

**Contract Management Practice for the Procurement
of Goods in the Public Sector in Bangladesh:
*a case study of LGED***

Dissertation Submitted in the Partial Fulfillment of the
Requirements for the Degree of
Masters in Procurement and Supply Management (MPSM)
Semester: Fall 2014

Submitted by:
Partha Pradip Sarkar
MPSM, Batch-VII
ID: 14282019

Masters in Procurement and Supply Management
May 2015



**BRAC Institute of Governance and Development
BRAC University**

**Contract Management Practice for the Procurement
of Goods in the Public Sector in Bangladesh:
*a case study of LGED***

Researcher

Partha Pradip Sakar

MPSM, Batch-VII

ID: 14282019

Semester: Fall 2014

Supervisor

Dr. Rizwan Khair

**Masters in Procurement and Supply Management
May 2015**



**BRAC Institute of Governance and Development
BRAC University**

Letter of Transmittal

May 16, 2015

Dr. Rizwan Khair
Thesis Supervisor

Subject: Submission of the Project Report.

Dear Sir:

I am delighted to submit the Dissertation Report titled '**Contract Management Practice for the Procurement of Goods in the Public Sector in Bangladesh: a case study of LGED**' in partial fulfillment of the requirements for the award of the degree of Masters in Procurement and Supply Management.

The paper entails the extent and nature of Contract Management Practices for the procurement of goods in LGED, effectiveness of the contract management process, compliance of existing practice with PPR-2008 and also explores the gaps between usual practice and the standard framework of contract management. Finally the report delineates some recommendations that might improve the situation.

I would be pleased to discuss this report with you at your request. Thank you for giving me the opportunity to work on such an interesting topic.

Sincerely,

(Partha Pradip Sarkar)

MPSM, Batch – VII
ID No. 14282019
BRAC Institute of Governance & Developments
BRAC University

Dedicated
To
My beloved Mother

Declaration

I, the undersigned would like to declare that this paper is solely presented for the dissertation works titled as “**Contract Management Practice for the Procurement of Goods in the Public Sector in Bangladesh: a case study of LGED**” which is the partial fulfillment of the requirement for the degree of “Masters in Procurement and Supply Management (MPSM)”.

I declare that the work done in this dissertation is unique and it is not used elsewhere. I am benefited by the work as I have obtained knowledge about contract management practice in LGED that certainly will help me playing an important role in my organization. I limited my study in one governmental organization “LGED” which is the largest engineering department of the Government of the People’s Republic of Bangladesh in light of procurement volume and workforces involved. I would like to do more investigations in future with this related topic.

Partha Pradip Sarkar

May 16, 2015

Certificate of Originality by the Supervisor

Certified that this project report titled 'Contract Management Practice for the Procurement of Goods in the Public Sector in Bangladesh: a case study of LGED' is the bonafide work of Mr. Partha Pradip Sarkar (ID No. 14282019), who carried out the research and submitted the report as a partial fulfillment of the requirements for Masters in Procurement and Supply Management under my guidance and supervision. Certified further that, to the best of my knowledge the work reported herein does not form part of any other project report or dissertation on the basis of which a degree or award was conferred on an earlier occasion on this or any other candidate.

Dated: 16 May, 2015

Dr. Rizwan Khair
Supervisor

Executive Summary

The research report will be furnished in five chapters. The first chapter is an introductory one containing research background, research questions and objectives, rationale of the research, limitations and study methodology. Chapter two delineates the literature review containing contract management practice both in global and in Bangladesh perspective. This chapter also highlights on previous works and loopholes in the same arena. In chapter three, the focus is on LGED in general, its procurement history and present practices. Chapter four contains the study findings in detail along with some analysis. The last chapter highlights the key findings of the study, both positive and negative and some recommendations for the improvisation of present practices.

In most of the cases of public procurement of goods, contract management performance is not that satisfactory, as a result of which the best value for money is not achieved through the contract management process.

In LGED practice, Contract Management Process is interrupted by several factors. There is no option of third party technical audit through professional technical audit team. In common practice, a pre-delivery inspection team, usually a cross functional team comprised of technical experts, procurement people and representative from the procuring entity inspect the goods before final acceptance.

The study found that in around 60% cases the public fund utilized effectively where 2 to 7% of total project budget is spend for procurement of goods. Which signifies that in LGED procurement practice, there are some level of efficiency in terms of PPR compliance but the public fund utilized is not 100% effective. So far, the procurement objectives, in case of goods are not 100% achieved and public resource not exclusively mobilized.

- Exact need analysis and accurate estimation of requirement is required prior to preparing procurement plan
- Procurement process for procuring goods should be started in accordance with development project's purchase schedule to prioritize best hardware utilization and timely deployment.

- Payment term should be comfortable to both supplier and purchaser to avoid contract failure due to financial crisis of supplier.

LGED having contract management efficiencies but it is not sufficient to ensure effectiveness of using of public fund in procuring goods in different development projects.

- LGED should enforce Contract Management Practices for best utilization of public fund.
- LGED has to discourage Ministry officials for sensitive PSI tour and ensure participation of highly technical expertise for the Inspection of goods before shipment.
- Procurement document / contract agreement should clearly define dispute settlement clauses e.g. Selection of arbitrator / adjudicator to avoid complexity of dispute management, if required, as a part of Contract Management.

Finally, performing this study, it is worthwhile noting that contract management is successful if:

- the contract outcome continue to be satisfactory to both parties;
- the expected business benefits and value for money are being achieved;
- the organization understands its obligations under the contract;
- there are no disputes;
- a professional and objective debate over changes and issues arising can be better trade-off;
- Efficiencies and effectiveness are being realized.

Acknowledgement

I acknowledge with gratitude to my respectable supervisor Dr. Rizwan Khair, for his kind approval of my study proposal and also for his profound directive that have provided a positive climate to complete the task.

I gratefully acknowledge those persons who spared their valuable time to fill up the survey questionnaire and made their valuable comments. My hearty thanks go to my fellow colleagues who helped me in choosing the study topic and also inspired me in various ways to perform the study.

I would remain incomplete if I don't express gratefulness to the high officials of LGED who shared their views and provided lots of information in addition to the formal questionnaire survey. I also express my gratitude to my fellow colleague Mr. Z M Sajjadul Islam for his sincere input in preparing the report.

Finally I like to convey thanks to all of my respected teachers, colleagues and course coordinators who helped me directly or indirectly at different stages of my project work and facilitated it toward conclusion.

(Partha Pradip Sarkar)

Table of Content

Letter of Transmittal	iii
Declaration	v
Certificate of Originality by the Supervisor.....	vi
Executive Summary	vii
Acknowledgement	ix
Table of Content	x
List of Tables	xii
Abbreviation	xiii
Chapter 1: Introduction.....	14
1.1 Background of the Research	14
1.2 Problem Statement	15
1.3 Research Objectives	15
1.4 Research Questions	16
1.5 Rationale of the Research.....	16
1.6 Scopes and Limitations of the Study.....	17
1.7 Research Methodology.....	17
1.8 Chapter Outline	18
Chapter 2: Literature Review.....	19
2.1 Contract and Contract Management.....	19
2.2 What is meant by Contract Management?	19
2.3 Key Elements of Contract Management	20
2.4 The process of contract management	22
2.5 Contract management in practice	22
2.6 Risk and risk management	24
2.7 Major Issues of Goods Contract Management.....	25
2.8 Responsibilities of the Contract Manager	32
2.9 Review of PPR 2008 and Standard Tender Document	33
2.10 Administration of Goods Contracts.....	51
2.11 Contract Performance Monitoring	52
2.12 Development of a Contract Monitoring System	53
2.13 Brief Summary of Literature Review	54

Chapter 3: Overview of LGED	55
3.1 Background	55
3.2 Mission	56
3.3 Vision	56
3.4 LGED procurement history and present practice	57
Chapter 4: Study Findings & Analysis	59
4.1 Relevancy of the Procurement of Goods.....	59
4.2 Contract Management Plan (CMP).....	60
4.3 Utilization of Goods Procured under Development Projects	61
4.4 Suitability of Procurement Rules for Quality Procurement	61
4.5 Procurement Methods Practiced.....	62
4.6 Major Clauses / Terms in Tender Document	62
4.7 Pre-delivery or Pre-shipment Inspection.....	63
4.8 Options for factory visit during manufacturing period	64
4.9 Options for pricing arrangement	65
4.10 Payment Terms Used	65
4.11 Compliance of goods being delivered	66
4.12 Methods for dispute management	66
4.13 Procurement Record Keeping	66
4.14 Payment according to Schedule	67
4.15 INCOTERMS Used	67
4.16 Time Management.....	67
4.17 Managing Contract Risk.....	68
4.18 Overall Findings	68
Chapter 5: Conclusions & Recommendations	70
5.1 Conclusions	70
5.2 Recommendations	71
5.3 Successful Contract Management	74
5.4 Future works.....	74
Annexure- 1	77
Survey Questionnaire	77

List of Tables

Table 4.1:	Relevancy of Goods procured at LGED	59
Table 4-2:	Frequency Distribution of practicing CMP	60
Table 4-3:	Utilization Status of Goods procured	61
Table 4-4:	Frequency Distribution of Suitability of Existing Rules	61
Table 4-5:	Frequency Distribution of PDI/PSI	63
Table 4-6:	Difficulties faced due to poor PDI/PSI	64
Table 4-7:	Frequency Distribution of Factory Visit	64
Table 4-8:	Table for whether payment is made as per schedule	67
Table 4-9:	Frequency Distribution of following Time Schedule	67

Abbreviation

AA	Approving Authority
ADP	Annual Development Program
APP	Annual Procurement Plan
BIWTA	Bangladesh Inland Water Transport Authority
CM	Contract Management
CMP	Contract Management Plan
CPTU	Central Procurement Technical Unit
DPP	Development Project Proposal
F.Y:	Financial Year
GDP	Gross Domestic Product
HOPE	Head of the Procuring Entity
HQ	Head Quarter
IMED	Implementation Monitoring and Evaluation Division
KPI	Key Performance Indicator
LC	Letter of Credit
LGEB	Local Government Engineering Bureau
LGED	Local Government Engineering Department
LGD	Local Government Division
LGI	Local Government Institute
MLGRD&C	Ministry of Local Government, Rural Development and Co-operatives
NOA	Notification of Award
PCC	Particular Condition of Contract
PE	Procuring Entity
PD	Project Director
PPRP	Public Procurement Reform Project
PPA'06	Public Procurement Act 2006
PPR'08	Public Procurement Rule 2008
RH	Reproductive Health
RHD	Roads and High way Department
REB	Rural Electrification Board
SLAs	Service level agreements
SME	Small and Medium-sized Enterprises
STD	Standard Tender Document
TOC	Tender Opening Committee
TEC	Tender Evaluation Committee
WB	World Bank
WP	Works Program

Chapter 1: Introduction

A contract is an agreement between two or more parties which is intended to be enforceable by law. Contracts are usually written but may be spoken or implied.

Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the technical specifications, terms and conditions as well as documenting and agreeing on any changes or amendments that may arise during its implementation or execution. It can be summarized as the process of systematically and efficiently managing contract (contract creation, execution and contract performance analysis) for the purpose of maximizing the achievement of the procurement objectives as well as minimizing the financial and operational risks of procurement.

According to Public Procurement Rule 2008 ‘the contract administration and management shall include all administrative, financial, managerial and technical tasks to be performed by the Procuring Entity from contract award until it is successfully concluded or terminated or until payment is made and the underpinning disputes or claims (if any) are resolved.’ The Procuring Entity (PE) shall apply professional ethics for adopting the contract administration and management techniques to ascertain the proper implementation of the signed contracts in line with the agreed conditions covering delivery, payments, quality control, contract implementation , liquidated damages and other related issues. The Procuring Entity shall ensure that Goods, Works or Services to be procured conform to the technical requirements set forth in the procurement Contract, and for such purpose, the Procuring Entity may establish inspection and testing facilities, form inspection teams, enter into arrangements for the joint or collective use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.

1.1 Background of the Research

Procurement of goods is completely different from that of works and services. In case of the procurement of goods, usually contract is made after tender evaluation based on documents provided and there is less visibility throughout the supply chain before delivery of goods except third party pre-shipment inspection and pre-delivery inspection. But in case of procurement of works, better visibility is there; work in

progress, quality of material etc. can be monitored throughout the work execution period.

