets Wells & Ponds Cattle Ponds & Grazing Areas Libraries Street Lighting

### 3. Procurement by Tehsil Municipal Administration

#### 3.1. Laws of Procurement

The laws governing the procurement practices at the time of this review were found confusing; besides, the TMAs continue to follow the pre-devolution procurement guidelines even though the regulations have changed.

In principle, procurement should have been governed by the “North West Frontier Province Procurement of Goods, Works, Services and Consulting Services Ordinance 2002”. In order to effectively implement the law, “Procurement of Goods, works and Services Rules 2003” were framed a year later. The procurement law and rules had to be applicable to all entities under the administrative control of the Provincial Government and all the Local Governments.

#### **Box 1: The Legal Situation at a glance**

- The NWFP Local government Ordinance 2001 provides for the establishment of local governments at district, tehsil/town and union council levels.
- Section 191 of the NWFP LGO provides for rules to be notified by the provincial government in accordance with the schedule.
- The Government has promulgated the North West Frontier Province Procurement of Goods, Works, Services and Consulting Services Ordinance 2002;
- Procurement of goods, works and services rules were notified in 2003.
- These laws and rules are now being revised.
- In accordance with section 191 of the NWFP LGO 2001, the Public Procurement of Goods, Works, and Services Rules 2003 are now applicable to all the tiers of local government, including TMAs.

The NWFP Public Procurement Ordinance 2002 is now in the process of being repealed by “NWFP Procurement Law 2008”, which has been drafted by the Finance Department, Government of NWFP with the assistance of The World Bank. A detailed set of Rules containing separate chapters of “Procurement of Goods, Works and Services” have been drafted and will be notified after the promulgation of the new ordinance.

#### 3.2. Types of projects funded

The development projects are broadly categorized as foreign funded and local funded.

The locally funded projects are further categorized into three types:

- schemes in District Annual development plan;
- schemes in Tehsil Annual Development Plan; and
- schemes that are implemented through special packages (schemes of President, Prime Minister, elected representatives and other special projects such as Khushal Pakistan Program<sup>2</sup>).

---

<sup>2</sup> Khushal Pakistan Program allocates funds to parliamentarians to recommend community based schemes based on local needs in their respective constituencies/areas.

The District Annual Development Plan and the special schemes are processed and approved by the District Development Working Party (DDWP), Provincial Development Working Party (PDWP), Central Development Working Party (CDWP) or Executive Committee of the National Economic Council (ECNEC). The forum for approval of a scheme is mainly determined by its cost. After administrative approval, the funds are placed with the related TMA for implementation. At Tehsil level, schemes pertaining to provision of basic amenities are placed before the Tehsil Development Working Party which is headed by the Tehsil Nazim or Tehsil Municipal Officer.

For foreign funded development projects, the provincial governments establish project management units responsible for planning, managing, supervising and monitoring the implementation of these projects. Implementation methods vary in keeping with the requirement of donors. The donors have their own procurement guidelines and standard bidding documents. Once satisfied with total adherence to their guidelines, the donors issue a No Objection Certificate to begin work. All contracts allotted to service providers are either “pre-reviewed” i.e. reviewed before allotment or “post reviewed” i.e. reviewed after allotment.

Presently, in the municipal water and sanitation sector the NWFP Government is executing three donor funded projects:

- Community Infrastructure Project - II financed by the World Bank
- Rural Water Supply and Sanitation Program (RWSSP) by the UK Department For International Development (DFID)
- NWFP Urban Development Project (NUDP) by Asian Development Bank

To illustrate the varying norms for foreign funded projects, the guidelines of Rural Water Supply and Sanitation Program (RWSSP) do not adhere to the prescribed procurement procedures of the province. Instead, the project follows the Department for International Development (DFID) guidelines for implementation of water supply schemes that work on the principle of developing partnerships between the Government and local communities represented by Citizen Community Boards (CCB) or Community Based Organizations (CBOs). The CBOs are assigned the entire process from identification to development of water supply schemes including procurement of works and related goods. These CBOs are required to raise 20 percent of the financing requirement while 80 percent funding is provided by the project.

