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**INDIA: Maharashtra Rural Water Supply and Sanitation
Program
(Program-for-Results)
2014-2020**

Fiduciary Systems Assessment

FINAL

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Fiduciary Systems Assessment

ABBREVIATIONS AND ACRONYMS

| | |
|-------|--|
| ACB | Anti-Corruption Bureau |
| BRC | Block Resource Center |
| C&AG | Comptroller and Auditor General of India |
| CAFO | Chief Accounts and Finance Officer |
| CEO | Chief Executive Officer |
| DLIs | Disbursement-Linked Indicators |
| FSA | Fiduciary Systems Assessment |
| GoI | Government of India |
| GoM | Government of Maharashtra |
| GP | Gram Panchayat |
| GSDA | Groundwater Surveys and Development Agency |
| IDA | International Development Association |
| INT | Institutional Integrity |
| M&E | Monitoring and Evaluation |
| MIS | Management Information System |
| MJP | Maharashtra Jeevan Pradhikaran |
| NBA | Nirmal Bharat Abhiyan |
| NRDWP | National Rural Drinking Water Program |
| PAP | Program Action Plan |
| PWD | Public Works Department |
| RA | Running Account |
| RTI | Right to Information |
| RWSS | Rural Water Supply and Sanitation |
| STA | State Technical Agencies |
| SWSM | State Water and Sanitation Mission |
| ToR | Terms of Reference |
| VWSC | Village Water and Sanitation Committee |
| WSSD | Water Supply and Sanitation Department |
| WSSO | Water Supply and Sanitation Organization |
| ZP | Zila Parishad |

A. Executive Summary and Background

1. A Fiduciary Systems Assessment (FSA) was carried out to evaluate the arrangements relevant to the Program and to determine whether they provide reasonable assurance that the Program funds will be used for their intended purpose. Taking into account the improvements required and the agreement on the actions required to strengthen the systems (which are reflected in the PAP), the overall fiduciary framework is considered adequate to support Program management and to achieve desired results.

2. GoM has a well-developed budgetary framework that ensures allocation of adequate resources to all departments and programs. There is sufficient predictability in the availability of resources; however, to maintain transparency in GoM's financing, an exclusive budget line has been allocated to this Program – as is usually done by GoM for externally aided projects. Funds will initially be released by the state treasuries; however, procurement actions will be taken and final payments will be made by SWSM, MJP, GSDA, ZPs and GPs, which operate outside the budgetary system¹ and use commercial banking channels for financial flows and payments.

3. Fiduciary arrangements in the sector are guided by several rules and legislations, including the state financial rules, Public Works Department (PWD) Manual, Store Purchase Rules, MJP Act, ZP Account Code and the Bombay Panchayat Rules. The existing governance and accountability arrangements in WSSD include the Anti-Corruption Bureau, which enforces the Prevention of Corruption Act, 1988; Audits by the Comptroller and Auditor General (C&AG) of India, the country's premier auditor; Right to Information (RTI) Act - 2005; and WSSD's vigilance function and its grievance redress system (E-Pani). Issues identified under the FSA, as summarized in the following paragraphs, will be addressed through the PAP, and other technical assistance and capacity building measures.

I. Procurement Systems

4. The state has a reasonably well established procurement system for works, which are described in the PWD Manual, including: detailed bid documents that meet the requirements of standard conditions and evaluation criteria; a well-developed evaluation process; and an acceptable performance of an average of 45 days for processing contracts. For procurement of goods, which is limited to the establishment of rate contracts for pipes, the 'Stores Purchase Rules' of GoM apply. Services procurement, which is used rarely, is handled under procurement procedures for works.

5. The assessment of the existing procurement management system and arrangements identified certain areas for improvement through Program support: rules and guidelines that are spread across multiple documents and frequently issued circulars leading to a lack of comprehensive instructions for all steps of the procurement process; inadequate regulations for the procurement of services; possible entry barriers for contractors imposed by the mandatory registration of contractors; need for alternative dispute resolution mechanisms; procurement

¹ These entities receive funds from the state in form of grants through the Treasuries and then make payments using commercial banks (with the exception of GSDA).

planning; contract administration; standards for disclosure/transparency; system for procurement monitoring (MIS); and oversight over procurement processes.

II. Financial Management Systems

6. The annual expenditure on the RWSS sector totals about US\$355 million, of which a significant portion (65- 80 percent) is spent through GPs. The balance is spent predominantly by MJP, whose mandate is to cover all large/multi-village schemes. Financial flows have a defined route and funds are periodically released by the Finance Department to the expenditure-making entities, such as MJP, GSDA, and ZPs. ZPs, in turn, release funds to GPs for making payments to contractors. Basic accounting records are maintained at all levels, except at GPs where record-keeping is irregular and weak. Independent and regular audits are conducted at all levels: by the C&AG at state-level institutions; the Local Fund Auditor (attached to the Finance Department) at the ZP level, and firms of Chartered Accountants at the GP level.

7. Financial management performance is constrained by several issues: MJP follows a single entry system of accounting, which is not guided by clear rules; MJP audit reports show several recurring observations, in addition to the audits being regularly delayed; the level of ZPs’ oversight and control over GPs (need for fiduciary controls without being burdensome, but allowing independence of GPs); all releases to GPs are recorded and reported as expenditure, although expenditure may be incurred after weeks/months; and, at the GP level, audit acts only as a post control measure and the audit process is not standardized.