In most of the cases of public procurement of goods, contract management performance is not that satisfactory, as a result of which the best value for money is not achieved through the contract management process. Contract management is a vital part of a procurement process, though in the procurement cycle, it is a post contract activity. Without effective contract management, project/procurement objectives cannot be achieved within defined time, budget and quality and this also affects the five rights of procurement. Still today, not many researches are done in this area, especially in Bangladesh. As in the public sector, huge expenditure is there for procurement of goods. If the contract management is not performed effectively, there is a potential to make the whole procurement void and result in a potential loss of public fund.

1.2 Problem Statement

Every year a major portion of government budget is allocated for procurement of goods of different kinds for different public agencies as per requirements of diversified projects. Goods include mainly equipment, machineries, vehicles, spare parts, tools, arms & ambushes, furniture etc. In some organizations, procurement of goods accounts for the lion portion of total budget like in Defense, Bangladesh Biman, Fertilizer industries, Power Development Board, BIWTA etc. Also in some other engineering departments, goods are procured alongside procurement of works and services like in LGED, RHD, WDB, DPHE, WASA etc. This is a common problem that due to poor contract management, we fail to ensure purchasing goods in right quality, in right time at right price. In case of International Competitive Bidding, 80-90% of payment is made during opening of LC which is major risk if the contract is not managed properly. As a result, there is a loss of government money which is not properly addressed.

1.3 Research Objectives

1.3.1 General Objective: To measure the performance of goods contract management in major development projects under LGED.

1.3.2 Specific Objectives:

- To identify the extent to which the existing contract management practices in LGED comply with the PPR-2008;

- To measure how far the procurement objectives of LGED are achieved through the existing contract management process.

1.4 Research Questions

- Does the existing contract management practice in LGED ensure effective utilization of public funds in procuring goods?
- How far the present contract management practice in LGED complies with the PPR-2008?

1.5 Rationale of the Research

A contract may not necessarily be considered when the actual physical work has been completed or the goods delivered. The true end of the contract may be the end of a warranty, retention or defects liability period. However, there are several stages to be covered before that point is reached. Not all of these stages will be necessary with every procurement exercise and contracting authorities must select a process which meets the particular requirements of the contract.

This study might explore potential areas of improvement regarding public procurement process, especially the contract management process in the procurement of goods. However the comparison between public and private sector procurement process both in terms of effectiveness and efficiency is always lagging behind. Ensuring the post-contract compliance in the public sector is not given adequate importance by the procuring entities. Due to conducting the inefficient contract management process, public sector organizations in Bangladesh does not always succeed in achieving procurement objectives which leveraging the occurrence of misuse of public fund. In a resource constraint country like Bangladesh, impact of such processes creates barriers to the initiate, conduct internal development works and gross development in turn.

LGED is one of the key government organization and handling huge development capitals of central government as well as from the multiple international donors. Therefore the World Bank supported several Public Procurement Reform Projects launched with objectives to improve governance of public procurement process, efficiency, transparency, accountability confidence of beneficiaries, and on the other hand, reducing corruption and maximizing the utilization of aid/development fund. The relevance of choosing LGED as study area is mainly because, among the public sector

organizations in Bangladesh, LGED largely burning government's development budget every year and the largest procurement entity as well.

1.6 Scopes and Limitations of the Study

The research targets to investigate the process of procurement of public goods. As an important representative unit of public sector organization in Bangladesh, some major projects of LGED where there were major budget for procurement of goods are considered. The study result/findings might be used improving the contract management process in the public sector organizations pursuing similar nature of procurement of goods and also the findings can be a lesson for the authority responsible for reforming public procurement in Bangladesh.

Due to time constrains and budget, it was not possible to undertake the study more extensively. The study result mainly reflects the data and information provided by the respondents of the respective projects. Though the study will cover a small part of public procurement area, it could be able to provide an indication of the scenario about how the contract management for the procurement of goods could be made more effective, in case of LGED to secure best value for public money.

1.7 Research Methodology

A combination of questionnaire survey among selected projects' personnel, focus group discussion method has been used in performing the research work. Literature review from similar nature of study, PPR-2008, PPA-2006, tender document used for the procurement of goods in the selected projects will also be taken into account. The data has been analyzed by using MS Excel and other statistical tools as appropriate and will be presented through tables, charts, graphs as applicable for better understanding.

Target group for conducting survey: Project Directors, Procurement Function's officials, Tender Evaluation Committee members and Major suppliers at LGED

Sample Size: 34(Thirty four) - Sample has been selected based on procurement volume, method used and category of purchase. 10(Ten) are from Procuring Entity group, 20(Twenty) are from the group who are directly involved with the procurement process of respective projects, 4(Four) are from LGED Procurement Unit. A focus group of 4 (four) officials from top level management were discussed about LGED's procurement policy, annual procurement budget etc.

1.8 Chapter Outline

Chapter 1 gives the Introduction which contains Research Background, Problem Statement, Objectives and Methodology of the research work. Chapter 2 undertakes Literature Review which is compiled with the basic elements of contract management from different documents, publications, guidelines and similar research findings. Chapter 3 is an overview of LGED, the institution under the study. Chapter 4 explains the study findings and analysis. In chapter 5 a brief conclusion is drawn and some recommendations are made based on study findings.

Chapter 2: Literature Review

2.1 Contract and Contract Management

A contract is an agreement between two or more parties which is intended to be enforceable by law. Contracts are usually written but may be spoken or implied.

Contract management includes negotiating the terms and conditions in contracts and ensuring compliance with the technical specifications, terms and conditions as well as documenting and agreeing on any changes or amendments that may arise during its implementation or execution. It can be summarized as the process of systematically and efficiently managing contract (creation of contract, execution and its performance analysis) for the purpose of maximizing the achievement of the procurement objectives as well as minimizing the financial and operational risks of procurement.

2.2 What is meant by Contract Management?

Contract management is the proactive monitoring, review and management of contractual terms secured through the procurement process to ensure that what is agreed is actually delivered by suppliers or partners. Contract management includes:

- ensuring compliance with the terms and conditions agreed
- documenting and agreeing any changes or amendments that may arise during contract implementation or execution

In short, effective contract management ensures that:

- strategic priorities agreed at the outset are delivered in a timely and cost effective manner;
- Issues of non-compliance or variation are picked up early and either dealt with or appropriately escalated for resolution;
- Costs and risk are managed appropriately;
- Reviews are undertaken and lessons learnt fed back into the commissioning and procurement process to ensure continuous improvement. (Basingstoke and Deane 2013:3)

According to Public Procurement Rule 2008 ‘the contract administration and management shall include all administrative, financial, managerial and technical tasks to be performed by the PE from contract award until it is successfully concluded or

terminated or until payment is made and the underpinning disputes or claims (if any) are resolved.’ The PE shall apply professional ethics for adopting the contract administration and management techniques to ascertain the proper implementation of the signed contracts in line with the agreed conditions covering delivery, payments, quality control, contract implementation , liquidated damages and other related issues. The PE shall ensure that Goods to be procured conform to the technical requirements set forth contract, and for such purpose, PE may establish inspection and testing facilities, form inspection teams, enter into arrangements for the joint or collective use of laboratories and inspection and testing facilities, and contract with others for inspection or testing work as needed.

2.3 Key Elements of Contract Management

According to CIPS course book “Managing Contracts and Relationships in Procurement and Supply, 2012” the key elements of contract management are –

Contract development: Formulation of a legally binding agreement, setting out detailed terms and conditions of business and the specification of requirement.

Contract Communication: Copies of the contract documentation and delivery plans, notification of any change should be distributed to those involved with managing them on a day-to-day basis.

Contract administration: The Implementation of Procedures, by buyer and supplier, to ensure that contract obligations are fulfilled. This may include procedures for:

- Contract maintenance, updating and change control : ensuring that change to the contract are agreed, authorized, accurately documented and implemented by both parties, and ensuring that all related documents are consistent;
- Budgeting and monitoring of costs and charges;
- Ordering and payment procedures;
- Resource management and planning;
- Management reporting- progress update, problems encountered, budgetary control spread sheet. (Managing Contracts and Relationships in Procurement and Supply 2012 : 150)

Managing contract performance

- **Risk Management:** Collaborating with users and suppliers to identify potential risks or barriers to performance, so that they can be managed or mitigated.
- **Performance Monitoring and measurement:** Service level agreements (SLAs) and Key Performance Indicators (KPIs) may be used to express the desired outputs from the contract. These documents will form an operational tool (usually more flexible than the contract itself) with which buyer-side and supplier-side contract managers can monitor performance on a day-to-day basis.
- **Continuous improvement Planning:** Buyer and supplier may work collaboratively over the life of the contract to set periodic improvement targets, solve performance issues, and identify emerging opportunities and so on. The contract may need to be revised to reflect new targets and agreements or may make a general provision for improvement planning.
- **Supplier motivation:** Incentives and rewards for performance, or sanctions and penalties for non compliance.
- **Performance Management:** Problem-solving and corrective action in the event of progress or performance shortfalls; pursuing dispute resolution procedures (as set out in the contract), pursuing remedies to mitigate loss or damage as a result of breach of contract or non compliance. Supplier performance will be managed both on a contract basis (via contract administration) and on an ‘aggregate’ basis (all the contracts placed with that supplier). (Managing Contracts and Relationships in Procurement and Supply 2012 : 150)

Contract Renewal or Termination

Towards the end of the contract period, the buyer’s contract manager (s) should review both (a) the success of the contract and relationship and (b) the status of the supply need.

If an ongoing need remains, the contract has been satisfactorily fulfilled by the current supplier, and there is no immediate value to be added by supplier switching (e.g. to take advantage of a more innovative supply solution) or being re-opened to competition (e.g. to take advantage of competitive pricing), the contract may be renewed.

If the need has been met, or changed, or if the current supplier's performance has been unsatisfactory, the contract may be terminated. (Managing Contracts and Relationships in Procurement and Supply 2012: 150)

2.4 The process of contract management

According to Public Procurement Brief by SIGMA program 2011 (www.sigmaweb.org, accessed on 22 February, 2015) contract management activities can be broadly grouped into three areas: Delivery Management, Relationship Management and Contract Administration.

Delivery management ensures that whatever is ordered is then delivered to the required level of quality and performance as stated in the contract. Delivery management may include checking the nature, quantity and quality of:

- Goods supplied – on delivery and also, when appropriate, at the time of manufacture;
- Works carried out – including conformity with designs and drawings, quality of workmanship and materials;
- Services performed – including checking that required services levels and timescales are met.

Relationship management seeks to keep the relationship between the economic operator and the contracting authority open and constructive, with the aim of resolving or easing tensions and identifying potential problems at an early stage, while also identifying opportunities for improvement. Relationships must be wholly professional throughout and must include a professional approach to managing issues and dispute resolution.

Contract administration covers the formal governance of the contract and any permitted changes to documentation during the life of the contract. This area of contract management ensures that the everyday aspects of making the contract run effectively and efficiently are taken care of.

2.5 Contract management in practice

Managing Relationships: Contractual arrangement creates relationships between the contracting authority and the economic operator through developing the working relationship between the purchaser and supplier, through regular contacts,

communication and information sharing ; developing and applying supplier incentives; managing and resolving conflicts; developing approaches to collaboration and mutual support; and so on.. Inevitably this involves a degree of dependency. It is in the contracting authority's own interest to make the relationship work as the costs of early termination and the consequences of poor performance and unplanned changes of economic operator are highly damaging. The three factors for success are:

- Mutual trust and understanding
- Openness and excellence of communication
- A joint approach to managing delivery

The Inaugural Meeting: For any major contract it is a good practice to have a formal inaugural meeting soon after the contract is officially awarded - where people from both the economic operator and the contracting authority meet for the first time within the context of the agreed contract. At this meeting it is vital that both sides move from a competitive to a cooperative viewpoint – they will be working together for the life of the contract as both will want a successful outcome. The objectives of the meeting include:

- Understanding the roles and responsibilities of everyone present
- Discussing the implementation and/or project plan
- Discussing issues which impact on the operation of the contract
- Discussing control mechanisms

This meeting must not become an opportunity to make changes to the specification or other requirements or to the conditions of the contract. Where absolutely necessary, these would be dealt with in accordance with pre-agreed procedures set out in the contract established for this purpose (as described below). (SIGMA Program 2011: 3)

Ongoing Contract Management: The economic operator will perform the contract within the agreed scope. This may include the delivery of goods and materials, or the provision of services or works to the contracting authority. A vital function is to allow both parties to raise issues as soon as they identify them and for the other party to treat these issues seriously and promptly. Ongoing contract management includes the administration of a range of activities, including:

- Change control

- Charges and cost monitoring
- Ordering procedures
- Receipt and acceptance procedures
- Payment procedures
- Budget procedures
- Resource management and planning
- Operational and management reporting
- Asset management
- Progress meetings

Contracting authorities are advised to have standard procedures in place for these activities and to seek advice from other competent authorities in the case of large or complex contracts for which standard procedures may be insufficient or inadequate.