The other World Bank funded project, Community Infrastructure Program II (CIP II), splits the projects into primary and secondary categories. For primary projects, open competitive bidding method is followed that adheres to provisional procurement rules as well as World Bank guidelines. The secondary projects, however, are implemented through local communities (CBO / CCBs), similar to RWSSP. The procurement processes of the secondary projects do not follow the provisions of Procurement Law and Rules of the province.

### 3.3.Methods of procurement

For local projects, TMAs follow two methods for procurement based on the value threshold – procurement through project leader and competitive bidding.

### *Procurement through the Project Leader*

This method is without a competitive bidding process and is followed in cases where the total value of the project is less than PKR 500,000 (US\$ 6,250)<sup>3</sup>. NWFP Government has issued instructions for carrying out various departmental schemes valuing less than PKR 500,000 (US\$ 6,250) through a 'Project leader'. The 'Project leader' is a person appointed by Naib Nazim (deputy mayor of Tehsil), at his/her sole discretion. The Project leader may or may not be a member of local Citizen Community Board (CCBs). He/she identifies a project which is designed and developed by the office of Tehsil Officer (Infrastructure) who subsequently grants a technical sanction for the projects. A twenty five percent advance is paid to the project leader who is solely entrusted to carry out implementation of the project including procurement of goods (material) and services for works without competitive bidding or quotations. The project leader completes the work and is paid the remaining balance of 75 percent.

### *Procurement through Competitive Bidding*

The second method is an open public competitive bidding through inviting tenders on prescribed formats and awarding it to the lowest eligible / responsive bidder. This method is prescribed for projects worth more than PKR 500,000 (US\$ 6,250). A bid evaluation committee is constituted by the Tehsil Municipal Officer or the Tehsil Nazim (mayor).

Projects worth more than PKR 500,000 (US\$ 6,250) have to be advertised in a leading newspaper for wider circulation. The policy for advertisement is laid down by the Provincial Government. The request for advertisement is sent to the Provincial Press Information Department (PID) which is then sent to the newspaper based on the thresholds and criteria set for circulation in the policy.

## **4. The Reforms process and Water and Sanitation Program (WSP) support**

### **4.1. The Reforms initiative**

The Water and Sanitation Program (WSP) is a global partnership administered by the World Bank which helps the poor gain sustained access to water supply and sanitation services. The interventions support the Government to make policy and legal reforms in the water and sanitation sector, and enhance the coordination of federal, provincial and local government and civil society for provision of basic services. These are directly linked with local governance and the decentralization reform process in Pakistan.

WSP, South Asia supported the federal government in conceiving and designing the role of TMAs under the Local Government Ordinance (LGO) 2001. Until the 2001 Local Government Ordinance (LGO), the Public Health Engineering Department (PHED) has been responsible for the development and maintenance of water and sanitation services in rural areas, whereas in urban areas services were provided by Development Authorities and Water and Sanitation Authorities (WASAs). Since 2001, water supply and sanitation services were devolved to the newly created Tehsil Municipal Administrations (TMAs).

---

<sup>3</sup> 1 US\$=80 PKR (Pakistan Rupees)

The provision of water and sanitation (drainage, sewerage & solid waste) facilities forms the largest components of overall municipal services. Prior to this, responsibility for the development and maintenance of Water Supply and Sanitation (WATSAN) took a predominantly top-down approach, lacking significant community participation. While steps have been taken in devolving powers to TMAs, the capacity of TMAs to delivery efficient and effective services remains a challenge under the new provisions.

In NWFP, WSP-SA continues to provide technical assistance to LG&RDD of Government of NWFP in creating an enabling environment through policy and strategy development, systems and processes to ensure the smooth functioning of TMAs. The provincial sanitation policy, TMAs assessment, procurement, training of TMAs and provincial Non Governmental Organizations (NGOs) in sanitation and other capacity building measures are some of the main initiatives of WSP-SA in NWFP in water & sanitation sector.

