

Infrastructure Procurement in Pakistan

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Abstract

In Pakistan, the need for infrastructure is immense while resources and capital are scarce commodities. This paper will explore the methods used in Pakistan to procure infrastructure projects. This paper is a part of doctoral study of procurement practices of developing countries. Through literature and archival analysis, it discusses the project approval and procurement process in Pakistan along with the problems and issues in the procurement practice of infrastructure projects in the country. The major constraints in procurement identified in this study are legal, regulatory, governance, management and project financing which needs to evolve to the growing needs of the time.

Keywords

Infrastructure Projects, Project Approval and Procurement, Pakistan.

1.0 Introduction

Pakistan's demand for infrastructure needs is massive and its resources are not ample to meet this demand. Not only is there limited fiscal space, there are also huge gaps in public sector capacity to build and operate infrastructure (IPDF, 2009). The Government of Pakistan (GoP) estimates that less than half of the infrastructure investment needs can be met with public funds under the Medium Term Development Framework (MTDF) of the Government of Pakistan (IPDF, 2009). The country needs to embark on implementing different forms of procurement to meet its infrastructure needs. The public sector has taken some steps but there is still more to be done. A combination of policy reforms, institutional support, incentives and financing modalities are required to encourage private-sector participation in financing, constructing and managing infrastructure projects (IPDF, 2009). In Pakistan, construction sector is an important sector although not working to its fullest potential but still of prime significance to the country (Azhar et al, 2008). It is among the largest sectors that generates employment within the country as well as a key driver for economic development of Pakistan (*ibid*). Like many other developing countries,

Pakistan is also facing critical project management related issues (*ibid*). Azhar et al. (2008) suggest that procurement is a major factor for cost overruns in projects in Pakistan. Saqib et al (2008) found out that procurement related factors such as project delivery system, project bidding method and project contract mechanism were rated as most significant factors and procurement related factors were rated among the top five critical success factors categories in Pakistan (Saqib et al, 2008). They suggest that there is a need for further study regarding research on procurement in Pakistan which will be useful in implementing projects successfully (Saqib et al, 2008). Much research remains to be done on the links between procurement of projects and its effective implementation in Pakistan (Khan et al, 2008). They expect that further research within Pakistan could reveal more prospective information on the existing mechanisms of procurement of projects in Pakistan and the means for improving the implementation of projects to achieve successful outcomes for the benefits of all the stakeholders and general public (Khan et al, 2008). This paper is initial part of research undertaken for a wider doctoral study. The aim of this paper is to give a holistic view of the procurement of infrastructure projects in Pakistan and the major constraints the public sector faces in this regards.

2.0 Methodology

The methodology for this paper is consists of analysis of literature and archival analysis of different government documents and reports, policies as well as reports and studies carried out by the lending and financial institutions such as World Bank (WB), Asian Development Bank (ADB) etc.

3.0 Procurement Laws and Regulation in Pakistan

Pakistan, being a federal state has different procurement regulations that apply at the national level and within each of the four provinces and two territories (ADB-OECD, 2006). At the national level the procurement system was revamped in 2002. This reform culminated in the passing of the Public Procurement Regulatory Authority Ordinance 2002 and the Public Procurement Rules 2004 (PPR 2004), the latter being inspired by the United Nations Commission on International Trade Law (UNCITRAL) model law (ADB-OECD, 2006). PPR 2004 applies to all procurement by all procuring agencies of the federal and provincial governments. The Public Procurement Regulatory Authority (PPRA) is, however, entitled to exempt the procurement of any object or class of objects from the application of the rules or any other law regulating public procurement (ADB-OECD, 2006).

