

स्थानीय सरकार सबलीकरण



The Asia Foundation

The Australian Government - The Asia Foundation Partnership in Nepal

Policy Dialogue on the ‘Procurement Reform in the Health Sector’

1st August 2019

Rapporteur’s Notes

A Policy Dialogue on the ‘**Procurement Reform in the Health Sector**’ was held on 1st August 2019 at Hotel Shangrila, Kathmandu. The dialogue was co-hosted by Public Policy Pathshala and The Asia Foundation and was attended by health procurement experts, members of parliament, and experts on local governance, donor representatives, civil society members, relevant stakeholders including local government representatives.

The main objective of the dialogue was to analyze the scope of current Public Procurement Act (PPA) along with practical challenges faced during procurement of medicines and equipment and its effect in health management system. The dialogue aimed to discuss the practical and legal issues in the implementation of PPA and provide insights that identified potential areas for improving public procurement processes related to health procurement. Recommendations and suggestions including the need to amend the Procurement Act given the challenges faced during procurement of essential medicines and equipment needed for health sector and how the procurement difficulties affected the health management system were discussed.

Public procurement practices in health sector under federalism

Mr. Bhavanath Dahal, Public Procurement Expert presented a paper on public procurement practices under federalism and the scope of current PPA in the context of health sector.

Public Procurement Act (Overview):

The Procurement Act (2007) codifies in detail a well-planned procurement process, enacting legal guidelines in the formulation and planning of public procurement as per the provisions in the Act. This legislation has provided government entities a legal framework to acquiring goods and services, ranging from operational needs to commissioning infrastructure projects all over Nepal. The act is intended to streamline procurement processes, and places emphasis on systems and processes that bring about transparency, competitiveness and efficiency, promoting good governance practices in public procurement.

Nepal’s Procurement Act is based on UNCITRAL Model, but some provisions vary in the procurement regulation than in the act, with two types of procurement agreements--multi-year

contract and organizational contract. While many of provisions in the Act and regulations are very practicable, actual implementation remains a challenge.

Act Provision Vs. Practice

- The Act's provisions provides clear guidelines and requirements for public procurement of goods and services. Procurement planning processes includes ident ; budget proposed, budget approval, demand consolidation, specification and budget planning shall be conducted before the next fiscal cycle in which procurements will be issued. However, the approved budget will be released next year only. And in the next fiscal year, only procurement process shall proceed further and documents will be updated. But in practice, only procurement planning is developed, estimation of tentative budget and 'abunda budget' is done in the previous fiscal year. The problem with 'abunda budget' is that there is a high chance that the approved budget will be controlled and might not be released as the budget will be under another heading. In the next fiscal year, procurement planning, ad hoc-budget, last minute document preparation, ad hoc-specification and long list of discussion on placement of advertisement and call for bids are done.
- The provision in the Act demands of detailed specification but in practice, generally, a general specification such as three units of furniture, eight units of laptop etc without any specification of the size, quality of the materials are mentioned in the procurement document. The more detailed specifications, the more procurement process will be easier.

Necessity

- Procurement planning and clarity on the budget in the beginning of the year and updating of estimation periodically will support the procurement process.
- Competitive qualification as per PPA and bid documents also helps to ease the procurement process.
- Technically skilled human resources for evaluation of bid documents are the prerequisite of any procurement process.
- Public Procurement Monitoring Office (PPMO) have to be in place to provide immediate suggestions.
- The authorized official should have all the rights and responsibility and official of the concerned institution cannot intervene in the procurement process.

Health: Special Procurement or General procurement?

- The procurement Act has defined procurement into two stages- in special cases and in general case and it can be used for buying commercial goods, products, construction materials and other services.
- So, if we look at the procurement in health sector then it cannot be defined as special case. The basis for terming procurement in health sector as special case is because of the specification and for the expiry date. However, these criteria does not make it a special case because all the procurement process demands technical specification and in case of

expiry date, the dealing of the procurement process for goods with expiry dates demands experts on such products for proper specifications.