The Federal and Provincial Governments are making efforts to improve capacity of all three levels of local government consisting of District Governments, Tehsil Municipal Administration (TMAs) and Union Councils (UCs). Various initiatives are underway to improve the legal and regulatory framework, enhance capacity in terms of resources to deliver and impart skills to reach the required level of service delivery. The Local Government Ordinance (LGO) encourages public participation in all areas of local government. This is especially true in the case of development activities. The involvement and ownership of the communities is essential for the sustainability of projects and for the delivery of quality services. Citizen oversight, community participation and engaging local actors in the process underpin decentralization and greater accountability.

TMAs in NWFP are recipients of 30 percent of the provincial funds disbursed through the Provincial Finance Commission Award<sup>4</sup>. Most development-related budget allocation of TMA is made for procuring infrastructure utilities pertaining to Water Supply and Sanitation (WATSAN). The existing procurement mechanisms were found to be complex and inaccessible. To strengthen capacity at the new devolved local government and community levels to plan and deliver such services and infrastructure, an integral, focused, transparent, user-friendly and simplified framework is imperative. This framework is a means to ensure desirable outcomes.

**Figure 3: Stages of the Research**

To get a clearer understanding of the issues and problems with prevailing procurement systems, The World Bank sponsored a review of the Procurement Law and Rules of the NWFP Government. The current initiative of the Water & Sanitation Program (WSP) under NTF is focused on developing Procurement Guidelines for TMAs. The intention is to review existing guidelines, and where appropriate, suggest



<sup>4</sup> The Provincial Finance Commission (PFC) is an apex body at the Provincial level headed by Senior Minister Finance, having the mandate of deciding financial allocation between the Provincial Government and different tiers of Local Government System.

innovations to further broaden the objective of citizen engagement.

## 4.2. Scope of the research

The intervention focuses on a three phased approach (Figure 3) for developing simplified guidelines for procurement of works. The first phase (review of *de jure*) entailed a review of existing laws, rules, bye laws formed and in practice, for procurement of works at TMA level. This exercise provided a snapshot of the existing legal situation of the procurement system at TMA level.

During the next stage (review of *defacto*), a detailed assessment of procurement practices in line with the existing procurement procedures for both, Government and donor funded projects was made with a focus on water and sanitation schemes. This phase also includes an assessment of capacity and skills of TMA staff vis-à-vis provincial government procurement rules as well as additional procedures under investment projects. During this stage, four case studies were also produced based on detail assessment and analysis of procurement practices in four selected TMAs.

In the third and final phase, after prelim and confirmatory research, simplified guidelines will be produced for procurement of works for water and sanitation. A communication strategy will also be prepared at this stage for effective dissemination of these guidelines.

### 4.2.1. Geography

TMAs were selected on the basis of their procurement (high / low procurement in terms of quantum and total worth of procurement), age of the TMAs, rural and urban areas, and their geographical locations. This selection was done in order to ensure that the selected TMAs were representative of conditions prevailing in the TMAs all over the province. *TMAs Peshawar* and *Takht Bai* were selected on the basis of high and low quantum of procurement, respectively, whereas *Peshawar* is old TMA while *Takht Bai* is a new TMA. *TMAs Chitral* and *Haripur* were selected since they were located in the North and South (South-East) of the province where *Haripur* is an urban TMA and *Chitral* is a rural one.

### 4.2.2. Stakeholders

The stakeholders were carefully identified through extensive research. The selected stakeholders included federal institutions like National Reconstruction Bureau, provincial departments including Local Government, Election & Rural Development Department, Reforms Coordination Unit, Finance Department, Planning & Development Department, Nazims (mayors) and TMA officials of the selected TMAs and relevant NGOs.