Issues Log: An issues log is one useful mechanism for recording and managing issues arising during contract implementation. It records issues as they arise along with the actions taken to attempt to address them. A dispute resolution procedure must be provided within the contract for issues that cannot be resolved in this way.

Review Meetings: Review meetings between the parties to the contract are another practical means of keeping control of a contract, particularly when it is complex or runs over several years. The frequency and coverage of the review meetings, if any, will depend on the nature of the contract. Review meetings are a useful means of communication between the parties to the contract during its execution, and not having them can have negative consequences. They must be well prepared, focused and not too much time consuming. Review meetings are intended as a forum for the parties to the contract, and not for other beneficiaries or stakeholders. (SIGMA Program 2011: 5)

2.6 Risk and risk management

Risk can be defined as uncertainty of outcome, whether positive opportunity or negative threat. In the area of contract management, the term management of risk incorporates all the activities required to identify and control risks that may have an impact on the fulfillment of a contract.

Many risks involved in contract management relate to the economic operator being unable to deliver at all or not delivering at a satisfactory level of quality.

These risks could include:

- Lack of capacity;
- The economic operator's business focus moving to other areas after contract award, reducing the added value for the contracting authority in the arrangement or impacting on the timeliness of delivery of goods or works;
- The economic operator's financial standing deteriorating after contract award, eventually endangering its ability to maintain agreed quality requirements of goods purchased or levels of service;
- Demand for the goods is much greater than expected and the economic operator is unable to cope;
- Staff at the contracting authority with knowledge of the contract who transfer or move on, weakening the relationship;
- Factors beyond the economic operator's control disrupt delivery of goods or services, for example, premises cannot be accessed because of a natural disaster;
- The contracting authority's inability to meet its obligations under the contract.

Perceived or anticipated risks should be identified in advance when preparing the procurement and can then be dealt with in the contract documents with clear and appropriate allocation of responsibility and corresponding acknowledgment and understanding of the consequences. One factor that can help procurement officers in a problematic case is the relationship they have with the economic operator. Where the relationship is good, open, fair and honest, an early warning of the impending risk being realized may be provided through the normal working relationships and control mechanisms. Where the relationship is poor, the economic operator may attempt to hide the problem, which then normally materializes as a greater risk. (SIGMA Program 2011: 6)

2.7 Major Issues of Goods Contract Management

According to WB procurement Guidelines 2011, Ensuring economy and efficiency in the implementation of the contract is concern of the World Bank according to their procurement guidelines. WB also gives importance in maintaining transparency in all through procurement process as well as the contract management. There are several features covered by contract management are:

- Variation control
- Time management
- Liquidated damage
- Contract termination
- Dispute resolution
- Conflict management
- Advance payment

Pre-shipment Compliance

One of the key activities available to the purchaser for monitoring a supplier's performance, particularly regarding the commodity's compliance with technical and quality assurance requirements is the right to conduct pre-shipment inspection or testing of the commodity, also known as pre-shipment compliance. The purchaser reserves the right to conduct pre-shipment compliance by including the requirement in the bidding documents and the contract issued to the supplier. It is often in the purchaser's best interest to have commodities inspected or tested before shipment. For imported commodities, identifying and resolving product problems prior to shipment (instead of identifying them upon arrival in-country) minimizes the impact on the delivery schedule and the program and saves shipping costs and time.

Some countries have established mandatory pre-shipment compliance requirements for goods, based either on the type of good or the value of the shipment. In most cases, the purchaser decides on the type or level of pre-shipment compliance that should be conducted for each product. The three basic levels of pre-shipment compliance are:

Level I—Pre-shipment Document Review

Level II—Visual Inspection of Product.

Level III—Laboratory or Physical Testing of Product. (Procurement Capacity Toolkit 2009: 9-12)

Conflict Management

Conflict management involves implementing strategies to limit the negative aspects of conflict and to increase the positive aspects of conflict at a level equal to or higher than where the conflict is taking place. Furthermore, the aim of conflict management is to enhance learning and group outcomes. It is not concerned with eliminating all conflict or avoiding conflict. Conflict can be valuable to groups and organizations. It has been shown to increase group outcomes when managed properly. (Tanveer 2013: 8)

Variations Management

A variation to contract is a mutually agreed amendment to vary the obligations set out in a contract for goods and services. Variation Management is a process of capturing, accurately recording all the changes that have arisen during the life of the project, which can make the differences in project outcome and implementing controlling measures to the changes. There are many reasons to vary an existing contract. For example, changes in technology, resources, needs of the organisation, market conditions, etc. Variations can generally be categorised as either administrative or financial:

- Administrative variations are changes that do not affect the financial details of the contract, e.g., changes to the billing process, delivery address, personnel assigned to the contract, monitoring processes, etc; and
- Financial variations alter the financial details of the contract, e.g. changes to the price/cost, quantity, nature of the deliverables and terms of the contract (which increase the value).

Several steps to control variation from the process:

- Determination of strategic focus to reducing variation
- Setting SMART objectives
- Understanding data
- Identification of focal area
- Implementing controlling measure and improvements. (Tanveer 2013: 9)

Time Management

Time management is the process of planning and exercising conscious control over the amount of time spent on specific activities, especially to increase effectiveness, efficiency or productivity. Time management may be aided by a range of skills, tools, and techniques used to manage time when accomplishing specific tasks, projects and goals complying with a due date. In case of purchasing goods, contract time management means managing every activity like delivery time, testing & inspection, acceptance & issuing acceptance certificate, making payment to the supplier etc. in time. (Tanveer 2013: 9)

Liquidated Damage

Liquidated damages are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance). Sum of money (agreed-to and written into a contract) specified as the total amount of compensation an aggrieved party should get, if the other party breaches certain part(s) of the contract. The contract also establishes what actions or failures to act constitute a breach. In order for a liquidated damages clause to be upheld, two conditions must be met. First, the amount of the damages identified must roughly approximate the damages likely to fall upon the party seeking the benefit of the term. Second, the damages must be sufficiently uncertain at the time the contract is made that such a clause will likely save both parties the future difficulty of estimating damages. (Tanveer 2013: 10)

Contract Termination

Cancellation of an entire contract or of its most significant part is called contract termination. Cancellation of a portion of work is called partial termination. The termination or cancellation of a contract signifies the process whereby an end is put to whatever remains to be performed there under. It differs from Rescission, which refers to the restoration of the parties to the positions they occupied prior to the contract. There are several ways to terminate a contract.

Contract Termination by Completion of the Contract Terms: A contract can be terminated when each party has performed its duties pursuant to the terms of the contract. In such an instance, the contract terminates as a matter of law.

Contract Termination by Agreement: A contract can include provisions whereby the parties agree in the contract itself that the contract terminates upon the occurrence of a specific event. For example, there could be a contract for one party to use all the gas in a tank. In such an instance, the parties can agree that the contract will terminate when the entire tank is empty.

Contract Termination by Inability to Perform: A contract can be terminated when something unforeseeable occurs that prevents the parties from following through with the contract. This situation is referred to as "*impossibility of performance*." For example, parties can agree to the sale of a house from one party to another party.

Thereafter, the house burns down. As a result, the parties cannot continue with the real estate transaction contained in the contract and thus, the contract is terminated.

Contract Termination by Breach of Contract: A contract can end when one party breaches the terms of the contract. Such a breach can occur in one of several ways. First, where a party fails to perform as agreed upon in the contract, there is a breach of contract. Moreover, one's failure to abide by the terms of the contract constitutes a breach of contract. Additionally, one party can do something to prevent the other party from performing his or her duties under the contract.

Contract Termination by Fraud: A contract can be terminated by what is referred to as "fraud in the inducement." Fraud in the inducement occurs where a party intentionally misleads the other party into entering the contract. For example, a party lies about the subject of the contract and the other party relies upon the statement and agrees to the contract. This misleading action can terminate the contract.

Remedies for Contract Termination: If a contract has been terminated, a party has legal recourse against the party in breach of the contract. At this point, one should review the contract to check whether there are any notice requirements wherein one must notify the breaching party as a prerequisite to filing any claims or suits. The aggrieved party may file a law suit in civil court where the party may seek, among other items, monetary damages. In such a case, one should consult an attorney in order to review what rights one has in pursuing legal action. (Managing Contracts and Relationships in Procurement and Supply 2012: 79, 100)

Dispute resolution

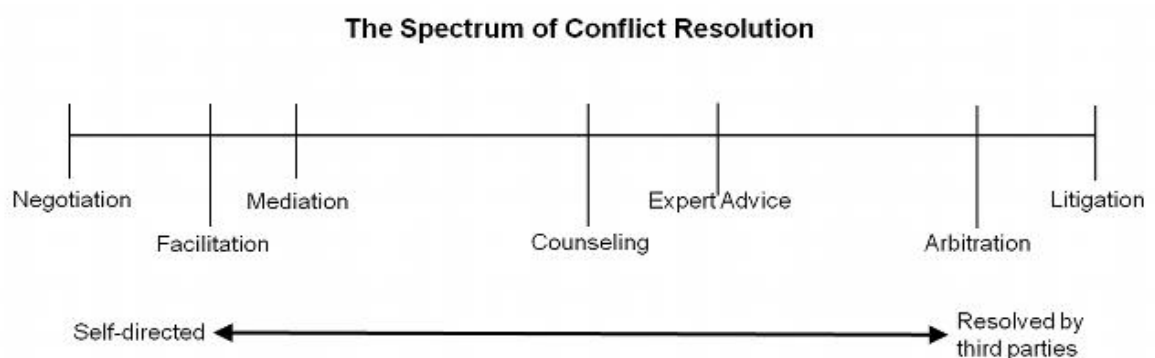


Figure 1. Methods of conflict resolution range from self-determination by the participants to decisions made unilaterally by a judge or arbitrator.

REF: Family Business Conflict Resolution Handbook 2003

Dispute resolution is the process of resolving a dispute or a conflict by meeting at least some of each side's needs and addressing their interests. Many disagreements and disputes arise when the parties cannot agree on issues related to the interpretation of contract provisions, such as the definition of deliverables, how performance standards are met and/or the effect of unexpected events. These disagreements may be of a minor nature which can be and are readily resolved. However, it is important that any possibility of dispute or an actual dispute be recognized at an early stage and addressed as quickly as possible. Avoiding the escalation of disagreements can impact on contract deliverables and reduce the costs to both parties. Most commercial contracts include a dispute resolution mechanism which provides a multilayered process involving a number of dispute resolution mechanisms. (Taylor Walton 2009: 29).

Negotiation: Negotiation is a dialogue between two or more people or parties, intended to reach an understanding, resolve point of difference, or gain advantage in outcome of dialogue, to produce an agreement upon courses of action, to bargain for individual or collective advantage, to craft outcomes to satisfy various interests of two people/parties involved in negotiation process. Negotiation is a process where each party involved in negotiating tries to gain an advantage for themselves by the end of the process. Negotiation is intended to aim at compromise. (Tanveer 2013: 12)

Conciliation: Conciliation is an alternative dispute resolution (ADR) process whereby the parties to a dispute use a conciliator, who meets with the parties separately in an attempt to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement. Conciliation differs from arbitration in that the conciliation process has no legal standing, and the conciliator usually has no authority to seek evidence or call witnesses, usually writes no decision, and makes no award. Conciliation differs from mediation in that the main goal is to conciliate, most of the time by seeking concessions. In mediation, the mediator tries to guide the discussion in a way that optimizes party's needs, takes feelings into account and reframes representations. In conciliation the parties seldom, if ever, actually face each other across the table in the presence of the conciliator. (Tanveer 2013: 12)

Mediation: The term "mediation" broadly refers to any instance in which a third party helps others reach agreement. More specifically, mediation has a structure, timetable and dynamics that "ordinary" negotiation lacks. The process is private and confidential,

possibly enforced by law. Participation is typically voluntary. The mediator acts as a neutral third party and facilitates rather than directs the process. Mediators use various techniques to open, or improve, dialogue between disputants, aiming to help the parties reach an agreement. Much depends on the mediator's skill and training. As the practice gained popularity, training programs, certifications and licensing followed, producing trained, professional mediators committed to the discipline. (www.wikipedia.org/wiki/Mediation, accessed on 05 March, 2015)

Arbitration: Arbitration, a form of alternative dispute resolution (ADR), is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons (arbitrator), by whose decision they agree to be bound. It is a resolution technique in which a third party reviews the evidence in the case and imposes a decision that is legally binding for both sides and enforceable. Other forms of ADR include mediation and non-binding resolution by experts. Arbitration is often used for the resolution of commercial disputes, particularly in the context of international commercial transactions. The use of arbitration is also frequently employed in consumer and employment matters, where arbitration may be mandated by the terms of employment or commercial contracts. (Tanveer 2013: 13)

Litigation: Litigation is a civil action brought in a court of law in which a plaintiff, a party who claims to have incurred loss as a result of a defendant's actions, demands a legal or equitable remedy. The defendant is required to respond to the plaintiff's complaint. If the plaintiff is successful, judgment is in the plaintiff's favor, and a variety of court orders may be issued to enforce a right, award damages, or impose a temporary or permanent injunction to prevent an act or compel an act. A declaratory judgment may be issued to prevent future legal disputes. Litigation may involve dispute resolution of private law issues between individuals, business entities or non-profit organizations. (Tanveer 2013: 14)

Advance Payment

An advance payment, or simply an advance, is the part of a contractually due sum that is paid or received in advance for goods or services, while the balance included in the invoice will only follow the delivery. It is called a prepaid expense in accrual accounting for the entity issuing the advance. Any type of payment that is made ahead of its normal schedule, such as paying for a good or service before you actually receive

it is an advance payment. Advance payments are sometimes required by sellers as protection against non-payment.