Management problem:

- Unallocated budgets, additional budgets and regular transfer of budget for procurement needs are the major problems that create irregularities and raise compliance concern in the procurement process. Even though the budget is approved, often times they do not release the budget citing reasons such as lack of program approval. The frequent transfer of the government officials who are involved in the procurement process or with the program hinders the procurement process as well.
- As a rule, the concerned office is prohibited to be involved in the evaluation process but the concerned office's regular interest in the evaluation process often affects the procurement process. Research shows that generally the concerned office do not show any interest in its program, procurement planning and monitoring of progress but they are interested only in the bidding process.
- The involvement of the employees of the concerned office during the technical evaluation of the bidding document influences the procurement process.

Concerned health related agency

- Lack of transparency during the bidding process also raises concerns of violations of fundamental procurement provisions. For example;
 - Solicitations being advertised in newspapers with lesser circulation, leading to less visibility and transparency of the procurement itself.
 - The details of the procurement process are discussed with the body requesting the product/service which is against the Act, violating a basic norm of procurement process.
 - Documents are collected from a competitive bidder without any written documentation.
 - The evaluation process is longer than anticipated
 - Collusion with service providers leading to leakage of procurement documents and information. This results in gross violations of procurement practices where specifications and provisions listed in the requirement allows a specific vendor or suppliers to be eligible for the bid.

Public Procurement Monitoring Office

The Public Procurement Monitoring Office (PPMO) is established under Office of the Prime Minister with the responsibility of preparing bidding documents but apart from few bidding documents, the PPMO has not been able to function and operate effectively. As an agency authorized and responsible to prepare bidding document guidelines as per the types of procurement documents, raises serious concerns on the government's ability to monitor and provide performance monitoring support to all three tiers of government bodies. The current set of

procurement guidelines and bidding documents also require review and updating to expedite procurement processes in Nepal's federal architecture.

- The PPMO does not take responsibility or following with monitoring during technical glitches during e-bidding.
- There is a lack of procurement training/education, especially in the federal context.
- The PPMO has not been effectively involved in monitoring.
- Lengthy documentation and certain sections ambiguous language hinders effective compliance of policies.
- The review committee has been dysfunctional.

PPMO's supportive role

- The PPMO office can provide support in setting criteria to define specific goods, for example in the case of goods produced in Nepal, definition of national mainstream newspaper, how to evaluate between different specifications, solutions to cases where biddings get equal marks. The PPMO can set a criteria's if bidders acquire equal points with conditions that also put weight on quality of service to ease evaluations and selection processes.

Oversight bodies:

- The oversight bodies' involvement in the evaluation process is one of the major problems faced during procurement process. In case of need of any suggestions regarding confusions then the question can be asked to the chief of office in writing.
- There is a lack of understanding in the regulatory body between evaluated lowest price method vs. lowest-bid price method.
- The oversight bodies procedures are slow to process and review documentation/files .
- They seek support from their departmental officials rather than from the expert, which in turn delays the whole procurement process.
- They neither take the responsibility of the time and energy taken up during the procurement process nor mention it in the report.

Budget releasing body

- Sometimes the budget is released without proper documentation which later becomes the root cause of mismanagement.
- The budget released under the political pressure/influence and in cases of budget released after July cannot be properly utilized.
- The procurement without planning also creates huge problems during budget execution cycles. Similarly the transfer of officials also affects the procurement process.

Suggestions:

- There is a need for framework contract so that it will be easier to procure item-wise products.
The framework contract will help to make bidding more competitive and fair. The bidding process has to be done through PPMO. The specification should be clear and should be done in advance.
- If the cross bidding is done between districts or state level for free rates competition then it will lower the rates and the problem of consumables will be solved.
- At the local level there is need for widespread procurement education in coordination with various ministries.
- Similarly, all kinds of procurement needs to be done after preparing plans and proper specification will help to solve the problem caused due to ad-hoc procurement process.