### 4.2.3. Methodology

Using a questionnaire, data was collected on identification of job requirements, skills and expertise, extent of knowledge and understanding of procurement procedures, rules and regulations as well as internal checks in the procurement process. The questionnaire focused on benchmarking procurement practices against laws, rules, procedures and involving case studies as well. Interviews, focus groups and consultative sessions with key officials in the four selected TMAs supported the data collected through questionnaires. A complete set of data was obtained through reviews of three to four

procurements in each TMA including Annual Development Program as well as foreign funded or special projects. This step focused at data collection, validation and findings on the procurement practices and the legal framework.

## **5. Issues and Problems Identified**

### **5.1. Systemic Issues**

#### *Contradiction in Legal Frameworks*

Procurement practices are in line with the Local Government and Rural Development Department (LGRDD) guidelines that contradict the Provincial/ Superior Law/Rules notified in the province. There is contradiction in the rules for CCBs as procurement law and rules provides no cover to this alternate procurement method nor provides any exemption from tendering for contracts valuing more than PKR 40,000 (US\$ 500). These legal issues hinder effective and efficient functioning of procurement systems.

Lack of simplified procurement guidelines covering both the donor and public sector funded projects creates confusion and duplication of efforts.

#### *Lack of Systemic Transparency*

The research revealed that TMAs' procurement practices lack transparency, openness and competition. For example, the practice of using the 'project leader' for carrying out development schemes valuing less than PKR 500,000 (US\$ 6,250) is contradictory as this system authorizes Naib Nazim (deputy mayor) to nominate any person for the job whether the person concerned is a member of a local CCB or not. Besides, the method does not achieve community participation in the process.

#### *Inefficacy of Internal Audit*

Internal Audit is meant to pre-audit financial transactions, including procurement transactions. Disbursements are made at the end of satisfactory pre-audits. The critical input of internal audit is significant to ensure sufficient internal controls for a transparent and efficient procurement. Case studies, like the one obtained from Water and Sanitation Unit (WSU), Chitral reveal that deviation from procurement procedures is neither identified nor objected to by the Internal Auditor. In Haripur, the Internal Audit played a limited role at the time of disbursement. In addition, periodic reports were not submitted to the management to point out shortcomings and improve adherence to procedures.

#### *Non-involvement of Tehsil Officer Finance*

The Tehsil Officer (Finance) should be a member of the evaluation committee. In case the evaluation committee is not needed, the officer should be consulted prior to seeking approval from the Tehsil Municipal Officer. It was observed in Haripur that the Tehsil Officer (Finance) was excluded from the procurement process though the matter had financial implications contrary to practices in other TMAs.

#### *Lack of continuity planning in structures*

TMA project-team structures, e.g. the Water & Sanitation Unit (WSU) Chitral were not found equipped to sustain implementation over the life of the scheme, fund or project. The ad hoc and unplanned staffing structure that employs people on an annual contract

and the lack of institutional support from the Government has rendered the unit, less effective and of no value. Loss of knowledge and lack of training are challenging issues in ad-hoc teams.

## 5.2. Practice and Implementation Issues

### No tender-evaluation committees

In some cases, tender evaluation committees were not formed and undated contract agreements were signed. There was no record of penalties, if imposed, for late completion of contracts.

### Differing composition of bid-evaluation committees

The bid-evaluation committee composition varies with TMAs. Except TMA Haripur, the other TMAs involve the Tehsil Officers for Finance, Infrastructure & Services, Planning and Regulation (where the post existed). In Haripur, the planning, procurement, verification and certification and disbursements are centralized with the Tehsil Officer (Infrastructure).

### Delays due to Provincial Press Information Department

The public policy for competitive bidding to circulate tender notices through the Provincial Press Information Department resulted in delays and in limited circulation.

### Non-adherence to guidelines

In one example in TMA Chitral, it was found that estimates for projects and their technical sanctions were without dates and there was no adherence to minimum response time. In some cases it was observed that instead of prescribed 30 days under Rule 20 only four days were given for submission of bids. In one case, the tender forms on the prescribed formats were issued to the three bidders a day before the last date of submission. This reduces open and broad based competition, increases possibility of collusion by forming local cartels, thereby reducing transparency.