The audit arrangements which are applicable for the Program are shown in Table 1:

Table 1: Program Audit Arrangements

| Scope of Audit | Responsibility | Remarks |
|--|----------------------------|--|
| Financial Statement Attest Audit | C&AG | Audit of Program financial statements |
| Other state-wide audit mechanisms which would also review this Program: | | |
| Annual C&AG audits of GoM accounts – certification of financial statements, opinion and observations on performance of the state, performance audit of select departments/ schemes | C&AG | Financial statements and performance aspects |
| Local Fund Audit of ZPs | Local Fund Auditor | Audit covering financial statements and propriety aspects of ZPs |
| Audit of GPs by Chartered Accountants | Chartered Accountant firms | Audit of sub-project implementation as per standard ToR |

III. Governance and Accountability Systems

8. The Anti-Corruption Bureau (ACB) has jurisdiction over all employees of the state government. The ACB has only an investigative mandate and conducts inquiries into cases referred

by government departments, the state Ombudsman (Lok Ayukta) as well as complaints filed by citizens on bribery, corruption, criminal misconduct, embezzlement of government money and other corrupt practices by public officials.

9. Each line department or ministry is required to conduct preliminary enquiries on misconduct by its employees. Only a few departments in Maharashtra, such as the Public Works and Water Resources Departments, have assigned this fiduciary responsibility to a Vigilance Officer, based on the GoI model. WSSD does not have a similar vigilance cell. WSSD handling of corruption cases internally is neither codified/formalized nor recorded/disclosed. The PAP proposes identification of an officer, with a clear mandate and designated responsibility for handling any allegation of fraud and corruption, supported by an established cell. The Terms of Reference (ToR) of the officer, along with an annual report on the discharge of the vigilance function, will be disclosed regularly. All allegations of irregularities under the Program will be conveyed to WSSD.

10. Other governance and accountability mechanisms include: (a) C&AG audit, the scope of which includes both the prevention and detection of fraud and corruption; (b) WSSD will disclose information and respond to requests for information in line with the RTI Act of 2005, through its head office and a network of more than 250 Public Information Officers across the state; and (c) WSSD's grievance redress system (E-Pani) records and responds to complaints relating to the sector and the Program will strengthen the same as appropriate. The PAP addresses strengthening of the vigilance function and the grievance redress mechanism (see Table 5, Action #1).

11. *Applicability of Anti-Corruption Guidelines of the Bank for the Program.* Reflecting its long-standing commitment to transparency and accountability, Maharashtra is fully committed to ensuring that the Program's results are not tainted by fraud or corruption. Through the Program's legal documents, India (as the recipient of the IDA financing) and Maharashtra are formally committed to the obligations under the Anti-Corruption Guidelines for PforR operations. In particular, in the context of this Program, Maharashtra has agreed to report to the Bank any credible and material allegations of fraud and/or corruption regarding the Program as part of the overall Program reporting requirements. The Bank will inform the recipient and Maharashtra about any allegations that it receives. Maharashtra has also agreed to ensure, through regular Program audits, that persons or entities debarred or suspended by the Bank are not awarded a contract under the Program during the debarment or suspension period.

12. The Bank's right to investigate allegations regarding the Program's activities and expenditures, and the related access to required persons, information, and documents will be observed in accordance with the standard arrangements for this purpose between GoI and the Institutional Integrity (INT) unit of the Bank.

B. Fiduciary Systems Assessment

I. Introduction

13. The Bank is partnering with GoM to support the RWSS program of the state. As part of Program preparation, in accordance with OP/BP 9.00, the Bank carried out a Fiduciary Systems Assessment (FSA) of the RWSS sector, to determine whether the fiduciary systems provide

reasonable assurance that Program expenditures will be used appropriately to achieve the intended purposes. The FSA is broadly based on work done by a consulting firm and the World Bank staff working on procurement, financial management, and governance systems.

II. Sector Overview

14. The current institutional framework of RWSS abides by the decentralized framework for service delivery which is empowered by the 73rd Constitutional Amendment and the emerging needs of the sector. Key stakeholders involved in the RWSS sector include WSSD, WSSO, MJP, GSDA, ZPs at the district level, and concerned beneficiary GPs at the village level. The sector is governed by the State Water Supply and Sanitation Mission (SWSM) at the state level, which is mandated to make policy, and approve and monitor scheme implementation. SWSM's role is to support and monitor the overall implementation setup in the state.

15. WSSD is the key department responsible for the implementation of schemes/projects in this sector at the state level and through its offices at the ZP level. A majority of the schemes are implemented by beneficiary GPs under the aegis of the concerned ZPs. MJP and GSDA are the State Technical Agencies (STAs) for Maharashtra, each with its separate mandate – MJP for complex and large multi-village RWSSs (apart from urban water supply schemes which are also its domain, outside of the RWSS structure), and GSDA with a mandate for water source identification, certification and strengthening. ZPs and GSDA support VWSCs (under the GPs) in implementing schemes by providing technical supervision and control. Districts and sub-districts monitor implementation and provide support to the VWSCs. While the block level (sub-district) does not have any operational or fund routing role, it is functionally the closest to GPs and provides support on social issues, as well as monitoring schemes being implemented. BRCs have been formulated at the block level to undertake capacity building and impart training on procurement, accounting, social awareness, dispute resolution, record keeping, etc.

16. Accountability arrangements for the sector are based on several guidelines and rules, in line with the institutional framework. These include the Maharashtra financial rules and budget guidelines which guide planning, budgeting and release of funds. However, expenditure is significantly impacted by rules laid down in the guidelines of two GoI schemes: NRDWP for water and NBA for sanitation. These guidelines specify funds flow and cost sharing arrangements between GoI and the state/community. The two key expenditure-making entities (MJP/GPs, VWSCs) are guided by the MJP Act and the Bombay Panchayat Rules (applicable to GPs/VWSCs).