Update by Bhogendra Raj Dotel, Director of Management Divison/ DoHS on Current Status of Procurement and Supply Chain in the Health Sector

In Nepal, the Department of Health Services (DoHs) procures more than 100 commodities and vehicles as well as maternal child health commodities, hospital furniture, contraceptives, essential drugs, health equipment, stationaries etc. From last year onwards, the fund has been distributed to all seven provinces to procure essential drugs as a part of decentralization so the volume of procurement has drastically gone down. Earlier DoHS was the sole body responsible for health procurement with 5 regional directorate offices, 75 district administrative offices and 81 organizations and budget of around Rs 1.5 billion allocated for the procurement of health-related commodities.

While procurement has been decentralized and it still takes place in DoHS; seven social provincial development ministries, 754 local units have been added to manage a larger fund for health-related procurement needs.

In total, DoHS has prepared 73 total procurement packages out of which 70 package's procurement process started, 68 notice published, 67 bid opened, 66 evaluation completed, 59 contract signed and have completed more than 90% of procurement work.

Commentary: Gagan Kumar Thapa, Member of Parliament

- We had an understanding that it was the PPA was causing the delay in the procurement process. However, after starting the discussion on an amendment did we realize that a lack of compliance and ambiguity in guidelines were the main issues of procurement management. At the moment when the PPA is being reviewed and revised, formation of a committee with a group of MPs from different parties who are interested in the procurement process with the aim of in-depth consultation on the issue would be more appropriate.

- Another problem is due to lack of proper provisions in the regulation which results in misinterpretation of both the Act and regulation.
- The high-level committee on medical procurement has prepared a report and has already submitted it to the government but is yet to be implemented.
- There is a serious problem in procuring health equipment. The hospitals which have the technical capacity have good practices that can be learnt from but in case of others with lesser technical capacity the result is far from satisfactory.
- We had prepared a seven-year plan for health sector and we did a research on the situation of health sector and we found out that there is a huge deficit of skilled human resources as well as medical equipment in all the hospitals across the country.
- Our research showed that we need at least Rs 30 billion for health equipment for all government hospitals for the next seven years.
- When we got an opportunity to meet the Chief Executive Officer of one of the global medical equipment suppliers at WHO Headquarters we discussed with them whether they would be willing to provide us such equipment based on installment plan and capacity to pay. They agreed to our proposition stating that they have been doing the same with Kenya with installment payment plan agreement for 10 years. If we can adopt a similar method, preparing a comprehensive list of all the equipment's with single specifications, we can have it procured from the global market. The quality of the product is assured, and it also saves us from administrative hassles. This will be a milestone for health care service delivery if adopted.
- While it is important to decentralize roles and responsibilities, certain situation and procurements demands a centralized approach. Exceptional cases where volume and costs can be offset with economics of scale as well skilled human resources are required will require a centrally driven procurement process

Challenges:

Concerns from the participants on an effective procurement mechanism for health commodities should be different compared to procurement of non-health commodities were raised. This is not clearly stated in the Public Procurement Act. Considering the sensitivity and urgency of the health sector, the participants stressed the need for separate chapter for procurement in health, in the Act. In addition to that, the discussion was also centered on areas related to: Framework agreement, Technical specification, Quantification and Forecasting, disposal of expired medicines, Quality Assurance of drugs and so on.

Capacity:

There are challenges regarding lack of capacity especially in the provinces:

Limited Sectoral expertise:

- Given the new mandate of the Provincial Social Development Ministries, the scope of work which not only includes health but other sectors, limits the ability of ministries and its officials to prioritize and focus on the health sector completely. With the staff adjustment

process ongoing and other sectoral responsibilities, skilled human resources are stretched when sectoral experts are required for support. While the volume of resources is being shared, the devolution of procurement processes has increased overall, including health.

Procurement Process challenges with allocated and unallocated budgets:

- There are times when, unallocated budgets are essential to meet unforeseen costs and escalations during procurement. For example, in the case of health camps that have a allocated cost budgeted for 100 patients and there is a rise in more than 200 patients, in such cases the budget gap is covered by unallocated budget. But the problem arises when allocated budget is used for procurement process.

