

PUBLIC PROCUREMENT SYSTEM AND REFORM IN AFGHANISTAN

Anwar M. Raufi

OUTLINE OF THE CONTENTS OF THE TOPIC TO BE PRESENTED

1- *Procurement system of Afghanistan before ten years, i.e. before 2001.*

Afghanistan had a series of provisions regulating procurement as under: (i) a Law on procurement of 1987; (ii) a Purchase Regulation adopted as a Decree of the Islamic Emirate of Afghanistan dated 8-10-1420 (2001), both of which applied to the procurement of goods (and routine works and maintenance), and (iii) Rules and Regulations for the procurement of works adopted sometime after 1989 (since it replaced the rules adopted on that date). The Purchase Regulation effectively replaced the Law on procurement. However, it was very much a copy of the Law with very few amendments, mostly of a religious nature.

Under these Regulations, large value contracts were subject to competition (national and international) based on open tender following proper advertisement and subject to time limits. Smaller value contracts were subject to direct purchasing methods under which 1, 2 or 3 officials would purchase the required goods depending on the value of the goods to be purchased. The core problem with the provisions of these regulations was the lack of detail and clarity in the qualification requirements, the setting of specifications, drafting of bidding documents and award criteria. The difficulty with these regulations was that they resembled much more a set of bid and contract preparation guidelines than a regulation to ensure competitive bidding.

Some of the detailed provisions of these regulations are as follow:

- As per the provisions of these regulations the procurement resembled auction rather than bidding or tendering,
- Announcement: There were two announcements, first announcement was to inform bidders about the process, duration of which was 15 days and the second announcement was for the purpose of holding auction meeting, the duration of which was 7 days only. If any bidder offered lowest price than the winner even during execution of

1730

contract, the entity had the right to award the contract to lowest offer.

- Submission of bids: Bids, taking into consideration the volume and conditions of procurement, could take place either sealed or opened.
- Number of bids: where there were less than three bids, the process was being declared as unsuccessful and the entity was obliged to rebid.
- Evaluation of bids: evaluation of bids was also based on tradition and there were no specific criteria rather than volume of contracts already performed and fixed asset like land, building and houses.
- Approval of contracts: for goods contracts to some extent the ministers were authorized to approve and sign the contracts above that the contracts were to be approved by king or President but works contracts were to be approved regardless of their volume by king or president.
- Method of procurement: there weren't any specific methods before 2001 as there are many today, like open tendering, restricted tendering, two staged tendering, RFQ, SSS etc.

Finally it is worth mentioning that procurement in Afghanistan was not meeting any internationally accepted standards before 2001 and nobody knew procurement of services during these terms as there weren't any guidelines, regulations which could stipulate the process of procurement of services especially consultancy services.

2- Commencement of Procurement Reform in Afghanistan

After a prolonged period of military occupation, wars and Taliban rule, Afghanistan is striving to standardize and reform its public financial management system especially the public procurement system. The public procurement reform in Afghanistan refers to May 2003 when a holistic procurement review was undertaken by Donor community especially the World Bank. A number of serious constraints were identified and recommendations made, most notably in respect of the need to transfer procurement capacity as well as responsibility for

procurement functions to the line Ministries of the Government. The recommendations called for a significant enhancement of the procurement component of Public Administration Project, namely the Public Administration Capacity Building Project (PACBP) financed by International Development Association (IDA) the World Bank.

Simultaneous to commencement of the PACB project a new legal framework introduced leading by Public Procurement Law (PPL) and rules of procedures meeting international standards as well as hiring of an international consulting firm to complement the legal framework and build capacity of procurement staff who can absorb the legal framework and implement it in carrying out their procurement activity of the relevant entities.

3- *Current Procurement System of Afghanistan*

The procurement system in Afghanistan is centralized with a strategic plan and aim to decentralize the procurement at national level but to centralize it at each procuring entity in the future by building capacity of procurement staffs, establishing and certifying procurement offices in each procuring entity by Procurement Policy Unit (PPU) of Ministry of Finance taking into consideration certain criteria established and communicated to relevant Procuring Entities in advance.

Currently based on the provision stated in Public Procurement Law (PPL) a central procurement unit under the title of Afghanistan Reconstruction and Development Services (ARDS) based in Ministry of Economy exists and is acting as facilitator in the field of procurement. All Procuring Entities must refer their procurement to ARDS if the estimated value exceeds from the threshold established by PPU.

PPL also limits the threshold for award authority in approving and signing of procurement contracts, if the value of the procurement contracts exceed the stated threshold, then the contract will be approved by A special Procurement Commission (SPC) which comprises of three Ministers; Minister of Finance as head and member, Minister of Justice as member and Minister of Economy as member. The rule of transaction of SPC, in accordance with the provision of PPL, being prepared by PPU and approved by Ministry of Finance.