17. Table 2 presents existing sectoral expenditure patterns. Since GSDA and the ZPs transfer funds to GPs for expenditure, GPs are responsible for a significant part of the state program.

Table 2: Expenditure in RWSS Sector in Maharashtra

| | | | | | | Rs in Crores |
|-------------------------|----------|-------------|----------|-------------|----------|--------------|
| | 2011-12 | | 2010-11 | | 2009-10 | |
| Agency | Releases | Expenditure | Releases | Expenditure | Releases | Expenditure |
| MJP | 269.35 | 253.55 | 582.23 | 396.52 | 431.17 | 405.32 |
| GSDA | 161.44 | 180.56 | 107.02 | 116.85 | 62.78 | 42.78 |
| Zilla Parishads (ZP) | 973.87 | 817.88 | 784.15 | 826.39 | 768.89 | 661.81 |
| Total | 1,404.66 | 1,251.99 | 1,473.40 | 1,339.76 | 1,262.84 | 1,109.91 |
| GSDA & ZP as % of total | | 80% | | 70% | | 63% |

1 Crore = 10 million

III. Fiduciary Systems Overview

18. Key aspects of Program fiduciary arrangements include:

- a) Periodic release of funds by the Finance Department drawing on an exclusive budget line.
- b) Procurement of works by MJP and GPs (VWSCs) using existing GOM systems. Procurement of most Consultancy services is done at the state level by SWSM/WSSO/MJP. GoM is developing systems for these and they would be included in the procurement manual.
- c) Implementation and payments by SWSM, MJP, GSDA, ZPs and GPs using (strengthened) country systems.
- d) Compilation of expenditure information and uploading on website by WSSO/SWSM on a quarterly basis, and reporting to the Bank on an annual basis.
- e) Annual Financial Statements (Attest) Audit by the C&AG. Once these reports are in, the reported expenditure would be reconciled with expenditures certified by audit.

19. The FSA evaluated the capacity of relevant institutions to implement the proposed Program while providing adequate fiduciary assurance on the use of Program funds. The assessment highlights several pertinent issues that have been discussed with GoM and the agreements reached. While some solutions (e.g., development of Manuals) will be effective in the short term, others will be implemented (and regularly monitored) in the medium term. The assessment provides reasonable assurance that the overall fiduciary framework for the Program is adequate to support Program management and to achieve the desired results.

20. Key performance indicators are linked to PAP actions and will be monitored during program implementation as per Table 3 of this Note.

IV. Financial Management Assessment

21. Funding for the Program will be provided in the GoM budget under WSSD in an exclusive budget line, separate from the other budget line items through which GoM finances the RWSS sector. This is as per the general practice of GoM, wherein it creates separate budget lines for external funding. Bank funds will flow to GoI and then flow through GoM Treasury and, along with GoM budgetary allocation for the Program, will be disbursed to various agencies implementing the Program. Maharashtra Treasuries will monitor performance against this budget line and this will be reported through the existing Budget Estimation, Allocation & Monitoring System. Normally the state budget is approved by the State Legislature before commencement of the financial year on April 1 of each year.

22. Delay in transfer of funds to implementing entities has been a common problem faced by the entire state; no funds are transferred by the Finance Department in the initial (one to two) months of the financial year and further a significant part of the funds are made available in the second semester. This risk is mitigated by the implementing entities (since they operate outside the treasury systems) carrying over some balances at the end of each financial year which are used in the initial months of each financial year to make payments. Secondly, though departments prepare budget estimates, the practice of departments preparing a procurement plan with details of quantity, time schedule for award/completion, and estimates as part of their annual action plan is yet to take root.

Assessment of Institutions

23. *SWSM / WSSO*. SWSM has been constituted as a Society and is currently being used by GoI for routing funds under NRDWP/NBA. State level expenditure/payments are made by SWSM, which maintains the required accounts and records.

24. *MJP*. Planning and budgeting processes of MJP are defined by the MJP Act, Government Resolutions of the Finance Department and WSSD. MJP's multi-village schemes take approximately one year to be approved from the date of application by the GP. This time is taken in the analysis of the scheme at the block level, including certification of the source, preparation of surveys and project estimates, as well as the administrative and technical approval of schemes. There is a need to streamline this process to enable a more efficient and faster approval process.

25. Release of funds by MJP to its district offices is based on demand submitted by the latter which, in turn, is prepared on the basis of approved contractors' bills. The fund flow is managed internally (through commercial banking channels), thereby exposing the system to possible weaknesses in internal controls.

26. MJP does not have finance and accounts guidelines; therefore, there is a possibility of inconsistency in financial treatment of events. District offices maintain accounts on single-entry basis and send monthly information to MJP Headquarters, which maintains accounts on a double-entry basis. This system currently does not provide a reliable basis for the preparation of accounts and for monitoring. Annual Financial Statements are prepared as per the format prescribed in the MJP Act, 1976 and are in a combined form, including the accounts of the 45 sub-units. Though there is an audit by a firm of Chartered Accountants, the statutory audit is conducted by the C&AG.

This report is regular but delayed.² The audit process is robust but certain observations appear each year, suggesting that not all audit findings are being addressed in an appropriate manner.

27. Considering the central role of MJP in Program implementation, the following actions would need to be prioritized: development of a fiduciary manual and switch-over to a double-entry system of accounting; timely completion of audit; and addressing, in a satisfactory manner, the significant observations made in the C&AG audit reports.