Use of back-date

- Backdated purchase orders are a constant issue in procurement processes and directly affect the execution of timely procurement orders. Given the complexity with federalism and documentation required during procurements within the government, communication and coordination is a serious concern. During these situations and deadlines, regulations and guidelines tend to get overlooked to fast track deliveries of procurement that compromise processes and compliance provisions that need to be met.

Frequent changes in authority

- Frequent changes in authority causes delays in the whole procurement process. For example, there are instances of changes in the authority up to 5 times in province 5. Similarly, the frequent transfer of skilled human resources also impacts the procurement process.

Case Example:

- A Zin export machine in province 1 and Rs 1 Crore was allocated but due to lack of experts for the cost estimation, specification, the procurement team coordinated with Nepal Telecommunications and published a tender notice. However, a company filed a complaint before all oversight agencies stating that the specification had a bias and was meant for only one company. This created a problem and the procurement process was halted. Later the Ministry of Health issued a letter stating to go ahead with a previous procurement precedent practiced since the last 10 years. This took a long time and delayed the award to the selected contractor. As a result of this delay, the company was not able to the short notice and the contract had to be terminated.

Narayan Dhakal, Member of high-level committee sharing of findings and recommendation from the high-level committee on medical procurement

- Two years ago, a high-level committee under the coordination of the Health Ministry with the representation of secretaries from all line ministries was formed to assess the gaps in

the health sector and to ease the procurement process by making the PPA and regulations more effective.

- The team provided suggestions on two major areas- a) how to procure medicine and equipment directly from international companies and b) how to monitor costs on medicine by private companies and to make it easily assessable for everyone at a lower price. The committee conducted a research on to how to minimize the middle-level supplier, lower the commission and to create a monopoly procurement so that the government could deal directly with the production company.
- The committee provided 24 recommendations and envisioned a specialized team to work on the procurement processes where competent national and international companies could bid at the supplier's end. The committee suggested dealing not only government-to-government but also where the supplier could directly deal with the government as well. At the local level, a framework contract was proposed.
- The committee had already given the action plan to then Prime Minister Sher Bahadur Deuba and he delegated it to the Chief Secretary for necessary action. Later Office of the Prime Minister took the lead, but things have not progressed further.

Q/A and Suggestions

Findings:

Complex procurement process

- We currently follow the World Bank's procurement guidelines for planning, review process, timelines for individual contract, national contract and Memorandum of Understanding. While the guidelines are helpful, it takes up to a minimum eight to nine months which has resulted in a backlog 108 items for essential drugs that need to be approved due the individual bidding. The procurement process is very complex. We also use framework contracts and we can do central bidding as well.

Capacity enhancement:

- Since this regulation was developed before federalism was adopted it is very important to revisit and optimize management of human resources, infrastructure, information and finance accordingly.
- In some cases, it is very important to conduct central bidding locally but due to lack of skilled human resources, it might not be possible. The government must develop separate procurement Acts for different tiers of government as well as enhance capacity at the local level.

Separate Public Procurement Act:

- There should be a separate public procurement Act for health sector and there is also a need to establish Ministry of Health at provincial level so that it will be easier to provide health care services effectively. Discussions are underway for PPA for health sector with Ministry of Law and Justice.

- The rural municipalities too have to be involved in the procurement process so that the procurement process will be more transparent. Having an integrated model for procurement process will be helpful.

Way Forward:

The participants further realized the need for discussion with other stakeholders who are closely working in the procurement sectors to know the actual challenges in procuring the medicines and equipment. For e. g

- Discussion program with pharmacist (people engaged in buying and selling drugs)
- Discussion with PPMO
- Follow-up discussion with experts in procurements to finalize the areas of amendment
- Necessary discussion with stakeholders to identify the alternatives for direct procurement

Also, the need for orientation to other stakeholders regarding Public Procurement Act was identified from the discussion.

The highlights from the discussion were also related to:

- Need for separate chapter for procurement in health
- Separate bidding document for health
- Provision of direct drug procurement from company.
- Need for amendment of hospital pharmacy guideline