### Donor related issues

Donor guidelines require TMAs to follow a lengthy process that results in delays in fund flows from donors to the TMA leaving limited time for implementation.

### Relevance of prevalent rates

Old composite scheduled rates (CSR) are still applicable, and these are in sharp contrast to the market rates.

## 5.3. Information and capacity building

### Information availability

Procurement Law and Rules of the provincial Government are not available with the TMA officials. However, the compendium of rules provided by the Local Government department of the provincial government are available with the TMA officials that includes TMA rules of business, CCB rules, budget rules, financial rules and work rules;

For procurement in Chitral, the NWFP procurement for Goods, Works and Services rules 2003 framed under the NWFP Procurement of Goods, Works, Services and Consulting Services, are in place. The absence of guidelines and regulations to be framed under the law and rules for procurement is a hindrance to an effective, transparent and efficient process. Further, quality of work cannot be ensured through a contract that does not entirely adhere to the three basic principles of transparency, competitiveness and efficiency (value for money) in procurement. The exception was in Haripur, where availability and local-knowledge of procurement procedures was found to be better than other TMAs. However, none of the officials in Haripur and Peshawar had received formal training on procurement or contract management. The rules were not available with the TMA staff. The enforcement is chiefly based on precedence. The knowledge of staff is limited to the extent of knowing the threshold for advertisement, being PKR 40,000 (US\$ 500).

### Training needs

Absence of training in public procurement, the law and the rules, Pakistan Engineering Council guidelines and donor guidelines creates limitations in capacity and competence;

Severe lack of human resource capacity in the TMA to understand and enforce adherence to donor guidelines represents a huge challenge.

TMAs adhere to the procurement rules of the NWFP Government. However, documentation is inadequate and incomplete and the principles of transparency lack emphasis.

### Lack of cross-learning

Most officers have remained in one TMA throughout their careers. This action deprives them experience offered through other TMAs and reduces their value by not providing them with a well-rounded knowledge of other TMAs. A rotation plan represents one way for officers to gain valuable experience and a broad-based view to better serve the TMA and the community, and enhance their own career goals and satisfaction.

## 5.4. Comparison between Legal Situation and Situation on Ground

<b>Legal Situation</b>	<b>Situation on Ground</b>
Law/Rules	Unavailability of copies of the ordinance /law and rules and lack of knowledge among officials dealing with procurement management suggests that the procurement law/ rules are not fully adhered to
Government instructions/guidelines	Instructions, SROs/ notifications of the Local Government and Rural Development Department are readily available and the knowledge and practice of these instructions can be broadly termed as satisfactory.
Knowledge & practice of Law/Rules and government instructions	In three out of four TMAs studied, officials did not have good command over Law/Rules and government instructions

Capacity & expertise in procurement management	The absence of training in public procurement, the law and the rules, Pakistan Engineering Council guidelines and donor guidelines creates a lack of capacity and resultant competence.
Rules/guidelines provided for private-public partnership (PPP)	Rules and guidelines not available.
Public display of procurement and reasons for success and failure of bidders	The record of procurement and list / reasons for success and failure of bidders is not displayed or made available publically.
Use of standard bidding documents	The same tender inquiry form and contract agreements are in use with the TMA staff, which was applicable before promulgation of local government ordinance 2001. The standard bidding documents of Pakistan Engineering Council were not available in the selected TMAs.
Adequacy of record for procurement	Record for procurement is well documented in most TMAs.
Internal audit (strengths & weaknesses)	Management reports were not being produced. Internal audit was reduced to pre-auditing of financial transactions only
External audit (strengths & weaknesses)	External audit was carried out but without pinpointing deviations from adherence to Law, Rules, Instructions and notifications of the government

## 6. The Way Ahead

Though entrusted with important responsibilities, TMAs are considered the weakest link in the local government system. They are still new and learning from experience while facing the challenges to deliver on account of lack of resources, training and community participation.