The principal legislation in force for regulation of public procurement in Pakistan is the Public Procurement Regulatory Authority (PPRA) Ordinance 2002 (ADB, 2007). Public Procurement Regulatory Authority (PPRA), has been constituted thorough an Act of Parliament of Pakistan in 2004 (ADB, 2007; World Bank, 2007 and Shah et al., 2008). The Public Procurement Regulatory Authority is an autonomous body endowed with the responsibility of prescribing regulations and procedures for public procurements by Federal Government owned public sector organizations with a view to improve governance, management, transparency, accountability and quality of public procurement of goods, works and services (PPRA, 2010). It is also endowed with the responsibility of monitoring procurement by public sector agencies/organizations and has been delegated necessary powers under the Public Procurement Regulatory Authority Ordinance 2002 (PPRA, 2010).

The federal government of Pakistan through PPRA has issued procurement rules with legal and constitutional cover for all procurements (World Bank, 2007). The PPRA rules provide an over

arching framework for procurement of goods and services, specifically, for consulting services, these can follow the rules and guidelines provided by the lending agencies or the present Pakistan Engineering Council (PEC) rules, depending upon their application (World Bank, 2007). Pakistan Engineering Council is the statutory body which regulates the engineering profession in the country. The major objective of PPRA-2004 rules is to ensure transparent and cost effective procurement of quality goods and services in the public sector (Shah et al., 2008). The rules provide various procurement options, which can be applied to the construction and infrastructure projects. (Shah et al., 2008)

4.0 Project Approval Processes in Pakistan

The responsibility for the development of appropriate cost and physical standards for the effective technical and economic appraisal of public sector projects including infrastructure projects is vested with the Planning Commission of Pakistan. Prior to sanctioning of projects by the relevant and appropriate forums their technical appraisal is carried out by the concerned technical sections of the Planning Commission of Pakistan. This includes the engineering, commercial, governance, environmental and managerial aspects among others. The Economic Appraisal Section of the Planning Commission analyzes the projects from economic, financial and social viewpoints (Tahir, 2005).

By conducting the archival analysis it was found that the method of infrastructure procurement in public sector in Pakistan can be broadly classified in two distinct methods i.e. the traditional method and the non-traditional method. Within the traditional method the normal practice in public sector in Pakistan is to use the general contracting i.e. Design-Bid-Build. In case of non-traditional methods of procurement for infrastructure projects in the public sector in Pakistan is through public private partnership (PPP). PPP in public sector for infrastructure projects in Pakistan can then be further subdivided into three main types of contractual arrangements which are build-own-operate (BOO), build-operate-transfer (BOT) and build-own-operate-transfer (BOOT). BOT is most widely used for infrastructure projects across the public sector in Pakistan especially in case of transport infrastructure projects. The approval process of both the traditional and non-traditional method of procurement is discussed below.

4.1 Approval of Projects based on Traditional Method of Procurement

According to Tahir (2005), projects and programs to be included in the Public Sector Development Program (PSDP) require getting approvals from the competent forums. Each Province has a Provincial Development Working Party (PDWP) which is headed by the Chairman, Development Board/Additional Chief Secretary and includes Secretaries of the Provincial Departments that are concerned with development. The PDWP scrutinizes and approves projects and schemes costing up to Rs.200 million, having foreign exchange cost of less than 25 percent (Tahir, 2005). Any scheme or project which is financed entirely by the respective provincial government can be approved by the PDWP the maximum threshold for which is up to Rs.1000 million (*ibid*). At the departmental level the Departmental Development Working Party (DDWP) is the forum for approving projects/programs for Federal Ministries/Divisions/Departments which can have a maximum threshold of Rs.40 million (*ibid*). The DDWP is headed by the respective Secretary/Head of Department and includes representatives from the Planning Commission and Finance Division (*ibid*). For projects costing between Rs.40 million and Rs.500 million prepared by the Federal Ministries, Provincial Governments, Autonomous Organizations, etc., are scrutinized for the purpose of approval by the Central Development Working Party (CDWP) which is headed by the Deputy Chairman, Planning Commission and includes as its members the Secretaries of the Federal Ministries