1732

4- Establishment of Procurement Policy Unit (PPU) in the Ministry of Finance as Regulatory and Monitoring Body.

PPL had stated the establishment of a “Procurement Policy Unit (PPU) within the Ministry of Finance for Policy and Professional Development, and Performance Monitoring Organ in the field of procurement. The functions of PPU are regulated by MoF by establishing separate procedures.

Functions of PPU are anticipated in PPL and are as follow:

- (i) Monitor and supervise procurement proceedings to ascertain efficiency and compliance with PPL;
- (ii) Collection of data or reports and the review of procurement records and files;
- (iii) Propose improvements in procurement practices to accomplish the purposes of PPL;
- (iv) In consultation with relevant circles prepare, organize and approve procedures, measures and standard bidding documents;
- (v) Assess the procurement needs and capacity of procuring entities;
- (vi) To debar bidders, in accordance with the provision of PPL;
- (vii) To refer violations of PPL to the relevant authorities for prosecution;
- (viii) To carry out economic studies on procurement, comparisons, and future projections, so as to collect information to provide reports;
- (ix) To determine policy for and to facilitate the use of information technology in Procurement, including, (for example) establishing of websites and data bases related to procurement;
- (x) To implement measures aimed at developing human resources and professionalism for Procurement, including recruitment and training Programs, and providing certification of the credentials of members of Procurement Committees and procurement officers;
- (xi) To issue circulars for integrating executions of procurements;

(xii) To annually review and propose any revisions to the threshold limits for award authority;

In addition to abovementioned functions PPU is responsible for establishing of a procurement office in each Procuring Entity in close coordination with Independent Administrative Reform and Civil Service Commission (IARCSC) based on the volume of work and budget of each PEs;

Also to carry out capacity certification assessment and award certificate to those Procuring Entities, who meet the criteria set out by PPU, for standalone procurement, this is in fact the strategy of government of Afghanistan to decentralize the procurement in Afghanistan but to centralize within each Procuring Entity by establishing a procurement office.

5- *Enactment of Public Procurement Law (PPL) for the First time in Afghanistan.*

For the first time, Public Procurement Law (PPL) is enacted in Afghanistan in 2005. PPL is drafted by International Experts which meets the international standards. This law is amended twice during 2008 and 2009.

PPL is translated into national languages and governs procurement of all projects financed by Ministry of Finance or in other words the application of PPL is mandatory to all on budget projects. Rules of Procedures prepared and issued by PPU, guiding circulars and other legal documents issued by PPU complements the implementation of PPL within the country.

6- *Procurement Legal Framework of Afghanistan.*

As mentioned above, Procurement system of Afghanistan is governed by Public Procurement Law (PPL) which is supported by Rules of Procedures, guiding circulars and other legal documents.

1734

Public Procurement Law provides for a sound, transparent procurement system and holds internationally accepted standards the content of which is approved by Donors especially by World Bank.

The purpose of PPL is: to ensure transparency in procurement proceedings; to have effective control of financial affairs and public expenditures; ensuring economy in the procurement of goods, works and services; and providing tendering opportunities for participation to all eligible bidders in procurement proceedings.

PPL provides for eligibility and qualification of bidders as who can participate in public bidding opportunities. In chapter IV PPL provides for procurement proceedings and implementation thereof, within this chapter PPL introduces procurement methods through which procurement of goods, works and services will be carried out. Certain methods have been mentioned as follows:

Open tendering which is in fact the default method of tendering, restricted tendering, request for quotation, request for proposals, international tendering, Invitation to bidders for two staged tendering, procurement of infrastructure and award of concessions and single source procurement.

Submission of Bids shall be from twenty-one (21) to ninety (90) working days. No bids will be rejected except late bids and the bids shall be opened at the nearest time upon submission deadline in a public proceeding in accordance with the bidding documents in the presence of bidders or their legal representatives.

Contract modification and price Adjustment: Contract modification that would increase the value of the procurement contract by up to twenty five percent (25%) may be approved under the relevant procedures and by appropriate award authority. The contract modification which exceeds a twenty five percent (25%) increase in value requires either initiation of a new procurement proceeding, or approval as single-source procurement.

Liquidated Damages (LDs) is stated in PPL as the procurement contract shall provide that the contractor is liable for payment of an agreed sum if there is a delay in contract performance. The agreed sum to be paid per time-unit (day, week or month) of delay, and

meanwhile the force majeure is also stated. The PPL also stipulates that in case of contract termination for default, the contractor will be liable for damages accruing until the entity obtains delivery or performance of a similar procurement.

The amount of LDs is further specified by Guiding Circulars issued by PPU as 0.1% per day or 0.5% per week of contract price for goods and 0.05% up to 0.10% per week for works but not exceed 10% of contract price.