NWFP Public Procurement Ordinance 2002 is now in the process of being repealed by NWFP Procurement Law 2008, which has been drafted with the assistance of The World Bank, by the Finance Department, Government of NWFP. A detailed set of Rules containing separate chapters of Procurement of Goods, Works and Services have been drafted which will be notified following promulgation of the new ordinance.

The guidelines to be prepared under this intervention will be in line with the principles laid down in the new ordinance for public procurement in NWFP and the rules made there under, in particular for procurement of works. These guidelines can be than notified either by the Local Government, Election and Rural Development Department for all the TMAs or these can be adopted by the TMAs as bye laws.

In the context of the way ahead, it is important to highlight the need for 1) transparency and access to information, and; 2) the role of civic society.

### ***Transparency and access to information***

Transparency and accountability are important elements of good governance. Lack of transparency and accountability has been recognised as a major threat to integrity in public procurement. Transparency is essential to a predictable, efficient procurement system. It is widely recognized that procurement transparency affects not only business but society as a whole. It results in increased competition as companies develop confidence in procurement practices due to which the number of bidders expands, yielding stronger competition.

Transparency reduces opportunities for corruption as opaque procedures permit decisions to be made on non-competitive grounds resulting in wastage of resources. Transparent and predictable procurement practices can reduce official discretion and opportunities for extortion. Transparency results in cost reduction and enhanced quality of goods and services due to increased competition. Greater access to information on public expenditures promotes public oversight and leads to assurance of the effective use of public resources.

On the basis of this research, recommendations have been developed to improve process/rules etc but getting better procurement outcomes might need additional – or new approaches – to achieve this. An important step forward may be partnering of civil society organizations with the TMAs to ensure transparency in the procurement processes.

### ***The role of the civil society***

The civil society, particularly the NGOs can play an important role in ensuring transparency in the procurement procedures by partnering with TMAs. Efforts have been made in Punjab province through the ADB Decentralization Support Program to involve civil society organizations in keeping a watch on disbursement and dissemination of procurement related information to the public at large. The civil society organizations that are selected to partner with TMAs can carry out different activities.

- **Raising Awareness:** Partner organizations can develop public awareness campaigns about benefits of transparency and consequences of corruption.
- **Ensuring Transparency:** The partner organizations can publicize new guidelines after they are formed. They can also publicize tenders, hold citizen consultations on new projects, form public oversight committees and keep citizens informed on the progress of a project. Such partner NGO can maintain website for the purpose and can also set up Public Information Booths.
- **Improving Demand Side of Governance:** By educating people, civil society organizations can improve the demand side of governance that can result in increased demand for better services from people. This can result in enhanced allocation of resources to TMAs from the government.
- **Running Education Programs:** Civic education is crucial in maintenance of water and sanitation infrastructure, in keeping cities clean and free of litter. Civic education is also required for improved revenue generation for the municipal services provided by TMAs.

## 6.1 Conclusions

Stakeholders consulted recommended developing and providing a legal framework for procurement of contracts for all schemes. Implementation should involve active community participation through Public Private Partnership (PPP). This would encourage greater civic engagement and promote social accountability in public procurement. Focus group discussions and interviews with TMA officials revealed a serious need for capacity building and training initiatives. Officers find it difficult to fully comprehend and follow the guidelines. Coherent, user-friendly and rule based standard bidding documents have not been developed. The contract documents are obsolete and require revision.

Following recommendations are suggested as a way forward.

### *Principles*

- Transparency, open competition should be well maintained above the prescribed threshold for petty purchase by the NWFP government.