28. *ZPs.* While the ZP budget is forward looking in terms of demand for new projects, there is no defined approval time frame at the ZP level for a request for new schemes received from GPs. The gap between the date of application by the Gram Sabha to the date of technical sanction ranges between two months to two years, depending on the executing agency. The budget for “spill-over” water supply projects at the GP level is not revised as per changes in Schedule of Rates during the preparation of next year’s budget, thus leaving the project vulnerable to increased cost. The fund release process to GPs varies across the state, primarily with respect to the involvement of the Chief Accounts and Finance Officer [CAFO (Finance Department)]. In some districts, the CAFO approves only the release and expenditure of projects which are funded through the state government budget, whereas in other districts the CAFO is involved in the approval and release of GoI funds as well. There is a need to follow a uniform practice across the state on the involvement of the CAFO in the approval process for the release of funds to GPs.

29. Contractor payments are made by VWSCs as per Running Account (RA) bills approved by the ZP. The ZP also issues a release order which permits the VWSC to make payments to the contractor; this seems to be an unnecessary impediment, which could cause delays. A Utilization Certificate is submitted by the GPs while requesting for each subsequent installment. The most significant weakness in the ZP-level accounting framework is recording/classification of all releases to the GP level as expenditure at the time of release. Each installment released by the ZP is unutilized at the time of release and there is a significant time gap between the release and utilization of funds by the GP.

30. Audit of NRDWP funds at the ZP level is undertaken by a firm of Chartered Accountants. Financial statements are collated using information recorded in books such as the cash book, grant register and other record books; these are prepared based on releases to VWSCs, but neither take into account the GP audit undertaken by the firm of Chartered Accountants nor provide any GP-level information with regard to expenditure or balances.

31. Considering the role of ZPs in Program implementation, the following actions would need to be prioritized: simplification of the process of release of funds to GPs, and uniformity across the districts regarding the role and responsibilities of the CAFO.

32. *GPs and VWSCs.* GPs are involved in the identification of needs and requesting for schemes, but are not involved in the detailed cost estimation for the schemes, which is a technical function handled by district/sub-district offices. GPs and VWSCs depend on ZPs/BRCs for guidance and technical appraisal of the schemes. The GP’s role in planning includes expressing felt needs and making decisions through Gram Sabhas. Though final payment to contractors is made by

² Report for FY 2009-10 was issued 19 months after the close of the year.

the VWSC, fund availability at VWSC is dependent upon the approval of each RA bill by the ZP, thus making the entire fund release process vulnerable to delay. Overall, there is a constraint due to the limited technical (as well as book-keeping) capacity of VWSCs. A single-entry system of accounting is in use and the task of updating records/preparation of financial statements is linked to the release of the fourth (that is, the final) installment, only for which an audit of the VWSCs' books of account is a pre-requisite. The audit is conducted by a firm of Chartered Accountants drawn from a panel established by each ZP; however, a ToR for GP/VWSC audits does not exist, leading to a lack of uniformity in audits, as well as non-adherence to standards established by the Institute of Chartered Accountants of India. Further, the audit is conducted after 90 percent of the expenditure has been incurred and the fourth and final installment is reached, making it much less effective as a tool for pre-control.

Program Actions

33. Considering the role of GPs/VWSCs in Program implementation, the following actions would need to be prioritized: regular compilation of information on expenditures as drawn from the books of account of each VWSC/GP, standardizing and formalizing audit (that is, use of a standard (ToR) and introducing a requirement for audit much earlier during scheme implementation. The Key Program Actions and other actions to address the gaps through Technical Assistance and capacity building measures are listed in Table 3.

Auditing Arrangements for the Program

34. Audit arrangements will include an annual financial statement attest audit by the office of the C&AG as per a well-established ToR. Other state-wide audit arrangements, which would also cover this Program, include:

- a) The audit conducted by the C&AG for the state of Maharashtra includes a certification of its financial statements, including a confirmation of the financial flows under the Department.
- b) The above certification is supplemented each year by an audit report, which covers significant observations relating to all departments and schemes implemented by the departments.
- c) ZPs are periodically audited by the Local Fund Auditor, who comprehensively reviews their financial performance, and also looks into propriety aspects.
- d) GPs (sub-projects) are audited by firms of Chartered Accountants as per standardized ToRs.

Risks and Performance Indicators

35. Table 5 provides the key risks and mitigation measures related to Financial Management Systems, and Table 6 provides Indicators to measure financial management performance.

V. Procurement Management Assessment

Procurement Systems

36. Major items procured by the RWSS sector in the state comprise procurement of works. At the state level, a limited quantity of goods is procured by WSSD, WSSO and GSDA. At the district level, procurement of works is carried out by ZPs and MJP, and at the village level by GPs. Procurement is carried out in accordance with three separate guidelines: PWD Manual, Store Purchase Rules and Zila Parishad Account Code. The guidelines require open competitive bidding for procurement for all contract values above INR 50,000. Below this threshold, direct contracting from Central Stores and Purchase Office, Rate Contract and Shopping is permitted for procurement of goods, while Item Rate Contracts and Percentage Contracts are permissible for procurement of works. Mandatory negotiations with L1 bidder is a universal rule for all procurement methods.

37. Bidding documents such as B1 tender document and D tender document are used as standard bidding documents for procurement of works and for procurement of goods respectively. These bidding documents meet the standards of upfront declaration of essential terms and conditions and evaluation/qualification criteria.