Chapter number VII of PPL about Transparency and accountability which includes the following:

Principles of Transparency, Public Notice of a contract award, Right to Unsuccessful Bidders to Explain, Registration of Contracts, Record and Reports of Procurement Proceedings, Procurement website, Obligation of Procurement Officials, Obligation of Bidders and Contractors, Debarment of Bidders, Right to Review, Review Procedures and Co-operation with Oversight Authorities.

PPL also anticipates establishment of an Administrative Review Committee, by PPU, composed of experts for the purposes of conducting administrative review of applications and related appeals. The Committee is functional and reviewed more than 50 cases and debarred 2 firms from participating in public biddings for a period of 2 years.

Apart from PPL, amongst legal framework, Rules of procedures, Manual for Appeal and Review, SBD for Goods, SBD for Small works, SBD for Large Works, Request for Proposals (RFP), SBD for pre-qualification and Request for Quotation (RFQ) are prepared and officially issued by Procurement Policy Unit of Ministry of Finance and is applicable by all procuring entities both centrally and provincially.

7- Structure of Procurement Department of Procuring Entities at National and sub-National level.

As per the provision of PPL, Each procuring entity shall have a procurement office which shall carry out all procurement activities of the entities. As mentioned above, PPU in close cooperation with IARCSC will work together to institutionalize procurement office of each PEs, PPU is working on the same and so far procurement offices

1736

of 13 Procuring Entities have been institutionalized/ restructured and are properly functional. Two Procuring Entities, whose Procurement offices are already institutionalized, are certified by PPU for standalone procurement. About the sub national level so far 6 provinces are assessed for institutionalization and the establishment of procurement office within governor office is under process. But for the time being the procurement of each secondary unit in provinces is doing their procurement individually with approval of procurement committee functions in governor's office.

8- *Establishment of the interim body to provide procurement facilities for Line Ministries till the establishment of full capacity in the respective entities.*

PPL stipulated in its chapter number X: "Final Provisions" the establishment of Interim Procurement Arrangements which include designation of a special agency to provide procurement facilitation to the entities and opportunities for capacity development of officers in the procuring entities, by taking inspiration from this provision Afghanistan Reconstruction and Development Services (ARDS) is established by financial support of World Bank and is functional till the establishment of procurement offices in each procuring entity as well as establishment of full capacity of each PEs both of them are under process and ARDS will soon be ceased.

9- *Procedures for approval and signing of contracts.*

PPL stipulates two stages for approval and signing of contracts, one is award authority and the other is Special Procurement commission (SPC) PPL has delegated limited thresholds for award authority to approve and sign procurement contracts either by themselves or delegate their authority to their DMs, DGs, or secondary unit's DGs where the value of the contract exceeds the threshold than the PEs is obliged to refer the procurement contract to SPC for Approval. The SPC approves procurement contracts without any limitation.

10- *Capacity building Program taken by Procurement Policy Unit (PPU) of Ministry of Finance and Independent Administrative Reform and Civil Service Commission (IARCSC) of Afghanistan.*

Procurement Policy Unit (PPU) has signed an MoU with (IARCSC) based on which a permanent procurement capacity building component is established within Afghanistan Civil Service Institute (ACSI), for the time being with the financial support of World Bank being provided through MoF channel from PPU budget, as per the provision of MoU, ACSI is to facilitate the administrative issues and take the lead in terms of running the training programs whereas the Procurement Policy Unit (PPU) of Ministry of Finance is to provide the funds needed for the department and supervise the training program being run in central and provincial levels.

Procurement Capacity Building Component is run by national experts comprising of a team leader, eight procurement trainers who had been trained by international procurement trainers, one procurement coordinator and other admin and finance staff.

There are currently three categories of procurement training programs: basic, intermediate and advanced level. Also, special procurement trainings are offered for Auditors of the Attorney General's Office, Control and Audit Office and High Office of Oversight and Anti-Corruption, In addition, the procurement controllers and procurement specialists benefit from such procurement trainings from time to time.

So far more than 3500 trainees have been trained in basic, Intermediate, Advance and Special procurement training courses. Out of which 12 trainees obtained International Certificate in Purchasing and Supply from Chartered Institute of Purchasing and Supply (CIPS) based in UK. These trainees have been trained by international procurement trainer who was a certified member of CIPS.

Apart from training programs in the field of capacity building, Procurement Policy Unit (PPU) of Ministry of Finance has two other major monitoring and capacity building program;

PPU has twenty five procurement controllers assigned in procuring entities for the purposes of monitoring the procurement proceedings of their respective PEs, report non-compliance to PPU and facilitates the use and application of legal framework and Standard Bidding documents.

1738

Along with procurement controllers PPU has 25 procurement specialists assigned in Procuring Entities who provide on job trainings for the officials of the respective PEs and take active participation in the procurement activities from need identification to signing the procurement contract even contract management. The main purpose of assigning procurement specialists within the procurement entities is to expedite the procurement proceedings that will result in accelerating the budget execution for which Government of Afghanistan is always criticized.