The Project Manager shall make Advance Payment, If so specified in the PCC, the Procuring Entity shall make advance payment to the Contractor of the amounts and by the dates stated in the PCC against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to the Procuring Entity in an amount equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

The Contractor shall use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used for such specific purposes by supplying copies of invoices or other documents to the Project Manager.

The advance payment shall be repaid by deducting at proportionate rate from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages. (Tanveer 2013: 13, 23)

2.8 Responsibilities of the Contract Manager

- Participating, as necessary, in developing the solicitation and writing the draft documents. Contract administration must be considered during this process.
- Monitoring the contractor's progress and performance to ensure goods and services conform to the contract requirements.
- Check compliance with the technical specifications and to arrange for inspection to check quality and quantity of the goods. He may engage an external agent for the purpose of conducting pre-shipment inspection of goods.
- Check the compliance with delivery schedule and other terms and conditions. He shall arrange to settle delays and also arrange timely payments following the contract terms and irrevocable letter of credit.

- Ensure compliance of maintenance guarantee, after sales services and warranty obligations. He shall also ensure the application of the General Conditions of Contract and other terms specified in the Particular Conditions of Contract.
- Resolving disputes in a timely manner, documenting significant events and maintaining appropriate records.

(<http://comptroller.texas.gov/procurement/pub/contractguide>, accessed on 26 January, 2015)

2.9 Review of PPR 2008 and Standard Tender Document

Public Procurement Regulation 2008 covers almost all the aspects of Government Procurement locally or internationally. Part- 6, 11 & 12 of chapter three (Principle of public procurement) covers contract administration and management, conflicts and dispute resolution issues. Clause 78 of chapter four part five covers variation works and chapter seven is about professional misconduct management. Beside Public Procurement Regulation 2008 General Condition of Contract (GCC) and Particular Condition of Contract (PCC) guides any user if problem arises. Extensive and thorough analysis of PPR is the basic source of data in this comparative study.

Definitions

Contract Agreement means the Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein;

Contract Documents means the documents listed in the Contract Agreement, including any amendments thereto;

Contract Price means the price stated in the Notification of Award and thereafter as adjusted in accordance with the provisions of the Contract; ;

Delivery means the transfer of ownership of the Goods from the Supplier to the Purchaser in accordance with the terms and conditions set forth in the Contract;

Goods means raw materials, products and equipment and objects in solid, liquid or gaseous form, electricity, and related Services if the value of such Services does not exceed that of the Goods themselves ;

corrupt practice means offering, giving or promising to give, receiving, or soliciting, either directly or indirectly, to any officer or employee of a Purchaser or other public or

private authority or individual, a gratuity in any form; employment or any other thing or service of value as an inducement with respect to an act or decision or method followed by a Purchaser in connection with a Procurement proceeding or contract execution;

Fraudulent practice means the misrepresentation or omission of facts in order to influence a decision to be taken in a Procurement proceeding or Contract execution;

collusive practice means a scheme or arrangement between two (2) or more Persons, with or without the knowledge of the Purchaser, that is designed to arbitrarily reduce the number of Tenders submitted or fix Tender prices at artificial, noncompetitive levels, thereby denying a Purchaser the benefits of competitive price arising from genuine and open competition; or

coercive practice means harming or threatening to harm, directly or indirectly, Persons or their property to influence a decision to be taken in a Procurement proceeding or the execution of a Contract, and this will include creating obstructions in the normal submission process used for Tenders.

Should any corrupt, fraudulent, collusive or coercive practice of any kind come to the knowledge of the Purchaser, it will, in the first place, allow the Supplier to provide an explanation and shall, take actions only when a satisfactory explanation is not received. Such exclusion and the reasons thereof, shall be recorded in the record of the procurement proceedings and promptly communicated to the Supplier concerned. Any communications between the Supplier and the Purchaser related to matters of alleged fraud or corruption shall be in writing. The Supplier shall permit the Purchaser to inspect the Supplier's accounts and records and other documents relating to the submission of the Tender and Contract performance. (STD PG4 2013: 36)

Documents Forming the Contract in order of precedence

The following documents forming the Contract shall be in the following order of precedence:

- (a) The signed Contract Agreement;
- (b) The Notification of Award;
- (c) The Tender and the appendices to the Tender;
- (d) Particular Conditions of Contract;
- (e) General Conditions of Contract;
- (f) Technical Specifications;

- (g) Drawings;
- (h) Priced Schedule and schedule of requirements and ;
- (i) Other Documents including correspondences listed in the PCC forming part of the Contract. (STD PG4 2012: 38)

Eligibility

The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country. All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. Origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components. (STD PG4 2012: 39)

Governing Language & Law

The Contract shall be written in English language. Correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser shall be written in English. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in English language, in which case, for purposes of interpretation of the Contract, this translation shall govern. The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation.

The Contract shall be governed by and interpreted in accordance with the laws of the People's Republic of Bangladesh. No fees, gratuities, rebates, gifts, commissions or other payments, other than those shown in the Tender or the contract, shall be given or received in connection with the procurement process or in the contract execution. (STD PG4 2012: 39)

Communications & Notices

Communications between Parties (notice, request or consent required or permitted to be given or made by one party to the other) pursuant to the Contract shall be in writing to the addresses specified in the PCC. A notice shall be effective when delivered or on the

notice's effective date, whichever is later. A Party may change its address for notice hereunder by giving the other Party notice of such change to the address. (STD PG4 2012: 40)

Trademark, Patent and Intellectual Property Rights, Copyright

The Purchaser should not be liable for any infringement of intellectual property rights arising from use of the goods procured. In case there are third-party claims of such infringement of patent, trademark, or industrial design rights, the supplier must indemnify and hold the Purchaser free and harmless against such claims and shall not be in contravention of The **Trademark Act, 2009 and The Patents and Designs Act, 1911**. The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party. (STD PG4 2012: 40)

Assignment and Sub-contracting

The Supplier shall not assign his rights or obligations under the Contract, in whole or in part, except with the Purchaser's prior written consent. Any subcontracting arrangements made during contract implementation and not disclosed at the time of the Tendering shall not be allowed. Subcontracting of any portion of the Goods shall not relieve the Tenderer from any liability or obligations that may arise from its performance. Supplier shall retain full responsibility for the contract and cannot pass any contractual obligations to the subcontractor and under no circumstances assignment of the contract to the subcontractor be allowed. (STD PG4 2012: 40)

Supplier's and Purchaser's Responsibilities

- The Supplier shall supply all the Goods and Related Services specified in the Scope of Supply and the Delivery and Completion schedule in conformity with the provisions of the Contract Agreement;
- Whenever the performance of the obligations in this Contract requires that the Supplier obtain permits, approvals and other license from local public authorities, the Purchaser may, if so needed by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.

However, the supplier shall bear the costs of such permits and/or licenses. On the other hand, the Purchaser shall pay all costs involved in the performance of its responsibilities, in accordance with the contract;

- The Purchaser shall pay the Supplier, in consideration of the provision of Goods and Related Services, the Contract Price under the provisions of the Contract at the times and manners prescribed in the Contract. (STD PG4 2012: 41)

Amendment to Order

The Purchaser may make an amendment to Order for necessary adjustment within the general scope of the contract in any one or more of the following aspects in order to fully meet the requirement of the Contract:

- a) Drawing, design or specifications of the goods, provided that:
 - i. The goods to be furnished are to be specifically manufactured for the government in accordance therewith;
 - ii. The change is an improvement of the goods and advantageous to the Government;
 - iii. It is done at no extra cost; and
 - iv. It is not prejudicial to the losing Tenderers in the sense that such change/s could not have been foreseen during the conduct of the tendering and would have significantly affected the other Tenderer's tender;
- b) The place of delivery;
- c) The place of performance of the services;
- d) Additional items needed and necessary for the protection of the goods procured, which were not included in the original contract.

Such amendment may or may not result to an increase or a decrease of the contract price, and/or an extension or reduction of the delivery period. However, the amendment should not have the result of changing the subject matter of the contract or the specifications of the goods or services, in any material aspect. (STD PG4 2012: 41)

Instances to Issue Amendment to Order

The Purchaser may issue amendments order at any time during contract implementation, through a notice, provided that such adjustment is required to fully meet the requirements of the contract. Any of the following circumstances may serve as basis for such amendment/s:

- I. Emergency cases, fortuitous events or unforeseen contingencies arising during contract implementation, and such contingencies have an impact on the procurement at hand, such as:
- II. Changes in the conditions affecting the contract, e.g., a change in the place of delivery;
- III. Time is of the essence in the implementation of the contract, and any changes require immediate implementation; and
- IV. Additional requirements have been identified as necessary for the protection of the goods procured, such as changes in the packaging of the goods, or additional items have become necessary to ensure that the goods are sufficiently protected from the elements;

When the contract does not reflect the real intention of the parties due to mistake or accident, and the amendment is necessary to reflect the party's intention; and other analogous circumstances that could affect the conditions of the procurement at hand. (STD PG4 2012: 42)

Adjustments in Contract Price and/or Delivery Schedule

If an amendment to order increases or decreases the cost of, or the time required for executing any part of the delivery under the original contract, an equitable adjustment in contract price and/or delivery schedule should be mutually agreed upon between parties concerned, and the contract should be modified.

If the amendment to order consists of additional items, the price adjustment shall be based on the unit price in the original contract for items of goods similar to those in the original contract. If the contract does not contain any rate applicable to the additional items, then suitable prices shall be mutually agreed upon between the parties, based on prevailing market prices. It is required, however, that any increase in contract price must not exceed ten percent (10%) of the original contract price. (STD PG4 2012: 42)

Packing, Delivery and Documents

The Supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract and in accordance with existing industry standards. The packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme

temperatures, salt and precipitation, and open storage. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements (if any), specified in the PCC, and in any subsequent instructions ordered by the Purchaser. The outer packaging must contain a “Packing List” which must reflect the actual contents of the package.

The Delivery of the Goods and completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier shall be specified in the PCC, and shall be received by the Purchaser at least one week before arrival of the Goods and, if not received the Supplier shall be responsible for consequent expenses. (STD PG4 2012: 42)

Acceptance

Acceptance by the Purchaser shall be completed not later than fourteen (14) days from receipt of the goods at final destination in the form of an **Acceptance Certificate**, unless any defects in the supply, any damage during transportation or any failure to meet the required performance criteria of the supply are identified and reported to the Supplier. In such cases the Acceptance Certificate will be issued only for those parts of the contract supplies which are accepted. The Acceptance Certificate for the remaining supplies will only be issued after the Supplier has remedied the defects and/or any non-conformity. The appropriate Technical Inspection and Acceptance Committee of the Purchaser must commence the inspection and acceptance process within two (2) days from delivery of the goods, and shall complete the same as soon as practicable. (STD PG4 2012: 43)

Contract Price

The Contract Price shall be specified in the PCC. During evaluation, tender has excluded and not taken into account:

- For Goods manufactured in Bangladesh, VAT payable on account of Supplier, which will be payable on the goods if a contract is awarded to the Tenderer;
- For Goods manufactured outside the Bangladesh, already imported or to be imported, customs duties, import VAT and other import taxes levied on the

imported Good, VAT, which will be payable on the Goods if the contract is awarded to the Tenderer.