38. The assessment finds that the existing procurement management system and arrangements have the following gaps:

- a) *Goods and Works.* Rules and guidelines related to procurement are spread across multiple documents with no clear and comprehensive instructions for all steps of the procurement process.
- b) *Services.* No guidelines/regulations are in place for procurement of services. Evaluations of proposals are based on pass/fail criteria such as registration details, earnest money deposit, turnover, and number of years of experience. There are no specific guidelines for qualitative evaluation of technical proposals. Presently, the B1 tender document used for works procurement is also used for procurement of services.
- c) Registration of contractors is a prerequisite condition to be fulfilled for participation in the bidding process, which may act as an entry barrier and restrict many bidders from participating.
- d) No alternative dispute resolution procedure or written processes for a complaint/grievance handling mechanism exist besides the jurisdictional avenue during the bidding process. The assessment did not come across any documentation of complaints received.

39. GoM has developed and deployed an e-procurement system and made it mandatory since³ January 2012. The e-procurement platform used was developed and deployed by the National Informatics Centre of GoI. This being a Government-led action (being implemented but some districts have been provided relaxation), it is assumed that all procuring offices will have the required infrastructure, and associated actions (such as training and capacity building of procurement staff to undertake e-procurement, as well as workshops to the bidder community) would be carried out during the first year of Program implementation. Handholding support would be provided at the districts where the Program will be implemented.

³ For Procurement of Goods costing more than INR 100,000 (US\$1,600) and works costing more than INR 500,000 (US\$8,100)

40. The present system only allows for e-tendering, where uploading of bid documents and bids are facilitated electronically, while evaluation of the bids is carried out offline. The state IT Department revamped the system in October 2102 to include features such as active tender notices, contract closures, online evaluation of bids, MIS reports, and payment gateways for Earnest Money Deposit. With the successful deployment of e-procurement, a significant increase in competition is being witnessed and a reduction in collusion among bidders is expected. As per the current policies of GoM, MJP is responsible for procurement and awarding contracts at the district level wherein the estimate cost of single village schemes is above INR 5 crore and that for regional schemes, above INR 3 crore. Majority of contracts are given on single responsibility basis. In few contracts, MJP provides materials (pipes etc) to the contractor.

41. Across entities, there is a need to enhance procurement capacity. This is important at district/GP level as a large number of works contracts are handled at this level. All institutions in the state have capacity constraints related to skills and competencies required for efficient and transparent procurement. In most situations, procurement processes are mainly dealt with by technical staff with little formal training in procurement and contract management. It is crucial to strengthen the capacities of key staff dealing with procurement on subjects related to procurement, contract management, record keeping, quality control, and transparency. With the state government making it mandatory to use the e-procurement portal, additional IT staff is being deployed through RDD for handholding the e-procurement process at the GP level.

Procurement Performance

42. Procurement performance was assessed at the GP level and at the state level at MJP -- the two places where most Program procurement is expected to take place. Based on the information and data analyzed from 33 projects at the GP level, in 85 percent of the cases the procurement process was completed within 45 days, with another 7 percent taking more than 90 days. Dissemination of bidding opportunities is through advertisements, usually in local newspapers at the district level or even at the taluka (sub-district) level. Data regarding advertisements/quotations sought were available in 75 percent of these villages. Of these villages, 63 percent published tenders in newspapers, while for the remainder quotations were sought for supply of materials/goods. In all cases except one, bids/quotations were received from at least two or three bidders. In almost all cases contracts awarded were at par with the project cost estimate, with the price quoted by bidders being within 10 to 15 percent on either side. Construction delays were observed in 20 percent of the cases.

43. Other key observations on the overall performance of procurement and contract management at GP and MJP levels are:

- a) *Procurement Planning.* Departments prepare budget estimates. However, the practice of preparing a procurement plan, with details of quantity, time schedule for award/completion and estimates as part of the annual action plan, is yet to take root in the system;
- b) *Participation.* Key contracts awarded for procurement of goods at the state level are Rate Contracts for pipes, which are administered by MJP. The Rate Contract process is open only to manufacturers from within the state, resulting in participation of only two to three bidders in the past few years. Bids for works at the district and GP levels also attract less

than three bidders. Other potential bidders active in different states are not participating in the bidding process.

- c) *Contract Administration.* Rate Contracts for pipes are contracted centrally by the MJP head office, while they are implemented and monitored by MJP district offices. In such cases, the contractual obligation of the supplier is to the state level, while contract implementation is the responsibility of the district authority. Under this arrangement contract monitoring and implementation by MJP district offices can become an accountability issue, which can lead to late delivery of goods, inferior quality, delay in payments, poor performance of the contractor, etc.
- d) *Disclosure.* There is a need to develop and practice rules/guidelines for disclosure of contract award information to promote transparency. The state needs to formulate and implement a disclosure policy for procurement, such as award, achievement of targets and expenditures, at various levels to maintain transparency in the system and also meet RTI obligations.
- e) *Procurement Monitoring Information Systems.* Information related to the procurement plan, procurement process followed, name of the winning bidder, and performance monitoring of contractor/supplier is not organized or consolidated at the district or state level to help make appropriate management decisions. There is no defined framework for dissemination of procurement-related information such as budget and expenditure, bidders' participation, price comparison, and bidders' performance etc. The revamped e-procurement system being implemented is expected to have provision for detailed MIS reports and tender-wise information for various departments to monitor procurement at the central level with linkages to budgetary allocations.
- f) *Oversight and Control.* Procurement process monitoring and oversight currently rests within the hierarchies of the procurement management system. A separation of functions for independently assessing and ensuring the integrity of the process and the system is not yet in place. Further, there is a need to establish and institutionalize a post-procurement review process to be conducted annually to assess the degree of adherence to agreed norms and guidelines and the integrity of the procurement process. In the case of assets created, independent quality inspection should also be carried out.