### *Procedures*

- The set of standard bidding documents should be user-friendly, easy to comprehend and in conformity with law, rules and guidelines for procurement and should also be translated into local languages.
- All procurements should bear an identification code to track expenditure in order to ensure that the funds have been fully utilized for the intended purpose.
- Selective representatives of civil society should be invited as observers to see the procurement process including evaluation of bids and awards process.
- Tender documents should be available at all time, in adequate numbers and should contain all the relevant details that a bidder needs to file a bid in an unambiguous and explicit manner.
- Internal audit function has to be improved wherein the internal auditor should comment on the procurements, trends, adherence to law, rules and guidelines; to provide for a management report every year for the Tehsil Nazim and TMO to take corrective measures.
- Internal auditors or accountants processing the financial transactions need to receive focused and customized training.
- Set of standard bidding documents for goods, works, services should be developed.
- Procurement committee should include all the Tehsil Officers. The result should be disseminated and copies of the result should also be available on request.
- Project for Improvement in Financial Reporting & Auditing (PIFRA) based on a new accounting model should be rolled out to all TMAs in accordance with the strategy developed by the PIFRA directorate, Auditor General of Pakistan.

### ***Rules***

- The existing procurement law and rules should be widely disseminated to all the TMAs. Initially a communication campaign should be launched to create awareness about the procurement reforms, law, rules and guidelines.
- All notifications and orders of the LGRDD inconsistent to the provisions of provincial procurement law and rules should be withdrawn (e.g. local government department order No. AO/LCB/8(89)/07 dated the 22nd of August 2007).
- A simple but effective/efficient grievance redressal system should be designed and put in place to dispose of all complaints on a procurement process before signing of the agreement (process to be completed in seven days) and for complaints during contract executions by the contractor/vendor/service provider within 15 days.
- Discretionary powers such as nomination of a project leader should be abolished.

### ***Practices***

- Refresher courses should be introduced to provide knowledge on changes brought in procurement systems from time to time.
- Public awareness should be created to safeguard public fund utilization. Element of social accountability should be introduced.

## References

Ahmad, M, '*Pakistan – Water and Sanitation Services in a Devolved Government system*', [http://spaces.brad.ac.uk:8080/download/attachments/1570/Pakistan Water and Sanitation Services in a Devolved Government System.pdf](http://spaces.brad.ac.uk:8080/download/attachments/1570/Pakistan_Water_and_Sanitation_Services_in_a_Devolved_Government_System.pdf), accessed on November 16, 2009

'*Local Government System 2001*', [http://www.nrb.gov.pk/local\\_government/default.asp](http://www.nrb.gov.pk/local_government/default.asp), accessed on November 16, 2009

'*Institutional Arrangements for Community Empowerment*', [http://www.nrb.gov.pk/local\\_government/community\\_empowerment.htm](http://www.nrb.gov.pk/local_government/community_empowerment.htm), accessed on November 16, 2009

'*Local Government*', <http://www.decentralization.org.pk/lg.asp>, accessed on November 15, 2009

Analysis of De-Jura and De-Facto Situations at the TMA level in NWFP: Development of Procurement Guidelines for TMAs in NWFP, report to WSP by Muhammad Zeeshan Tariq (consultant)

## Persons Interviewed

Mr. M. Riaz, Member National Reconstruction Bureau, Prime Minister Secretariat, Government of Pakistan.

The Director General, Local Government, Election and Rural Development department, Government of NWFP.

Mr. Tahir Azeem, Director General (M&E), Planning & Development Department, Government of NWFP.

Mr. Ali Zeb Khan, Reforms Coordinator, Finance Department, Government of NWFP.

Mr. Abdul Latif, Additional Reforms Coordinator / Additional Secretary, Finance Department, Government of NWFP.

The Deputy Secretary, Local Government, Election and Rural Development department, Government of NWFP.

The Planning Officer, Local Government, Election and Rural Development department, Government of NWFP.

Mr. Masroor Ahmed, WATSAN Specialist, The World Bank

Mr. Mark Ellery, WATSAN Specialist, The World Bank.

The Deputy Team Leader (TA Consultants), World Bank TA for NWFP

Engineer Mr. Fazl-i-Rehman, Procurement Consultant, World Bank TA for NWFP