



Institution Building in Procurement Policy Unit of Ministry of Finance

Implementation of new Procurement Law 2008

Restoration of ARTF Recurrent Cost Funding



In July, 2008 a new Procurement Law, which was the successor of the Afghanistan Procurement Law 2005 was enacted by the Government of Afghanistan (GoA). However, World Bank (WB), a major donor and ARTF administrator, expressed strong reservations against the new law since many provisions in the new Law did not meet international standards and prior consultation was not done with relevant donors while enacting it. Consequently, it suspended ARTF recurrent cost funding to GoA. This was a serious situation for GoA and if not resolved, had the potential of triggering a financial crisis¹ for the government.

The challenge for the Procurement Policy Unit (PPU) led by the CAP team in Ministry of Finance (MoF) was to quickly take necessary steps towards building consensus and agreement amongst all the stakeholders, especially WB, on the remedial action to be taken and to implement the same. The goal was to get the ARTF funding resumed at the earliest.

The first step was to understand the differences between the previous Law and the new Law and implications thereof. This required translation of the Law from Dari to English. The immediate question to be addressed was who should translate the Law. An obvious option was to outsource the job but there had been problems in the initial translation which was done by an outside agency, so this option was not exercised. WB had also insisted on a 'reliable' translation as a prerequisite to starting the remedial dialogue. The translation was therefore done in house by the PPU team. CAP national coach took the lead and there was active participation by other PPU staff. Several rounds of editing were done including consultations with legal advisors and the final version was shared with WB.

On receiving the official and reliable translation of the Law, WB responded with a total of 66 observations addressing substantive issues in the Law along with a clause by clause commentary. Discussions were held with WB representatives in a series of meetings to work out the way ahead to suitably address all the issues. The responsibility of the CAP team was twin fold: On the one hand it was to be ensured that a response is developed for all the observations of WB. On the other hand GoA i.e. senior management in MoF had to be convinced on the course of action to be taken in the coming months. At the same time it was to be ensured that the positive features in the new Law were retained.

After detailed discussions with the WB, it was agreed that compliance on many observations could be met through policy circulars, rules of procedures and modifications in standard bidding documents. However, there were certain observations that could be complied only through amendments in the law. These related to imprecise or awkward definitions, vagueness in provisions, misplacing of certain provisions which included inter alia: request for quotations provisions, prequalification proceedings, review procedures and time limits provided to Special Procurement Commission. After several rounds of discussions with WB, PPU, under the guidance of CAP team prepared a solution matrix. The matrix proposed that 27 observations out of 66 would be complied through amendments to the Law and rest would be addressed through subsequent legal and policy documents. The preparation of the solution matrix and acceptance by WB was a major milestone in the journey whose final destination was resumption of ARTF funding.

Next two important milestones were drafting of the amendments and building up stakeholder ownership within the government, especially MoF. CAP team, with the assistance of a legal advisor completed the task of drafting the amendments suggested in the solution matrix.

An initial step in developing stakeholder ownership was to convince the government about the urgency and necessity of the proposed action. To start with, H. E. Minister of Finance was briefed and convinced about the proposed solutions over a series of meetings. Thereafter, the matter was referred to and discussed with ministry of Justice (MoJ). Meetings of representatives of all Line Ministries/Procuring Entities and others (involved in drafting the initial law) were held under the aegis of Taqneen, MoJ to build consensus. PPU team led by CAP International advisor presented arguments in support of the rationale and urgency of the amendments. After prolonged discussions, the proposed amendments were finalized with some modifications.

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A substantial portion of the budget of government of Afghanistan is funded through ARTF funds. Suspension of these funds was therefore a matter of grave consequences for GoA.

Thereafter the different steps necessary to lead to a Presidential decree were taken. All this was done while meeting with the time deadlines of WB and of the running parliamentary cycle. Finally, after cabinet approval, the amendments were promulgated through a Presidential decree in January, 2009. An immediate outcome was restoration of recurrent cost funding under ARTF.

In addition to steering the whole process and bringing it to a logical conclusion, CAP team also made significant contributions in bringing in innovative and effective elements in the procurement law. One such example was introduction of the 'Scheme of strengthening of procurement control function of line ministries/procuring entities' wherein 'Procurement Controllers' were placed in the ministries on behalf of MoF to facilitate high value procurements and to strengthen the procurement monitoring. This scheme, along with the provision of increased procurement awarding threshold limits for the ministries will go a long way in rationalizing and simplifying procurement processes in government of Afghanistan.

The amended Law which now meets international standards has raised the comfort levels of all the stakeholders and put the public procurement reform process that had slowed down during the impasse, back on fast track. Though it is a significant achievement, complacency has not struck CAP team. There are still a lot of tasks at hand for PPU in the post Presidential decree period. These include incorporating Dari amendments, alignment of issued and to be issued documents with the amended Law and taking further action as per solution matrix agreed with the WB.

CAP team played a very important role in steering the whole process right from the time when ARTF funding was withdrawn till the moment when presidential decree was promulgated and ARTF funding restored. CAP team performed the role of a change management catalyst, providing at each stage, sound technical advice, facilitating multistakeholders' dialogue process, defining roles & responsibilities of different players² and most of all sensitizing the government to the urgency of the situation and the need for change. In the process CAP team also contributed towards institutional as well as individual³ capacity development in PPU. All this effort resulted into a win-win situation for all: WB, MoF and all other stakeholders. The magnitude of the success of CAP team's initiatives in salvaging the situation was also appreciated by the WB team.

"It was a miracle that whole exercise could be completed so fast".
- Paul Sisk
FM specialist, WB

The process highlighted many interesting organizational and behavioral dimensions along with throwing up lot of questions: who will translate the Law in English? Who will certify it as authentic? Who should propose amendments to the Law? Would it be PPU in MoF or Ministry Of Justice? And so on. CAP team provided answers to most questions and expedited the implementation of the solution. Probably in the absence of satisfactory and acceptable solutions, the stalemate could have prolonged and the "miracle" would not have happened.

Along with the success, some key learning points came out from this experience:

- The policy and legal formulation and changes must involve all the stake holders in the process. Had PPU and WB been involved in the process of preparing the Procurement Law 2008, the problems necessitating amendments would not have arisen
- In any such capacity and change management interventions, the implications of following or not following the suggested course of action are to be clearly brought out to bring consensus and agreement amongst different stakeholders
- The advisory and capacity gaps can be filled up by clarifying issues, roles and responsibilities while all the time keeping an eye on the bigger picture.

² Ministry of Finance and Ministry of Justice had different legal responsibilities but there was ambiguity on this. This was resolved during the several discussions between the two, facilitated by CAP team.

³ CAP team used the mix of advising and coaching for capacity development. While advising helped in institution building through the new stronger procurement law, coaching was provided to PPU staff to strengthen them in dealing with such issues in future.