Actions Agreed for Improvements in Procurement Management

44. The following actions will be taken by GoM to address the above gaps:
- a) A Procurement Manual, which collates rules and regulations which are spread out in different documents for works and goods (but also addresses issues of blacklisting, negotiations, disclosure of awards, etc..) will be prepared by Year 1. The procurement manual would also include the selection of consultants, including the development of the standard request for proposals.
 - b) Procurement post-review will be conducted on a regular basis, covering at least 15 percent of contracts issued in each year and the report will be shared with the World Bank by September 30 each year.
 - c) The complaint handling and redress system, including procurement issues, will be covered in the PAP.
 - d) A Procurement MIS module, which can be integrated with the e-procurement system, will be developed.

Program Actions

45. Based on the assessment and agreements reached with GoM (use of e-procurement systems, control and oversight through the annual post review, and the integrated complaint management and M&E systems) procurement systems under the Program offer reasonable assurance of value for money with integrity. The key Program Actions and other actions to address gaps identified through technical assistance and capacity building measures are listed in Table 3.

Risks and Performance Indicators

46. Attachment 5 provides the key risks and mitigation measures related to procurement systems, and Table 7 provides Indicators to measure procurement performance.

VI. Fraud and Corruption Risk Mitigation in the RWSS Sector in Maharashtra

The State Anti-corruption Framework

47. In India, law and order is the responsibility of the states. Neither GoI nor central nodal anti-corruption agencies, such as the Central Vigilance Commission, have jurisdiction on corruption issues in the states, except for investigating and prosecuting central government employees. India's supreme audit institution, the C&AG, is the only federal institution which has a mandate to help mitigate the risk of corruption in the implementation of any public policy or program across the country through its financial, compliance or performance audits.

The Anti-Corruption Bureau (ACB), Maharashtra

48. The ACB was established in 1957 to enforce the Prevention of Corruption Act, 1988, by investigating "bribery, corruption, criminal misconduct, embezzlement of Government money and other venal practices by public servants." Although employees of the central government fall under the ambit of the Central Bureau of Investigation, the Maharashtra ACB has jurisdiction over all employees of the "State Government, of the statutory Corporations of Bodies set up and financed by the State Government, and of the Municipal Corporations, Nagar Parishads, Zilla Parishads and Panchayats in the state." ACB is part of the state Home Department and has only an investigative mandate. Its staff is mostly made of some 200 police officers seconded from the state police. It conducts inquiries into cases referred by government departments, the state Ombudsman (Lok Ayukta) as well as complaints filed by citizens on bribery, corruption, criminal misconduct, embezzlement of government money and other corrupt practices by public officials. As per the Constitution of India, the ACB cannot investigate any 'Class I' (highest ranking) officers of the state government without the government's concurrence. ACB discharges its mandate in two ways: (i) by trapping public servants accused of demanding bribes; and (ii) by investigating assets disproportionate to known sources of income amassed by a public servant. In 2012, the Bureau received 135 cases related to disproportionate assets and caught 513 officials asking for a bribe, only one of whom was from an agency of the RWSS sector.

Vigilance Function in the RWSS Department

49. Each line department or ministry is supposed to conduct preliminary enquiries on misconduct by its employees. A few of them in Maharashtra, such as the Public Works and Water Resources Departments, have assigned this fiduciary responsibility to a Vigilance Officer, following the GoI model, where the Vigilance Cell in every line ministry or department is compliant with the ToR issued by the Central Vigilance Commission. In the Maharashtra PWD, the Vigilance Cell is placed under the authority of the Chief Engineer (Head of the Department), has branches at the district level and is responsible for the prevention and detection of fraud and corruption, a mandate it fulfills through surprise checks (for quality assurance) and by addressing complaints received by the administration/government.

50. WSSD does not have such a vigilance cell and its vigilance function is neither codified/formalized nor recorded/disclosed. Ideally, an officer with a clear mandate and support from an established cell should be assigned the responsibility of handling any allegation of fraud and corruption. The ToR should be disclosed and an annual report on the discharge of the vigilance function within the department should be prepared for review by any stakeholder. The mandate and contact details should be made publicly available and any referred allegation should be kept on record. The PAP includes an action to address this.

Decentralized Vigilance Function

51. There is an established system by which the CEO of a ZP can trigger police investigation (by filing a First Information Report in the local police offices) against VWSCs and contractors for fraud, embezzlement and corruption. Such an investigation can also be triggered by the local administration whose vigilance role has recently been strengthened.

52. In 2011, GoM established Committees for Eradication of Corruption at District, Divisional⁴ and Taluk (sub-district) level (respectively chaired by the District Collector or the deputy at the district level or the divisional commissioner at the divisional level) for handling complaints against public officials related to delays, irregularities, incompetence and corruption. These committees comprise public officials and representatives of civil society appointed for two years. In addition to conducting preliminary enquiries on complaints, these committees are mandated to hold quarterly reviews of complaints received, remedial actions taken and to suggest methods to expedite processes. They are also expected to collect further information on sectors where corruption is prevalent and to suggest mitigating measures.

53. Each line department is also mandated to establish a Vigilance Squad under the aegis of its most senior officer at the district level. As part of strengthening the vigilance function, this decentralized vigilance mechanism will be an integral part of the WSSD vigilance function and will be operationalized under the Program.