- The Contract price will include all the costs paid or payable as stated above. Prices charged by the Supplier for the Goods delivered and the Related Services performed under the Contract shall not vary from the price as stated in PCC with the exception of any change in price resulting from a Change Order. (STD PG4 2012: 43)

Transportation

The Supplier is required under the Contract to transport the Goods to a specified place of destination as specified in Section 6: Schedule of Requirements, defined as the Site, transport to such place of destination, including insurance, other incidental costs, and temporary storage, if any. These costs shall be included in the Contract Price. If not in accordance with the above, responsibility for transportation of the Goods shall be as specified in the *INCOTERM* indicated in the Price Schedule or any other trade terms specify the responsibilities of the Purchaser and Supplier as specified in PCC. (STD PG4 2012: 44)

Terms of Payment

The Contract Price, including any Advance Payments, if applicable, shall be paid in the manner as specified in the PCC. The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Related Services performed, and accompanied by the documents as stated under delivery and acceptance and upon fulfilment of any other obligations stipulated in the Contract. Payments shall be made promptly by the Purchaser, but in no case later than the days indicated in the PCC after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it. The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the tender price is expressed. In the event that the Purchaser fails to pay the Supplier any payment by its respective due date or within the period set forth in the PCC, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment at the rate shown in the PCC, for the period of delay until payment has been made in full, whether before or after judgment or arbitration award. (STD PG4 2012: 44)

Insurance, Taxes and Duties

The Goods supplied under this Contract shall be fully insured by the Supplier in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery. The Goods remain at the risk and title of the Supplier until their final acceptance by the Purchaser. If not in accordance the above, the insurance coverage shall be as specified in the *INCOTERM* indicated in the Price Schedule or any other insurance provisions as specified in PCC.

For Goods Manufactured within Bangladesh, the Supplier shall be entirely responsible for all taxes, duties, VAT, license fees, and other such levies imposed or incurred until delivery of the contracted goods to the Purchaser. For Goods manufactured outside Bangladesh, the Supplier shall be entirely responsible for all taxes, duties and other such levies imposed outside Bangladesh. If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in Bangladesh, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent. (STD PG4 2012: 44)

Performance Security

The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract. The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than Thirty (30) days following the date of Completion of the Supplier's performance obligations under the Contract and the issuance of certification to that effect by the Purchaser, including any warranty obligations as stated under warranty clause, provided that there are no claims filed against the supplier. (STD PG4 2012: 45)

Specifications and Standards

The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in Technical Specifications and in Drawings, if any. If there is no applicable standard, the goods must conform to the authoritative standards appropriate to the good's country of origin. Such standards must be the latest issued by the concerned institution. Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a

notice of such disclaimer to the Purchaser. Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Technical Specification. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser. (STD PG4 2012: 45)

Inspections and Tests

The Purchaser shall have the right to test the Goods to confirm their conformity to the contract specifications. The PCC and Technical specifications shall specify what tests the Purchaser requires and where they are to be conducted. The supplier shall at its own expense and at no cost to the Purchaser, carry out all such tests of the Goods and related services as are specified in the Contract. The Supplier shall provide the Purchaser with a report of the results of any such test. The Purchaser may engage external agents for the purpose of conducting inspection or pre-shipment inspection of Goods, provided that the Purchaser shall bear all of its costs and expenses. The Purchaser or its designated representative as specified shall be entitled to attend the tests and/or inspections, provided that the Purchaser shall bear all of its own costs and expenses incurred in connection with such attendance.

Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract, but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications, codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected. The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier

shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a reasonable advance notice. The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report, shall relieve the Supplier from any warranties or other obligations under the Contract. (STD PG4 2012: 45)

Warranty

The Supplier warrants that all the Goods supplied under the Contract are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the design and/or material required by the Purchaser provides otherwise under amendment to orders.

The Supplier further warrants that the all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in Bangladesh. In order to assure that manufacturing defects shall be corrected by the Supplier, manufacturer, or distributor, as the case may be, a warranty shall be required from the Supplier for a minimum period of three (3) months in the case of supplies, and one (1) year in the case of equipment, or other such period as may be specified in the PCC, after the Goods, or any portion thereof as the case may be, have been delivered to and accepted in the form of an **Acceptance Certificate** at the final destination indicated in the PCC.

The warranty periods may vary among the various items and lots. The warranty for Goods delivered ahead will lapse earlier than the succeeding deliveries. The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within the period specified in the PCC, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

If the Supplier, having been notified, fails to remedy the defect(s) within the stated period, the Purchaser may proceed to call upon the Performance security without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract and under the applicable law.

Performance Security shall only be released after the lapse of the warranty period, provided that the goods supplied are free from patent and latent defects and all the conditions imposed under the contract have been fully met.

- A patent defect, which is one that is apparent to the buyer on normal observation. It is an apparent or obvious defect. For example, a ball pen that does not write is patently defective.
- A latent defect, which is one that is not apparent to the buyer by reasonable observation. A latent defect is “hidden” or one that is not immediately determinable. For example, a ball pen that writes .75 kilometres instead of the expected 1.5 kilometres has a latent defect. (STD PG4 2012: 46)

Delays in Delivery and Extensions of Time

The Supplier must deliver the Goods or perform the services procured within the period prescribed by the Purchaser, as specified in the Contract. If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services, the Supplier shall promptly notify the Purchaser in writing. It must state therein the cause/s and duration of the expected delay. The Purchaser shall decide whether and by how much to extend the time. In all cases, the request for extension should be submitted before the lapse of the original delivery date. Within twenty-one (21) days of receipt of the Supplier’s notice, the Purchaser shall evaluate the situation and may grant time extensions, if based on justifiable grounds, without liquidated damages. The Procuring Entity may extend up to twenty percent (20%) of the original contract time, above 20% of the original contract time approval of Head of Purchaser (HOPE) shall be required, in which case the extension shall be ratified by the Parties by amendment of the Contract. Except in the case of stated Force Majeure, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages, unless an extension of time is agreed. (STD PG4 2012: 47)

Liquidated Damages

If the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery and/or perform the Related Services within the period specified in the Contract. The Purchaser shall, without prejudice to all its other remedies under the Contract, deduct from the

Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the PCC of the Contract price of the delayed Goods or unperformed / Related Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those PCC. Once the maximum is reached, the Purchaser may terminate the Contract as stated under GCC Clause 42. (STD PG4 2012: 47)

Change in Laws and Regulations

Unless otherwise specified in the Contract, if after the Contract, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in Bangladesh (which shall be deemed to include any change in interpretation or application by the competent authorities) that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. (STD PG4 2012: 48)

Force Majeure

“Force Majeure” means an exceptional event or circumstance:

- (a) which is beyond a Party’s control;
- (b) which such Party could not reasonably have provided against before entering into the Contract;
- (c) which, having arisen, such Party could not reasonably have avoided or overcome; and
- (d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war;
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel;
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity, and

- (v) natural catastrophes such as cyclone, hurricane, typhoon, tsunami, storm surge, floods, earthquake, landslides, fires, epidemics, quarantine restrictions, or volcanic activity;
- (vi) freight embargoes;
- (vii) acts of the Government in its sovereign capacity. (STD PG4 2012: 48)

Notice of Force Majeure: If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure. The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them. Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract. Each Party shall at all times use all reasonable endeavours to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure. (STD PG4 2012: 49)

Consequences of Force Majeure: The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure. The Purchaser may suspend the delivery or contract implementation, wholly or partly, by written order for a certain period of time, as it deems necessary due to force majeure as defined in the contract.

Delivery made either upon the lifting or the expiration of the suspension order. However, if the Purchaser terminates the contract for default as stated under GCC, resumption of delivery cannot be done. Head of Purchaser determines the existence of a force majeure that will be basis of the issuance of suspension of order. Adjustments in the delivery or contract schedule and/or contract price, including any need to modify contract under contract amendment. (STD PG4 2012: 49)

Contract Termination

Termination for Defaults

The Purchaser shall terminate this Contract for default when any of the following conditions attends its implementation:

- a) Outside of force majeure, the Supplier fails to deliver or perform any or all of the GOODS within the period(s) specified in the contract, or within any extension thereof granted by the Purchaser pursuant to a request made by the Supplier prior to the delay;
- b) As a result of force majeure, the Supplier is unable to deliver or perform any or all of the GOODS, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Purchaser stating that the circumstance of force majeure is deemed to have ceased; or
- c) The Supplier fails to perform any other obligation under the Contract;
- d) If the Supplier, in the judgment of the Purchaser has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract;
- e) When the deductible amount, due to liquidated damage, reaches its maximum as stated in the contract.

Termination of a contract for default is without prejudice to other remedies available to the Purchaser for breach of contract, such as payment of liquidated and other damages, if there are grounds for the latter.

In the event the Purchaser terminates the Contract in whole or in part, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

In the event as stated in (d), the Purchaser shall,

- (a) Terminate the Supplier's employment under the contract and cancel the contract, after giving 14 days notice to the Supplier.
- (b) Declare, at its discretion, the concerned Person to be ineligible to participate in further Procurement proceedings, either indefinitely or for a specific period of time. (STD PG4 2012: 49)

Termination for insolvency

The Purchaser shall terminate this Contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not

prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser and/or the Supplier. (STD PG4 2012: 50)

Termination for Convenience

The Purchaser, by written notice sent to the supplier, may terminate this Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that the termination is for the Purchaser's convenience, the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.

Any of the following circumstances may constitute sufficient grounds to terminate a contract for conveniences:

- (a) If physical and economic conditions have significantly changed so as to render the contract no longer economically, financially or technically feasible, as determined by the Head of Purchaser;
- (b) The Head of Purchaser has determined the existences of conditions that make contract implementation impractical and/or unnecessary, such as, but not limited to , fortuitous event/s, change in laws and government policies;
- (c) Funding for the contract has been withheld or reduced;
- (d) Any circumstances analogous to the foregoing.

The GOODS that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be accepted by the Purchaser at the contract terms and prices. For GOODS not yet performed and/or ready for delivery, the Purchaser may elect:

- (a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or
- (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier. (STD PG4 2012: 50)

Procedures for Termination of Contracts

The following provisions shall govern the procedures for termination of this Contract:

- a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Purchaser shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;
- b) Upon recommendation by the Purchaser, the Head of the Purchaser shall terminate this Contract only by a written notice to the Supplier conveying the termination of this Contract. The notice shall state:
 - i. that this Contract is being terminated for any of the ground(s) aforementioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - ii. the extent of termination, whether in whole or in part;
 - iii. an instruction to the Supplier to show cause as to why this Contract should not be terminated; and
 - iv. special instructions of the Purchaser, if any:
- c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;
- d) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the Head of the Purchaser a verified position paper stating why this Contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the Head of the Purchaser shall issue an order terminating this Contract;
- e) The Purchaser may, at any time before receipt of the Supplier's verified position paper, withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;
- f) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the Head of the Purchaser shall decide whether or not to terminate this Contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate; and

- g) The Head of the Procurement Entity may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the Head of the Procurement Entity. (STD PG4 2012: 51)

Contract Amendment

Subject to applicable laws, no variation in or modification of the terms of this Contract shall be made except by written amendment signed by the parties. The Purchaser, in accordance with their Delegation of Financial Powers, as required, may amend the Contract to reflect the changes introduced to the Original terms and Conditions of the Contract. (STD PG4 2012: 52)

Settlement of Disputes

Amicable Settlement:

The Purchaser and the Supplier shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

Adjudication:

- a) If the Supplier /Purchaser believe that amicable settlement of dispute is not possible between the two parties, the dispute shall be referred to the Adjudicator within fourteen (14) days of first written correspondence on the matter of disagreement;
- b) The Adjudicator named in the PCC is jointly appointed by the parties. In case of disagreement between the parties, the Appointing Authority designated in the PCC shall appoint the Adjudicator within fourteen (14) days of receipt of a request from either party;
- c) The Adjudicator shall give its decision in writing to both parties within twenty-eight (28) days of a dispute being referred to it;
- d) The supplier shall make all payments (fees and reimbursable expenses) to the Adjudicator, and the Purchaser shall reimburse half of these fees through the regular progress payments;
- e) Should the Adjudicator resign or die, or should the Purchaser and the Supplier agree that the Adjudicator is not functioning in accordance with the provisions of

the Contract; a new Adjudicator will be jointly appointed by the Purchaser and the Supplier. In case of disagreement between the Purchaser and the Supplier the Adjudicator shall be designated by the Appointing Authority designated in the PCC at the request of either party, within fourteen (14) days of receipt of a request from either party. (STD PG4 2012: 52)

Arbitration:

- a) If the Parties are unable to reach a settlement by adjudication, within twenty-eight (28) days of the first written correspondence on the matter of disagreement, then either Party may give notice to the other party of its intention to commence arbitration.
- b) The arbitration shall be conducted in accordance with the rules of procedure specified in the PCC. (STD PG4 2012: 53)

2.10 Administration of Goods Contracts

- The Project Manager shall check compliance with the technical specifications of Goods and arrange for inspection of its quality and quantity. The Procuring Entity may engage an external agent for the purpose of conducting pre-shipment inspection of Goods;
- The Project Manager shall check the compliance with delivery schedule and conditions and arrange to settle delays. He shall arrange timely payments following the contract terms and irrevocable letter of credits;
- He shall ensure compliance of maintenance guarantee, after sales services and warranty obligations and also ensure the application of the General Conditions of Contract and other terms specified in the Particular Conditions of Contract.