concerned with development and the heads of the Planning Departments of the Provincial Governments (Tahir, 2005). Projects and Schemes with foreign funding of 25 % and above have also to come to CDWP for approval. The Concept Clearance Committee (CCC), which has the same composition and meets concurrently with the CDWP, allows negotiations with foreign donors prior to the approval of the project (*ibid*). However, a project contract can and is only signed once it is approved by the CDWP for the purpose of ensuring the availability of local/counterpart funds (*ibid*). The schemes and projects cleared by the CDWP costing more than Rs.500 million are submitted to the Executive Committee of National Economic Council (ECNEC) for final approval. ECNEC is the highest body of the Federal Government for the approval of projects and programs costing Rs.500 million or above (*ibid*). It is headed by the Prime Minister/Finance Minister and has representation from all development and economic Ministries and Provinces at the Ministerial level (*ibid*). Projects of significant importance or that entailing policy choices or involving multiple Ministries are also approved at the level of the Economic Coordination Committee (ECC), of the Cabinet (ADB, 2007).

4.2 Approval of Projects based on Non-Traditional Method of Procurement

Regarding the approval of projects involving other procurement arrangements, the mechanisms for approval of such projects did not exist initially. In the early 1990's, Pakistan established a policy and regulatory framework for Public Private Partnership (PPP) in the energy sector, which have seen great advances. The framework for PPP infrastructure service procurement in other sectors such as transport and logistics, water supply, sanitation, solid waste management, social sectors, and real estate was developed in the early 2000's and the policy framework was passed by the Ministry of Finance and subsequently by the ECC of the Cabinet in November 2007. Recently the Government has introduced in its various quarters the concept of PPP since it was a new concept for the government the procedure for approval of the project under this programme did not exist (Planning Commission, 2009). The Planning Commission has approved a procedure, proposed by the Ministry of Industries and Production to process/approve the Projects under Private/Public Partnership (Planning Commission, 2009). With the assistance of the Asian Development Bank, the Government of Pakistan has structured a PPP program that includes (IPDF, 2010);

1. "Establishment of a PPP Task Force that is chaired by the Advisor to the Prime Minister on Finance and includes all key stakeholders. The purpose of the Task Force is to formulate a policy, regulatory and legislative structure that is conducive to creating a PPP market in Pakistan;
2. Establishment of the Infrastructure Project Development Facility that serves as the Secretariat to the Task Force, provides 'hands-on' technical assistance to implementing agencies at all tiers of government, builds their implementation capacity, and provides inputs financing, guarantees, subsidies etc.; and
3. Formulating a business plan to establish the Infrastructure Project Financing Facility (IPFF) to provide 'residual' long term fixed rate local currency financing".

Regarding non-traditional procurement of projects and their approvals, they are classified as solicited projects and un-solicited projects. Solicited projects are those projects that are recommended by the government ministries/ organizations to be procured using non-traditional methods such as PPP. Its approval follow the process explained below (IPDF, 2010):

1. "Approval of Project (Preparation Stage): Projects are screened, reviewed and evaluated by the appropriate public institutions

- Planning Commission to ensure consistency with GoP infrastructure policy /strategy
 - Line Ministry or [Province] as contracting authority
 - Ministry of Finance if public financial obligations are involved.
 - The IPDF assess the potential for a project to be a PPP and make its recommendations to the Planning Commission / Ministry of Finance (MoF) and the concerned Line Ministry
2. Approval of Project Structuring and draft concession contract before tendering (as above).
 3. Approval of any final public financial commitments by MoF.
 4. Approval of the award of the PPP concession to the successful bidder by the Contracting Authority. The above Approval Authority includes interrelated processes: These are clear and unambiguous processes in order to support competition, transparency and the best possible PPP transactions. Consultation and market sounding, within the public sector and private sector respectively are essential components of the PPP process”.

According to IPDF (2010) report, unsolicited projects, by contrast, are proposed by the private sector to government as being worthy of consideration as a PPP project. Such projects come almost exclusively from outside the above mentioned programs. It is the Government’s intention, in the early years of its PPP program, to proceed cautiously on unsolicited proposals. All unsolicited proposals are treated on a case-by-case basis and limited to projects that demonstrate genuine and substantial innovation and are supportive of public policy.