54. The WSSD vigilance function will also ensure that allegations of fraud or corruption pertaining to the Program raised by or referred to ZP officials are recorded and monitored by the Department. These measures will be supported under the Program.

⁴ A group of districts is administered at the Divisional level by a Divisional Commissioner.

Mitigating the Risk of Fraud and Corruption through External Audit

55. The Program will be subject to external financial audit by the C&AG (through the state Accountant General). Both prevention and detection of fraud and corruption fall within the C&AG's jurisdiction: "examination of system for detection and prevention of fraud and corruption will be an integral part of all regularity audits and also of performance audits, whenever it forms one of the audit (sub) objectives. Audit must evaluate and report on the adequacy of the systems in place and competence with which the management (of the audited entity) has discharged its responsibility in relation to prevention, detection, response and follow-up/remedial measures in relation to fraud and corruption. Reports of individual cases of suspected fraud and corruption should be confidentially addressed, in the first instance, to the controlling authority concerned. More serious cases should also be confidentially reported to the Secretary of the Administrative Departments (where they are not the controlling offices) concerned and the investigative authorities like Central/State Vigilance Commission, Lok Ayukta, etc."

56. C&AG guidance to staff also includes the following specific provision on externally-funded projects, which reads: "Audit is (supposed) to identify matters relating to inadequacies in systems and control, cases of fraud and presumptive fraud, wasteful expenditure and failure of administration to take corrective action on recommendations contained in the earlier report."⁵

Other Accountability Mechanisms

57. Broader accountability mechanisms, beyond external auditing, that also help mitigate the risks of fraud and corruption and strengthen fiduciary control, are:

- a) *Transparency*. Under the RTI Act, 2005, any public entity is bound to proactively disclose information of general interest (listed in section 4 of the Act) and answer any request for information in a timely manner. The RTI Act grants citizens the right to "i) inspect works, documents, records; ii) take notes, extracts or certified copies of documents or records; iii) take certified samples of material; and iv) obtain information in form of printouts, diskettes, tapes, video cassettes or in any other electronic mode or through printouts of information related to public." The RTI has become an effective accountability mechanism and millions of applications for information are being filed every year. There is empirical evidence that it is a more effective tool for citizens to obtain the service they are entitled to than to bribe their way through red tape. The Maharashtra State Information Commission, which oversees the implementation of the RTI Act within the state, has recently highlighted to the state line departments that they have to comply with Section 4 of the Act on voluntary disclosure of information. WSSD has committed to abide by the law and to significantly strengthen its public information system. WSSD is well equipped to answer requests for information, thanks to a network of 258 public information officers spread over each RWS Division of ZPs, with 119 first appellate officers and a next level of Appellate Authorities appointed by the WSSD Chief Information Commissioner in each of its six divisions.
- b) *Village level committees*, including VWSCs, do not fall under the RTI Act, but it has been agreed that in order to ensure comprehensive disclosure of information pertaining to the

⁵http://saiindia.gov.in/english/home/Our_Process/Audit_Methology/Guidelines_Notes/Book_Fraud_Corruption.pdf

implementation of the Program, a system will capture information pertaining to the activities of VWSCs, including (but not limited to): (a) village assemblies' resolutions, administrative and technical sanctions; (b) technical details of schemes sanctioned (designs, plans, estimates); (c) funds released to VWSCs; and (d) completion certificates/audit, information on Gram Sabha resolutions, administrative approval, technical approval, costs of projects, and contractors. Such information will be captured in the strengthened M&E system of the sector, and aggregated on the WSSD website.

Social Accountability Mechanisms

58. Social accountability mechanisms (VWSC accountability, social auditing) are detailed in the Environmental and Social Systems Assessment. The WSSD grievance redress mechanism (E-Pani) will be strengthened to capture, record and handle allegations of fraud and corruption pertaining to the Program, and improve its access and effective use by stakeholders, including beneficiaries. A follow-up mechanism is being put in place to handle grievances that are not resolved at the village level. Like any state department, WSSD is also meant to draft and disclose citizen's charters (under the recently revived state Performance Management and Evaluation System).

VII. Program Actions

59. The anti-corruption framework can be construed as potentially effective. However, two mechanisms call for significant strengthening: (a) WSSD's vigilance function needs to be codified, formalized and consolidated; and (b) grievance redress mechanism (E-Pani) needs to be made more accessible and comprehensive, and allow for the capture and handling of allegations of fraud and corruption. The Key Program Actions, and other actions to address gaps through technical assistance and capacity building measures, are listed Table 3 (extracted from the PAD).

Table 3: Key Program Actions

| Cross-cutting actions | |
|------------------------------|---|
| 1 | Strengthen existing complaint and grievance redress and vigilance mechanisms within WSSD at the state level to handle complaints related to <u>procurement</u> , <u>financial management</u> , service delivery, environmental and social <u>fraud and corruption issues</u> under the Program. Information on complaints received and remedial actions taken will be aggregated annually and publicly disclosed. |
| Fiduciary Actions | |
| 2 | Compile the rules and procedures on procurement, including for selection of consultant services, into a comprehensive procurement manual for the RWSS sector and adopt it. |
| 3 | Conduct procurement post-review on a regular basis, covering at least 15% of contracts issued each year in the RWSS sector. |
| 4 | Establish double-entry accounting system at all levels in MJP, including simplification of formats for annual audited financial statements and development of an entity Financial Management Manual. |
| 5 | Establish a system to report information on expenditure (not releases) at GPs/VWSCs. Carry out district and GP level audits as per a specific ToR. |