(www.path.org/publications/files/RH_proc_cap_toolkit, accessed on 03 February, 2015)

Contract management and supplier performance monitoring are important components of the procurement process, since unsatisfactory performance by the supplier can jeopardize the objectives of an RH program. Proactive contract management and performance monitoring that engages the supplier's support allows the purchaser to obtain information on supplier production and performance problems at an early stage in their development. Early identification improves the chances of resolving a problem before it significantly impacts the product delivery schedule. It can also be more cost

effective, since early problem identification allows the purchaser and supplier to consider a broader range of contingency options, thereby minimizing the need to resort to more costly solutions such as expedited shipments or overtime labor.

One of the key activities available to the purchaser in monitoring the supplier's requirement to provide a good-quality product is to conduct pre-shipment compliance. The three levels of Pre-shipment compliance most often used by purchasers (document review, visual inspection, and laboratory or physical testing) are discussed in this module. The purchaser should also monitor the transport arrangements made for the product, particularly for those products that may have temperature storage limitations. Finally, the module also discusses the purchaser's responsibility to manage the contract payment process, including completing timely payment arrangements once the supplier has fulfilled its contract obligations. (www.path.org/publications/files/RH_proc_cap_toolkit, accessed on 03 February, 2015)

2.11 Contract Performance Monitoring

The key objectives of a contract performance monitoring system are to:

- Ensure that all technical specifications and contract requirements are met;
- Identify performance problems early and correct them;
- Provide information on a supplier's performance when considering the supplier for future contracts;

By establishing a monitoring system to achieve these objectives, the purchaser strengthens its ability to successfully support the program for which the commodities have been ordered. Setting up and properly implementing an effective performance monitoring system, however, requires a commitment of both time and resources.

The basic components of a performance monitoring system include:

- Formal procurement records and key performance indicators;
- Supplier commitment to meet the contractual requirements that form the basis for the performance indicators;
- Procedures for addressing performance problems and contract disputes;
- Pre-shipment compliance plan;
- Procedures for monitoring commodity transport.

The extent to which performance monitoring systems are used is determined by the purchaser on the basis of risk-management and cost-benefit assessments. For example, when the commodity being purchased has a high relative expenditure cost and the supply is difficult to secure, then the priority would be to establish a robust contract performance monitoring system to manage the risk associated with the procurement. Most health care commodities are of high value and the risks associated with poor-quality products necessitate using a robust performance monitoring system.

Regardless of the value of the procurement, it is always important to ensure that the product meets basic requirements. For RH commodities, where the overall risk to health and program implementation from poor-quality products is high, the purchaser should establish and implement a thorough contract performance monitoring system to help manage the risk. (Procurement Capacity Toolkit 2009: 9-4)

2.12 Development of a Contract Monitoring System

Key Performance Indicators: Key performance indicators are used to track and evaluate the supplier's performance in complying with the contract requirements. For performance indicators to be effective, they need to be SMART: **S**pecific, **M**easurable, **A**ttainable, **R**elevant, **T**ime based.

A range of performance indicators can be developed to monitor a supplier's performance and the exact indicators used will vary according to the commodity, the level of risk associated with contract failure by the supplier, and the value of the procurement. The specific information needed to develop performance indicators is drawn from the procurement record files discussed above. For most high-value procurements, performance indicators should be developed that track compliance with the following categories:

- Technical specifications.
- Timeliness of deliveries.
- Labeling and packaging requirements.
- Shelf-life requirements.
- Contract terms and conditions.

(Procurement Capacity Toolkit 2009: 9-34)

2.13 Brief Summary of Literature Review

For the study, the researcher considers the following main elements of contract administration and management for procuring goods –

- a) Pre-shipment Inspection;
- b) Insurance cover;
- c) Understanding risks and responsibilities of both supplier and purchaser;
- d) Understanding force majeure issues;
- e) Inspection and testing of goods at factory;
- f) Pre-delivery Inspection and testing;
- g) Management of Variation Orders, Contract suspension and termination, price revisions, Contract remedies such as imposition of liquidated damages, delayed payments, and disputes or claims settlement procedures;
- h) Payment management;
- i) Supplier compliance (legal, social, environmental);
- j) Organization and management of documentation related to contract implementation.

Theoretical aspects of Contract Management issues and their reflection in PPR-2008 and in Standard Tender Documents used in the public sector procurement in Bangladesh are discussed in the literature review. Contract Management Practices according to some international procurement guidelines are also highlighted. Research works done by others in the similar area are discussed. Also the Standard Tender Document for procuring goods, PG4-which is published by CPTU, is discussed.

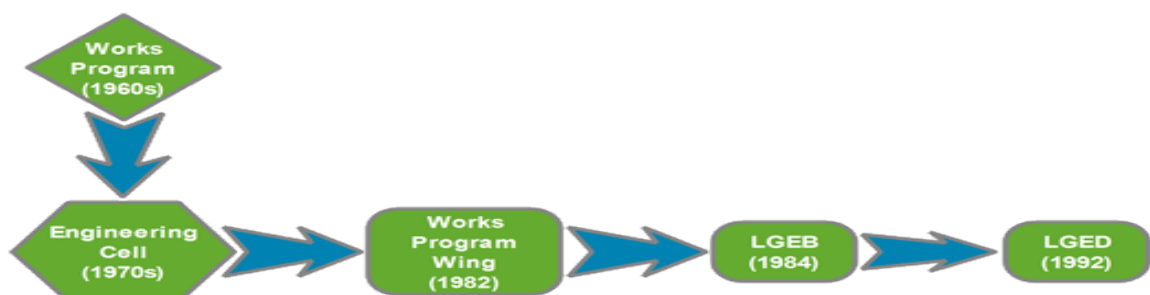
Chapter 3: Overview of LGED

3.1 Background

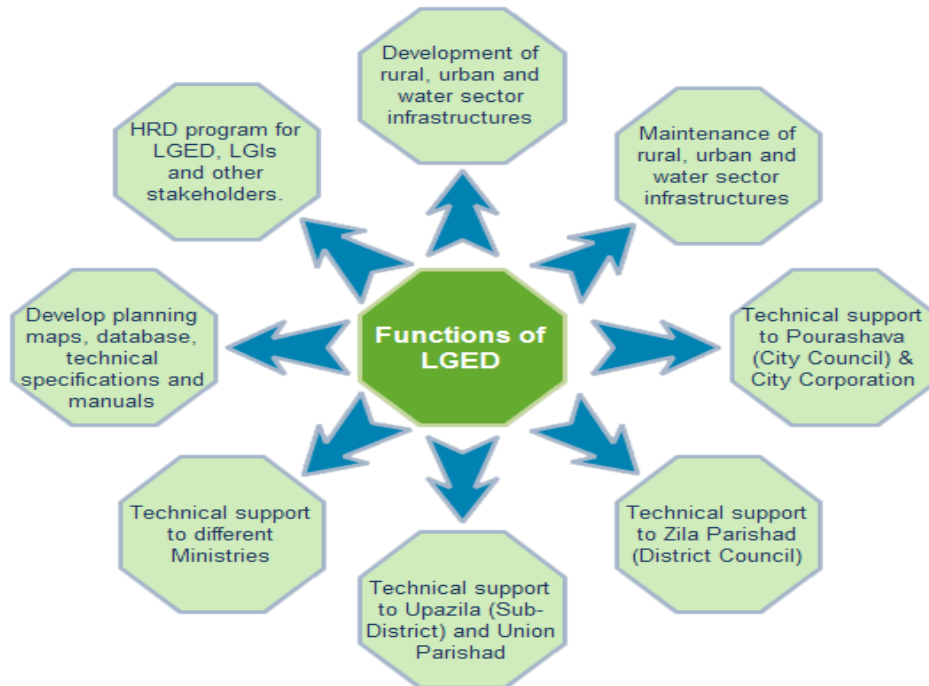
Local Government Engineering Department (LGED) is one of the largest public sector organizations in Bangladesh entrusted for planning and implementation of local level rural urban and small scale water resources infrastructure development programs. LGED works closely with the local stakeholders to ensure people’s participation and bottom–up planning in all stages of project implementation cycle.

The broad objectives of LGED’s development activities are to improve the socio-economic condition of the country through supply of infrastructures at local level and capacity building of the stakeholders. LGED promotes labor-based technology to create employment opportunity at local level and uses local materials in construction and maintenance to optimize the project implementation cost with preserving the desired quality. LGED works in a wide range of diversified programs like construction of roads, bridges/ culverts and markets to social mobilization, empowerment and environmental protection.

The organizational background of LGED can be traced back to early sixties when implementation of works program (WP) comprising Rural Works Program (RWP), Thana Irrigation program (TIP) and Thana Technical Development Committee (TTDC) was started. A “Cell” was established in the Local Government Division (LGD) under the Ministry of Local Government, Rural Development and Cooperative (MLGRD&C) in 1970s. To administer WP nation-wide, the Works Program Wing (WPW) was created in 1982 under the Development Budget. It was reformed into the Local Government Engineering Bureau (LGEB) under Revenue Budget of the Government in October, 1984. LGEB was upgraded as the Local Government Engineering Department (LGED) in August, 1992. The organizational evolution of LGED can be illustrated as follows.



LGED is highly decentralized organization where ninety nine percent of total manpower works at District and Upazila (Sub-District) level. The Chief Engineer is the head of the organization supported by four Additional Chief Engineers with subsequent supporting manpower. The total manpower under permanent payroll is 10287 both at head quarters and field levels. The detail organogram is described under the section of ‘Organization of LGED’ the thematic functional areas of LGED can be illustrated as follows.



3.2 Mission

Development and management of local infrastructure for increasing farm/non-farm production, generating employment, improving socio-economic condition, promoting local governance, reducing poverty and acting as agent of change at the local level.

3.3 Vision

LGED would continue to remain professionally competent, efficient and effective public sector agency for performing the interrelated and complementary functions of:

- Developing, maintaining and managing transport, trading and small scale water resources infrastructure at the local level by ensuring LGI and community participation and taking care of environmental and social issues.
- Providing technical and institutional support to strengthen the local government institutions and serving local communities and other stakeholders.

3.4 LGED procurement history and present practice

LGED is allocated a lion's portion of government development budget every year. LGED's average annual budget is around Tk. 8,000 Crore. LGED deals with every kind of procurement (works, goods and services). Procurements of works are mainly infrastructure based like roads, bridge, building etc. Procurement of goods at LGED covers- purchasing construction equipment, supervision vehicle, quality control & laboratory equipment, utility vehicle (dump truck, hydraulic beam lifter, sewerage vacuum cleaner etc.), utility service equipment (generator, lift, water pump etc.), office equipment (photocopier, computer, air cooler, printer, multimedia projector etc.).

Before enacting Public Procurement Acts (PPR-06), all the procurement contracts were dealt with the 'The Law of Contract' which is very general in nature. Since, any public procurement contract demands simple bureaucratic procedure, high level of competency of the staff, quality tender documents, and standard tender evaluation framework, effective administration of contracts and presence of adequate mechanism for ensuring transparency & accountability, therefore, PPR-06 has distinctly given advantage over the existing Law. In a way to PPA-06, the government of Bangladesh had issued the Public Procurement regulations 2003(PPR-03). Immediately after pronouncing PPR-03, LGED established a separate Procurement Unit at head quarter level on January 2004 in order to early cope up with the changes. Procurement unit provides technical assistance to all Procuring Entities in LGED in order to implement PPA '06 and PPR'08 in public procurement and to implement Electronic Government Procurement (e-GP).