The process for unsolicited proposals is as follows (IPDF, 2010);

1. “Private sector identifies a potential project
2. Private sector seeks guidance from GoP of the framework for Unsolicited Bids and discusses this project and especially that the project study must conform to (to be) Issued Guidelines, be of public merit and that the Government has no objection in principle.
3. Private Sector prepares its own Feasibility Study at own cost and risk
4. Private sector submits study and proposal to GoP
5. GoP appraises project and;
 - Accepts project in principle and processes, or
 - Requires more information on, or changes to, the Project, or
 - Rejects Bid outright due to major non compliance with original concept.
6. GoP proceeds or not, according to its rules and regulations”.

Public private partnership (PPP) projects are a relatively new phenomenon in Pakistan and are at the stage of infancy. The Government of Pakistan recognizes the importance of improving and expanding infrastructure services for sustaining economic and social development in its Medium Term Development Framework (MTDF). Substantial investment in infrastructure is required in Pakistan which the government foresees to be provided through public private partnerships (PPP). Attracting private sector investment has been a challenge for the government. The Government is implementing a combination of policy reforms, institutional support, incentives and financing modalities to bolster private sector participation in financing, developing and managing future infrastructure development projects (IPDF, 2010).

5.0 Major Constraints in Infrastructure Project Procurement in Pakistan

The study (ADB, 2007) which is related to constraints in private sector in investment in infrastructure in Pakistan and specifically focuses on Public Private Partnership (PPP) has identified a large number of constraints. Some of these constraints are generic and can be holistically applied to different procurement arrangements and not just PPP. Following are some of the major constraints identified by this study but it is not limited to this study alone.

5.1 Legal and Regulatory

In Pakistan, the different procurement rules and regulations are vague, often having contradictory clauses, making them inefficient and impractical to apply (World Bank, 2007). Ambiguous and imprecise rules in public procurement in Pakistan is allowing for inconsistent and arbitrary behavior to thrive and prosper (World Bank, 2007). The inconsistencies in rules have resulted in higher transaction costs for consultants and contractors when doing business with the government (World Bank, 2007).

According to the World Bank report (2007), the regulatory framework in Pakistan leaves many issues unaddressed. The report further states that the only criterion emphasized in the regulations available is price competition and no provision is made to ensure the quality of work being delivered. This weakness in the regulatory system implies that there is weak institutional capacity on part of the government to select, monitor and regulate consulting and contracting services when it comes to public procurement in Pakistan. Also “the judicial system has a long distance to travel to meet the requirements of the commercial sector in a technically and financially complex – and internationally watched – infrastructure sector” (ADB, 2007).

The non-statutory frameworks for public procurement currently in force are limited in their focus to transparency and accountability, and are unfit to realize the stated aim of the Government of Pakistan to implement other procurement arrangements such as public private partnership (PPP) as expressed in the medium term development framework (MTDF) of the Government of Pakistan (ADB, 2007). There are five key principles of procurement as described by Raymond (2008) they include: 1) value for money (VFM), 2) ethics, 3) competition, 4) transparency, and 5) accountability. The PPRA which has been termed as a ‘skeleton law’ along with the Public Procurement Rules (PPR) 2004, focuses on, and is limited to, transparency and accountability of procurement (ADB, 2007). The study further states that PPRA being a Federal law applies only to procurement by Federal entities which include corporations utilizing public funds for procurement and on the whole the PPRA and the PPR cover conventional procurement only (ADB, 2007). “The efficacy of the PPRA stands minimized in that ‘misprocurement’ – procurement in violation of the rules, regulations and policies – is neither penalized nor rendered ineffective under the law” (ADB, 2007).