Table 4: Other Actions

| | Other Actions | Links to PAP/DLIs |
|---|---|--------------------------|
| | <i>Fiduciary Issues</i> | |
| 1 | Develop a Procurement Management Information System module, drawing on the e-procurement system. | DLI #1 |
| 2 | Include complaints handling related to fiduciary issues under the comprehensive complaint handling and redress system of WSSD. | PAP – Action#1 |
| 3 | Strengthen institutional capacity in terms of staffing, staff training and orientation, review of rules/guidelines, and simplification of procedures. Address critical issues and improve the effectiveness of audit. | DLI#2 |
| | <i>Governance and Accountability Issues</i> | |
| 4 | Strengthen/codify/formalize WSSD’s vigilance function and codify, formalize and consolidate information on vigilance issues. | PAP – Action#1 |
| 5 | Make the grievance redress mechanism (E-Pani) more accessible and comprehensive, and allow for the capture and handling of allegations of fraud and corruption. | PAP – Action#1 |

Table 5: Fiduciary Risk and Mitigation Measures

| Risk | Mitigation Measure |
|--|--|
| MJP’s accounting is on a single-entry basis and does not have a defined accounting framework/manual. | Issuing MJP’s fiduciary manual, which will ensure use of Generally Accepted Accounting Principles, including the use of a double-entry accounting system. System study and development of manual (Year 1); Revised system rolled out and ability to generate entity financial statements (Year 3). |
| MJP audits regularly delayed and audits contain recurring observations. | Improve timeliness of MJP accounting and audit; create a taskforce to address past audit observations. |
| Variation across districts in terms of procedure for release of funds (ZP to GP). | Uniformity in procedure – ensure adequate fiduciary coverage across the state. |
| Additional layers of review at the ZP level leading to delays in payments to contractors by GPs. | Simplification of procedure and empowerment of GPs. |
| Reporting of GP level expenditure based on releases by the ZPs. | Expenditure data captured on a systematic and regular basis. |
| Lack of staff capacity at lower levels, coupled with multiplicity of instructions, and delays in procurement process and outcomes. | Mandatory use of e-procurement, with already provided IT staff for handholding and the development of the Manual to assure consistency and predictability for staff as well as the bidding community. |
| Governance issues, including petty corruption, collusive practices, etc., with no clear dispute resolution mechanism, could impact the integrity of the process. | Mandatory use of e-procurement and establishment of a complaint handling and redress management system. |
| Lack of independent control and oversight mechanisms could lead to | Mandatory procurement planning at state and entity levels, integration of procurement MIS as part of the integrated |

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| inefficient procurement management, leakages and losses. | M&E system and an annual post review of procurement contracts awarded. |
| GP audits delayed (only after incurring 90% of scheme expenditure) and not standardized (no clear ToR for audit). | Bring GP audits early on in the scheme cycle and regulate the audit process by defining ToRs and adherence to standards. |
| Fraud and corruption: lack of a formalized vigilance function at the department level; beneficiaries lack access to grievance redress mechanism. | The WSSD vigilance function and its grievance redress system (E-Pani) will be strengthened. WSSD vigilance function will be codified, formalized and consolidated. E-Pani will be made more accessible and comprehensive, and allow for the capture and handling of allegations of fraud and corruption. |

Table 6: Indicators - Financial Management

| Risk | Performance Indicator | Baseline | Recommended Standard |
|---|---|---|--|
| Reporting of expenditure at MJP level. | Accurate and uniform reporting of expenditure. | Single-entry system of accounting and no framework to guide financial management. | A fiduciary manual which ensures use of Generally Accepted Accounting Principles, including use of double-entry accounting system. |
| Reporting of program expenditure at GP level. | Expenditure reported based on payments made by the VWSC/GP. | Reporting of GP level expenditure based on releases by ZPs. | Expenditure data captured through 'Priasoft' or similar software. |
| District-level audit. | Streamlining district level audit. | Separate audit reports issued for different GoI schemes. | Specific audit ToR and consolidation of Audit Reports. |
| Audit framework at GP level. | Standardization and uniformity in GP audits. | GP audit not guided by any framework. | Specified ToR made mandatory, including adherence to the Institute of Chartered Accountants of India guidelines. |

Table 7: Indicators - Procurement

| Risk | Performance Indicator | Baseline | Recommended Standard |
|-----------------------|---|---|---|
| Procurement plan. | Implementation agencies prepare procurement plans. | None of the agencies prepares a comprehensive procurement plan. | Annual procurement plans are prepared. |
| Use of e-procurement. | All procurement is undertaken through e-gp system and time taken for procurement process. | 60 days | Timely conclusion of contracts within initial validity period; lower repeat bidding; and lower bid cancellations. |
| | Checking GoM and World Bank debarment list | Not always done. | Done in all cases before award. |

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| | before contract award. | | |
| Average number of bidders. | Number. of tenders sold and bids received. | 2 bidders | Improvement in level of participation and competition. |
| Number of contracts with cost increases over award amount. | Cost increases due to amendments or change orders. | Contracts not completed within awarded amount. | Quality of process, documents, specifications; quality of competition. |
| Processing of contractor payments. | Average time taken for release of payment from date of validation of Measurement Book and date of bill raised by contractor. | 70% payments are made within the agreed timelines in contracts. | Improved efficiency of contractor payments. |
| Contract administration/time over-runs. | Average time taken for completion of project from date of award of contract and difference between estimated date of completion as per contract and completion date. | 20% of contracts are delayed from the contract duration stated in the contract. | Improved time efficiency in project execution. |