Earlier, for national level tendering method form-2908 & form-2911 were used and for international tendering, donor agency guidelines (World Bank, ADB, KFW and JICA) were followed. Being a public organization, presently LGED follows PPR-2008 guidelines and relevant tender documents published by CPTU. For International competitive bidding, sometimes it follows donor agency's procurement guideline and relevant documents.

LGED is one of the target organizations of the Public Procurement Reform Projects (PPRP-I & PPRP-II) of the Government of Bangladesh with assistance from World Bank. The Objectives of PPRP-I were: (i) improve governance in public procurement; (ii) improve efficiency and transparency and accountability; and (iii) improve people's

confidence, reduce corruption and strengthen aid utilization. The major components were to establish a Central Procurement Technical Unit (CPTU); implement public procurement reforms and rules/procedures; and improve procurement management capacity.

The Objectives of PPRP II were: (i) complete remaining policy reforms, (ii) increase institutional capacity, (iii) strengthen procurement capacity at sector and CPTU levels, (iv) develop and implement e-GP and (v) involve stakeholders in public procurement and make procurement entity accountable. Major components were to continue policy reforms and institutional capacity development; strengthen procurement management at sector and CPTU; introduce e-GP; and communication, behavioral change and social accountability.

Chapter 4: Study Findings & Analysis

The study is based on existing public procurement documents, rules and regulations and the survey questionnaire/query designed to investigate the inclusion of current set of public procurement regulations (PPR) in conducting public procurement process of different development projects undertaken by LGED.

The study found that LGED officials are familiar with PPR/guidelines and also accordingly conducts procurement process while procuring Goods and Related Services. Most of the respondents are well experienced and directly involves in procurement of public Goods and Related Services, as a result the survey feedback reflects that the respondents are largely associated with procurement practices.

Since the major government budget in the development works being carried out by LGED, it thus accumulates the largest expenditures of public funds and apparently conducts huge procurement process at different PMU levels. The findings show that around 2 – 7 % of the total annual budget is being spent in conducting procurement process for procuring Goods and Related Services. Goods being procured by different entities at LGED are categorized as Vehicles, Construction Equipments, Quality Control & Survey Equipments and other Construction and Office Utility equipment. Procurement of Vehicle (Jeep, Pickup, and Motorcycle) is largely occupying the budgets of all the projects. In the urban sector projects, mostly three categories of goods are procured – Office Equipment, Vehicle and Construction Equipment.

4.1 Relevancy of the Procurement of Goods

Goods are commonly procured at Head Quarter level under development projects under LGED and then deployed at different levels according to project need. As for example, vehicles are used by officials and supervisors for monitoring of project sites to monitor physical progress of works; Construction Equipments are used for project construction works; other office equipments are used at offices.

Table 4.1: Relevancy of Goods procured at LGED

Relevancy	Frequency	Percentage (%)
Always	10	29.42
Mostly	19	55.88

Relevancy	Frequency	Percentage (%)
Sometimes	5	14.70
Never	0	00.00
Total	34	100

Table 4-1 above, illustrates that around 47% respondents of this study agreed that goods procured at Projects are to facilitate the operational aspects of the development projects, and no irrelevancy of the goods procured is found in the conducted survey.

4.2 Contract Management Plan (CMP)

CMP is a key management tool throughout the procurement life cycle, ranging from the initial identification of need and subsequent planning phase, right through to the long term management of the contract. CMP however essential to ensure ownership and accountability of both the parties and to build up partnerships and teamwork between owners and contractors to improve better understanding of each other's needs, and understanding their role for managing contract safety.

Table 4-2: Frequency Distribution of practicing CMP

CMP is practiced	Frequency	Percentage (%)
Always	11	32.35
Mostly	17	50.00
Sometimes	2	05.88
Never	4	11.77
Total	34	100

The findings shows that the 32.35 % of respondents answered that CMP is always practiced in procurement life cycle , while half of respondents speaks out mostly practiced, others says that CMP is practiced occasionally. So far it can be summarized that, in absence of CMP, there are degree of uncertainties / risks prevailing, and it is hardly possible to ensure effective contract management.

In case of procumbent of goods, it is however required to justify the quantity and actual needs of goods on the ground to mobilize actual resources in meeting actual demands, and thus it will helpful to measure up actual investment demands and budget size as well.

4.3 Utilization of Goods Procured under Development Projects

Table 4-3: Utilization Status of Goods procured

Category	Utilization Status		
	Unutilized	Under Utilized	Best Utilized
Equipment (Construction)	5 (14.70%)	17 (50.00%)	12 (35.30%)
Transport (Vehicle)	0 (0%)	5 (14.70%)	29 (85.30%)
Office Equipment	6 (17.75%)	11(32.35%)	17 (50.00%)

The findings reflect that half of construction equipment's procured under different entities are underutilized while almost 15% construction equipment are not utilized. But transport equipments are exclusively utilized and a minimum portion of goods procured remained unutilized due to wrongly or excessively procured. However respondent revealed that almost half of the office equipments are best utilized and more than a quarter are underutilized, while around 18% remain unutilized.

This scenario of underutilization of procured goods happens due to

- Improper selection of equipment/goods;
- Inefficiency in estimation;
- Excessively inclusion of goods in DPP.

Underutilization and Surplus of procured goods is a misuse of public funds.

4.4 Suitability of Procurement Rules for Quality Procurement

Table 4-4: Frequency Distribution of Suitability of Existing Rules

Suitability	Frequency	Percentage (%)
Always	13	38.23
Mostly	11	32.35
Sometimes	08	23.54
Never	02	05.88
Total	34	100

There are mixed opinions received from different procurement entities in connection with suitability of existing procurement rules in procuring best quality of goods. Less than half of the respondents (39%) agreed that existing rules can be applied successfully for procuring best quality of goods, while 33% respondent agreed upon

mostly suitable and 24% said less suitable. But 6 % respondent expressed that the existing rules are never suitable for procuring best quality goods. There are some causal factors which act as barriers for ensuring best quality of goods. These may be outlined as –

- Poor Specifications;
- Absence of procurement expertise;
- Nature and complexity of goods to be procured;
- Limitation of specifying source country;
- Less scope of PSI;
- Lack of technical knowledge and procurement knowledge of TEC members;
- Insufficient selection criteria.

4.5 Procurement Methods Practiced

Procurement methods commonly practiced in LGED are -

- International Competitive Bidding
- National Competitive Bidding
- Direct purchasing
- Limited Tendering
- Request for Quotation

Competitive bidding is always preferable for better transparency and wide participation. Discussing with many of the project directors it is found that there are scopes of pilferage in Direct purchasing , Limited Tendering and Request for Quotation methods.

4.6 Major Clauses / Terms in Tender Document

Clauses and terms that are usually used in tender document (as practiced in LGED) are as follows:

- Liquidated damage clause
- Warranty
- Termination clauses
- Force majeure clause
- Time extension provision
- Insurance

- Settlement of disputes
- Price adjustment
- Inspection and tests

Through focus group discussion with selected persons from the top level management of LGED, it is found that contract clauses are included in the tender document mostly for ensuring compliance with existing PPR-2008. In most of the cases these clauses are not suitably amended to fit in particular requirement of the procurement as a result of which these clauses and terms become useless for managing contracts. However, the clauses and terms used are in accordance with STD but in most of the cases these are not perfectly in line with PPA and PPR.

Moreover, to ensure quality of goods being procured, some additional terms are incorporated in the procurement document. These are –

- ISO certification
- Manufacturer’s Authorization
- Performance test certificate of product
- Factory Visit
- Product demonstration before contract sign
- Existing end-users satisfaction certificate

As found from the study, the majority of the respondents emphasis on Liquidated damage clause, Warranty clause, Termination clauses and Inspection and tests clause for effective contract management. They have also given importance on ISO certification, performance test certificate, emission standard of engine (in case of vehicle and construction equipment) and end-users satisfaction certificate.

4.7 Pre-delivery or Pre-shipment Inspection

Table 4-5: Frequency Distribution of PDI/PSI in case of Procurement of Goods

PDI/PSI Performed	Frequency	Percentage (%)
Always	05	14.70
Mostly	10	29.41
Sometimes	17	50.00
Never	02	05.89
Total	34	100

Pre-delivery inspection (Local) is usually done by project officials. In case of complex or more technical goods, PDI is performed by technical experts from LGED and also by cross functional team. In case of Pre-shipment inspection (abroad), third party inspection is performed. In many cases, project officials and ministry officials enjoy the foreign trips in the name of PSI which is simply misuse of public fund.

Table 4-6: Difficulties faced due to poor PDI/PSI

Difficulty	Frequency	Percentage (%)
Always	08	23.53
Mostly	10	29.41
Sometimes	10	29.41
Never	06	17.65
Total	34	100

From the above table, it is noteworthy that there are difficulties of ensuring better procurement due to poor PDI/PSI. Major difficulties are –

- Technical non-compliance;
- Quality non-compliance;
- Poor performance of the goods being procured;
- Shorter lifetime of goods being procured;
- Higher rate of rejection;
- Delivery Schedule failure etc.

Due to the issues mentioned above, best value for money is not always achieved in case of procuring goods in the public sector organizations like LGED.

4.8 Options for factory visit during manufacturing period

Table 4-7: Frequency Distribution of Factory Visit for Procurement of Goods

Difficulty	Frequency	Percentage (%)
Always	00	00
Mostly	00	00
Sometimes	07	20.59
Never	27	79.41
Total	34	100

In case of procurement of goods in LGED, there is less scope of factory visit to ensure product quality during manufacturing of goods under purchase contract. Analyzing the above findings, the following points may be noted for less scope/need of factory visit:

- Nature of goods - goods procured is mostly standardized;
- Less or almost no repetition of purchase;
- Small volume of goods procured in each case;
- Sourcing location is not always favorable for factory visit.

However, in some cases where goods/equipment under procurement is very complex in nature, sometimes LGED has provisions for factory visit.

4.9 Options for pricing arrangement

In usual practice, pricing arrangement for contract of procuring goods under different projects of LGED, following price terms are used –

- Fixed price contract
- Fixed price with price adjustment clause
- Quoted Price

Basically contract at quoted or fixed price means that the contract price will remain fixed during the contract period. Once the lowest evaluated tender is selected, the contract will be signed at that evaluated price.

In the Global procurement perspective, different pricing arrangement is made considering mutual benefits.

4.10 Payment Terms Used

For national tender, usually no advance payment is made for procuring goods; payment on delivery in full is the normal practice. Payment is made within 60 days after final acceptance.

For International competitive tender, major payment is made on L/C opening and the remaining amount after delivery and acceptance. Usually 90% payment is made on shipment and 10% after acceptance. There is no option for the compensation of the supplier like payment with interest, in case of late payment. Usually payment (remaining 10%) is made within 30 days after final acceptance.

To ensure compliance with PPR-2008, procuring entities in LGED do not go beyond scope of the Standard Tender Document published by CPTU, Bangladesh

4.11 Compliance of goods being delivered

For checking technical compliance of goods delivered, usual practices at LGED are as –

- Physical verification of measurable technical data;
- Comparing with offered technical specifications;
- Performance measurement through trial operation.

There is no option of third party technical audit through professional technical audit team. In common practice, a pre-delivery inspection team, usually a cross functional team comprised of technical experts, procurement people and representative from the procuring entity inspect the goods before final acceptance.

4.12 Methods for dispute management

According to the respondents, following methods are expressly mentioned in the tender document for dispute resolution:

- Amicable settlement
- Adjudication
- Arbitration

As per global practice, some other methods are used like – Negotiation, Litigation and Conciliation. In many cases, contract failure is happened due to ambiguity in pre-defined dispute management process. So, this is to be clearly defined in contract document especially in case of procuring goods from abroad.

4.13 Procurement Record Keeping

Project Directors at LGED performs following activities for procurement record keeping:

- Maintains separate set of files and registers for each procurement
- Payment records are kept
- Keep change records and approvals
- Preserve key documents and information related to the particular procurement

4.14 Payment according to Schedule

Table 4-8: Whether payment is made as per schedule

Schedule is followed	Frequency	Percentage (%)
Always	09	26.47
Mostly	12	35.30
Sometimes	04	11.76
Never	09	26.47
Total	34	100

This is a very good practice of payment mode in LGED. Usually, payment to the supplier is made according to the pre-defined / agreed payment schedule. This appreciable payment practice in case of procurement of goods in LGED, are mainly because LGED projects are mostly financed by development partners and usually fund is disbursed regularly and timely. Moreover, LGED is under keen observation of IMED under PPRP funded by WB. So LGED tries to comply with procurement plan and also with payment schedule. In addition, LGED is very resourceful in terms of procurement professionals and has centralized procurement monitoring unit.