Infrastructure Project Development facility (IPDF) is responsible for PPP in Pakistan. It has been observed that there seems to be likelihood for overlap and conflict between the statutory functions of both IPDF or any other body or organisation or a contracting authority for that matter which may be formed or is involved in procurement other than conventional or traditional procurements. At the time of conducting the data the Federal government was in the process of introducing a legal framework by enacting a comprehensive set of laws regulating the private sector role and involvement in financing and operating infrastructure facilities. Until the Bill is enacted, PPP projects are governed by contract law, it can utilize IPDF’s Standardized Provisions but its not binding to use these provisions which themselves are draft model contracts based on Unitary /Annuity and/or user charge payments designed specifically for PPP projects (IPDF, 2009). In addition, the government departments entering into contracts with private sector need to develop

regulatory guidelines in order to ensure quality and fair pricing to be incorporated in the contract thus removing uncertainties during the operational stage or they might have to set up independent regulators with powers to balance the rights of the parties involved which includes the Government, Consumers/Facility Users and the Private Sector (IPDF, 2009). Recently it has been found that the Government of the province of Sindh and Punjab have enacted the Public Private Partnership law while such remains to be enacted by the remaining provinces and territories.

5.2 Governance and Management

The project approval processes in Pakistan has its “roots in ‘executive discretion’ and are antiquated and lead to all procurement decisions (even for sums as low as US\$ 4-5 million) being decided at the highest levels of the Government (the Central development Working Party of the Federal Government or the Economic Coordination Committee of the Cabinet)” (ADB, 2007). This is the state of affairs even for projects that are pure privately funded and does not entail any direct expenditure by the public sector (ADB, 2007). According to the study by the Asian Development Bank (ADB, 2007) in which they have found that there is a project-to-project approval culture at the highest Government level which is inefficient and leads to disempowerment of the public implementing bodies that undertake primary analysis to prioritise projects. They also suggest that this opens the door for considerations that are extraneous to the primary objective of efficient allocation amongst competing demands for limited resources. The study further states that the public bodies remain constrained by this ‘case-to-case’ approval culture.

In Pakistan governance and approvals of projects is over centralized. There is a plethora of disjointed legislations which requires a large number of statutory consents that are in any case not processed by the public body tendering the projects. It is expected from the project developer to apply for and obtain the consents for project implementation after the award of the project and this causes significant delays and often conflicts (ADB, 2007).

Political influence and interference is another problem in procurement of projects and has a substantial negative impact in project implementation. For instance projects are publicly announced for political mileage without adequate feasibility study resulting in much time and effort being consumed in negotiations over project mechanics which then turns out to be futile when a proper feasibility study is undertaken (ADB, 2007). Another aspect of inadequate feasibility analysis is that implementation of projects in the public sector is often delayed by the cash flow difficulties arising out of inadequate budgeting or releases of the funds for utilization (ADB, 2007).

The current procurement approval processes are cumbersome and outdated. Furthermore ‘approved’ contract and bidding templates are preventing innovation and application of innovative transaction structuring (ADB, 2007). The approval processes has its roots in ‘executive discretion’ and are decided at the highest level of the government. The culture of project approval is based on a case to case basis and is over centralised. There is a plethora of process which has to be followed which seems to be the root cause for significant delays. The process and mechanics for approval of projects to be procured with the use of non-conventional procurements follows a somewhat different process but the concept remains the same as that of traditionally procured projects. It is not totally black and white as envisaged in the government’s policy; there are a lot of grey areas which need to be covered. Both the processes have been found to be cumbersome, highly bureaucratic and outdated, and at the same time are extremely time consuming. Hefty and substantial procurements which is mostly the case for infrastructure projects, are subject to the requirement of competitive bidding only which in itself is a multi stage time consuming process

with no room for flexibility. Furthermore, the obligatory use of the 'approved' contract and bidding templates are thwarting innovation. The implementation of projects in the public sector in Pakistan is often delayed by the cash flow difficulties arising out of inadequate budgeting or releases of the funds for utilization for political reasons, inadequate planning and governance issues.

In Pakistan there is a significant capacity constraint; there is a lack of appropriate, qualified and experienced staff to handle financial management including accounting, internal controls, financial reporting, disbursements and procurement. Frequent turnover of supervisory staff directly affects progress of work that they supervise (ADB, 2007).

Overlapping of jurisdictions is a perplexing phenomenon in Pakistan. For instance the matter of local government is an exclusively Provincial subject and in the ADB (2007) study they learnt that "a Federal Ministry of Local Government is functioning actively and its tasks include preparation of development plans, funding proposals, and the like for the Local Government". Also in the case of PPP there is an overlap of jurisdictions of the Board of Investment, the Privatisation Commission, the Economic Reforms Unit and Infrastructure Project Development Facility. This is clouding the identity of the central agency responsible for leading the Policy Framework initiative in case of PPP in Pakistan (ADB, 2007).

Land acquisition is a huge problem. The Federal and Provincial priorities are divergent and resettlement provisions under the land acquisition laws are in conflict with international norms (ADB, 2007). This creates a constraint in land acquisition process for projects and hence delayed start of projects and results in disputes. Land acquisition also has linkages to political interference as well.

Overall there is a need to investigate and explore processes of infrastructure procurement in Pakistan as according to the World Bank study (2007) which states that in Pakistan different processes need to be explored which focus on efficient delivery of the end product, especially large mega infrastructure projects at cost, in time, with quality and functionality (World Bank, 2007).

5.3 Project Financing

In Pakistan there is an absence of a specialized infrastructure financing institution which is a major constraint (ADB, 2007). Infrastructure projects that have long cost-recovery cycles which requires developed capital markets and in Pakistan currently, the availability of long term financing for these projects is available in limited quantity (ADB, 2007). The regulatory measures in Pakistan allowing trust funds to invest in government and corporate securities while restricting investment in Greenfield projects limit the sources of funding for infrastructure projects. Corporate bonds are not included in the list of government approved securities for the banking sector to invest in order to meet statutory reserve requirement. The increasing trend of interest rates is causing increases in project costs and results in higher payback and low rate of return for private investors (ADB, 2007).

There are a number of limitations in financial sectors which is a constraint for financing of infrastructure projects in Pakistan. For instance the financial sector has less liquidity, there is low level of secondary trading, there is a lack of credible benchmark rates, the cost of issuance is very high and has a long processing timeframe. Further there is a lack of an established debt market which is causing a serious shortage of long term financing instruments for infrastructure investment. The government role in promoting private investment is sector specific for example

the government provides power purchase guarantees to independent power producer's (IPPs) while such facility is not available to toll roads project in terms of guaranteeing minimum traffic or cash flow. Also tax benefits as available for power sector are not offered to other infrastructure sectors projects. The stamp duties can be very high and results in the same transaction value being subject to stamp duty many times over, based on the number of 'instruments' in the transaction. (ADB, 2007)

The knowledge and understanding of the principles and prerequisites of project finance is fairly low at an institutional level in the public sector, except for institutions that have been implementing PPP and other procurement forms. "Public sector institutions, however, remain pre-occupied with the objective of 'asset creation' and this is often the point where the minds fail to meet. Key to bridging this divide is a bankable feasibility study prepared with bankability as its foremost objective with asset creation being the means to an end. Such feasibility preparation requires a level of technical skills which again is a capacity constraint perennially noted by the private sector" (ADB, 2007).

6.0 Conclusion

Infrastructure procurement is a fairly complex phenomenon and requires innovation, specialty of skills, expertise including policy, regulatory, financial and governance instruments in place to tackle different eventualities. Although most of the factors driving infrastructure procurement process are common across the globe, it should be granted that local solutions to local problems should be pursued. There is a dire need to innovate in the procurement of infrastructure projects in Pakistan. The Government of Pakistan realizes that all infrastructure needs of the country cannot be with public funds, but the fact of the matter remains is how to attract, retain and build investor confidence from the private sectors; how to get the knowledge and understanding of the principles and prerequisites of project finance; what policy measures are required and how to maintain a consistency in policies; how to increase the efficiency regarding management and governance of procurement processes; how to develop a regulatory framework that addresses every aspect of procurement; etc. The policy, regulatory, financial and governance instruments at present in the country are at the stage of infancy regarding new and different procurement forms. They need to evolve to the growing needs of the time. Merely incorporating what has been successful in other countries will not bare fruitful results.

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