4.15 INCOTERMs Used

Especially for international competitive bidding, procuring entities at LGED use CIP or CIF with place/port of destination for offering price.

4.16 Time Management

Majority of the respondents of the study voted in favour of strictly following time schedule in case of procurement of goods. The following table lustrates the findings:

Table 4-9: Frequency Distribution of following Time Schedule

Time Schedule is followed	Frequency	Percentage (%)
Always	20	58.82
Mostly	07	20.59
Sometimes	04	11.76
Never	03	08.83
Total	34	100

In LGED practice, contracts for procuring goods are timely completed. Only a few respondents of the study opined that time schedule is not strictly followed. This is because LGED is a technical institution having numbers of procurement professionals and LGED spends major GoB budget in development works as a result of which Procuring Entities at LGED are highly experienced in procurement process. So LGED's PEs are quite good in Time Management.

4.17 Managing Contract Risk

Robust risk-management is not at all present in public procurement practices in Bangladesh, especially in LGED. In common practice, sufficient performance security is retained from the supplier. Litigation history of the supplier is also considered during evaluation.

In global practice, there are more provisions for managing contract risks like –

- Insurance coverage
- Guarantee from third party
- Indemnity clause put in place
- Robust monitoring of supplier's financial status
- Plan 'B' as an alternate

4.18 Overall Findings

In LGED, Procurement Practice more or less complies with PPA and PPR. Regarding contract management for procuring goods, there are some loopholes. To some extent, compliance is there but commitment for ensuring best value for money is not visible. In brief, the overall study findings are as follows:

- Goods procured in LGED are mostly relevant to the project need;
- Underutilization of goods procured is found;
- Major clauses used in tender document are in accordance with the requirement of PPR and Standard Tender Documents published by CPTU are used;
- There is no robust Contract Management Plan in LGED;
- Payment schedule is appreciably followed in LGED for suppliers bill payment;
- No scope for supplier development;
- Price adjustment clause for either party is not usually used as a result of which supply contract fails or delayed;

- For ICB, appropriate INCOTERMS are used;
- Contract Time Management practice is found good in LGED;
- Relationship management is poor;
- For dispute management, only three options are expressly used. Dispute resolution clauses are sometimes not understandable by the parties, as a result of which contract management process is hampered;
- Additional terms are used to ensure better procurement and also to ensure better contract management;
- PSI/PDI are not always effective due to not selecting right persons for the purpose;
- Record keeping is good in LGED's goods contract management practice;
- There is some misuse of public fund in the procurement of goods in LGED.
- Contract risk management system is not up to the mark;

However, the overall findings of the study are satisfactory to the researcher and the trend of contract management practice in LGED is very much positive despite of everything.

Chapter 5: Conclusions & Recommendations

The focus of the research questions of this study were to explore whether the existing CM practice ensures utilization of public funds and the extent of its compliance with PPR-2008. Research questions were designed to achieve the general objective to measure the performance of CM practiced in LGED and the specific objectives to identify whether the existing CM practice complies with PPR and to measure achievements of public procurement objectives.

The overall findings of this study can be summarized as –

- In LGED, Procurement Practice mostly complies with PPA and PPR though commitment for ensuring best value for money is not visible in the overall CM practice. Clauses used in tender document are in accordance with the requirement of PPR and STD by CPTU. Through this study underutilization of goods procured is found in LGED projects.
- Though there is no robust CMP in LGED, Time Management and Payment Management is found satisfactory. But contract risk management and relationship management is found poor in this study. Dispute resolution clauses are sometimes not understandable by the parties, as a result of which contract management process is hampered.
- In case of PSI/PDI, it is found that right persons are not always selected, especially where there is an opportunity of foreign tour. Thus, some misuse of public fund in LGED is observed which indicates that public procurement objectives are not fully achieved always in case of LGED procurement practice.

However, despite of everything the overall findings of this study are satisfactory to the researcher and based on these the following conclusions and recommendations are made.

5.1 Conclusions

There are four key components in contract management. In this study, the researcher tried to focus on all the four components which are as follows:

1. **Risk analysis**
2. **Commercial** – Financial Management, achieving best value for public money; maintaining payment schedule; supplier compensation for late payment etc.
3. **Suppliers and Contract** – Contract Management Plan; Supplier’s Relationship Management etc.
4. **Reporting and Record Keeping** – Procurement record keeping is an important part of contract management. The formal procurement record is a set of files containing all the critical documents and information pertinent to the procurement contract. From the procurement records the purchaser draws relevant information (such as signed contract agreement, particular conditions of contract, technical specifications, drawings, delivery quantities and schedules) that is used to develop a contract performance monitoring system. Formal procurement record files serve three useful purposes:
 - Provides essential supporting evidence in the event that it becomes necessary to take legal action against the supplier.
 - The procurement record helps to provide a full audit trail.
 - Information contained in the procurement record can be used to help evaluate a supplier’s past performance and additional opportunities to conduct business with the supplier should be considered.

For all the components of contract management, there are some lapses as we found in the study. Contract Risks are not properly analyzed, contingency plans are rarely present, robust monitoring of supplier’s financial stability is not done always, Contract Management Plans are not effectively followed, relationship management is fully absent and also proper record keeping is rarely done by the procuring entities, achieving best value for money is not the main focus in case of public procurement and many more.

5.2 Recommendations

Contract Management Practice for the Procurement of Goods in public sector like LGED should get momentum as the organization burns huge ADP budget. As corruption thrives on secrecy, it always remain invisible as “tip of the iceberg” and the transparency and accountability have been recognized as key conditions for promoting integrity and preventing corruption in public procurement and contract management. In

every procurement process conducted in LGED, it would be worthwhile in putting all factors of contract management agreement e.g. supplier's capacity, outlining contract risks, contingency plan, robust monitoring, risk insurance, maintain procurement logs etc to reduce risk and elimination of "grey areas". Considering all those challenges, decision makers/procurement entities in LGED must incorporate all key components of contract management to efficiently utilize public resources to ensure best value for money.

Further to consolidate the study outset objectives, there are some recommendations to conform key issues.

5.2.1 Contract Management Risk

To minimize contract management risk, we have to start from need identification. If the need is wrongly expressed, the whole procurement may go in vain. So the following points to be given importance –

- Analyze need accurately and be familiar with requirement
- Define your need / specification in terms of required output
- Carry out market analysis and communicate (objectively) with potential suppliers

5.2.2 Best utilization of public fund

The study found that in around 60% cases the public fund utilized effectively where 2 to 7% of total project budget is spend for procurement of goods. Which signifies that in LGED procurement practice, there are some level of efficiency in terms of PPR compliance but the public fund utilized is not 100% effective. So far, the procurement objectives, in case of goods are not 100% achieved and public resource not exclusively mobilized.

- Exact need analysis and accurate estimation of requirement is required prior to preparing procurement plan
- Procurement process for procuring goods should be started in accordance with development project's purchase schedule to prioritize best hardware utilization and timely deployment.
- Payment term should be comfortable to both supplier and purchaser to avoid contract failure due to financial crisis of supplier.

5.2.3 Suitability of Procurement Rules

Although 70% respondent's agreed in favor of suitability of procurement rules, but still there are loopholes due to lack of technical /procurement knowledge, poor specifications of goods to be procured , limitation of specifying source country and supplier selection criteria etc. which creates hurdles in choosing the best product and to ensure the best value for money as well. So far all procuring entities should customize their procurement documents being within the rules for selection of best supplier and best quality goods as well.

5.2.4 Contract Management Practices (CMP)

A CMP can add value by outlining:

- contract objectives and outcomes;
- roles, responsibilities and obligations of the parties and their agents;
- how the contract performance management and reporting (KPIs) will be managed;
- how benefits will be tracked and reported;
- reporting and communication protocols and purpose;
- the financial management approach, including supplier health check;
- the framework for managing variations, changes to program, slippage;
- contract governance requirements;
- issue management and process;
- negotiation strategies to improve on specification outcomes.

In LGED practice, Contract Management Process is interrupted by several factors. Since goods occupies around 7% of the total procurement and LGED incorporates all essential terms and clauses in conducting public goods procurement but PDI/PSI are performed in around 45% cases. Supplier's factory visits are mostly done by ministry officials rather than technical experts.

The supplier's payment is not always made according to payment schedule. In around 62% cases supplier payment is made as per schedule and in rest 38% cases these are not regularly happening due to fund unavailability and lack of due diligence. In this connection it may be mentioned that in many cases payment schedule for CMP is prepared without proper reflection of availability of public fund and in this area the present CM practice not fully complies with PPR 2008. LGED having contract

management efficiencies but it is not sufficient to ensure effectiveness of using of public fund in procuring goods in different development projects.

- LGED should enforce Contract Management Practices for best utilization of public fund;
- LGED has to discourage Ministry officials for sensitive PSI tour and ensure participation of highly technical expertise for the Inspection of goods before shipment;
- Procurement document / contract agreement should clearly define dispute settlement clauses e.g. Selection of arbitrator / adjudicator to avoid complexity of dispute management, if required, as a part of Contract Management.

5.3 Successful Contract Management

Finally, performing this study, it is worthwhile noting that contract management is successful if:

- the contract outcome continue to be satisfactory to both parties;
- the expected business benefits and value for money are being achieved;
- the supplier is co-operative and responsive;
- the organization understands its obligations under the contract;
- there are no disputes;
- there are no surprises;
- a professional and objective debate over changes and issues arising can be better trade-off;
- Efficiencies and effectiveness are being realized.

5.4 Future works

- A similar research work could be done for other public organizations in Bangladesh;
- Research work for a comparative study between global practice of goods contract management and that practiced in public sector procurement in Bangladesh may be done.

References

Basingstoke and Deane. 2013, '*Procurement and Contract Management Strategy 2013-2017*'. Retrieved 16 January, 2015 from www.basingstoke.gov.uk/content/doclib/350.pdf

Central Procurement Technical Unit, Implementation Monitoring and Evaluation Division, Ministry of Planning, Government of the People's Republic of Bangladesh, 2014, '*Procurement Performance Monitoring Indicator*'. Retrieved 26 November, 2014 from www.cptu.gov.bd/promis/ViewIndicator

Central Procurement Technical Unit, IMED, Ministry of Planning, Government of the People's Republic of Bangladesh, 2009, '*Standard Tender Document-PG4*'. Retrieved 21 December, 2014 from www.cptu.gov.bd/STD.aspx

David Gage and Scott Meza. 2003, '*Family Business Conflict Resolution Handbook*'. Retrieved 16 February, 2015 from <https://guessoumiss.files.wordpress.com/2011/08/handbook-of-peace-and-conefac82ict-studies.pdf>

Evaluation Sector, Implementation Monitoring and Evaluation Division, Ministry of Planning, Government of the People's Republic of Bangladesh, 2014, '*Impact Evaluation Study on Public Procurement Reform Project*'. Retrieved 29 January, 2015 from http://imed.portal.gov.bd/sites/default/files/files/imed.portal.gov.bd/page/e773_d5bf_182e_4fc5_a856_dfd3c8d05ced/FINAL%20REPORT-PPRP.pdf

Implementation Monitoring and Evaluation Division (IMED). 2012, '*Impact Evaluation Study on Public Procurement Reform Project*'. Retrieved 19 January, 2015 from www.wikipedia.org/wiki/Mediation

Local Government Engineering Department. 2012, '*Background of LGED*'. Retrieved 01 December, 2014 from www.lged.gov.bd

Mediation. Retrieved 05 March, 2015 from www.wikipedia.org/wiki/Mediation

Procurement Capacity Toolkit. 2013, '*Contract Performance and Monitoring*'. Retrieved 03 February, 2015 from www.path.org/publications/files/RH_proc_cap_toolkit

SIGMA Program. 2011, '*Public Procurement Brief*'. Retrieved 22 February, 2015 from www.sigmaweb.org

Taylor Walton. 2009, '*A practical guide to Successful contract management*'. Retrieved 13 February, 2015 from <http://www.taylorwalton.co.uk/wp-content/uploads/pdf/1321527832-successfulcontractmanagement.pdf>

Tanveer S. M. Sadik. 2013, '*Contract Management Practices in World Bank and PPR 2008: A comparative study*', Master's Thesis, BRAC Institute of Governance and Development, BRAC University

Texas Comptroller of Public Accounts. 2011, '*Responsibilities of Contract Manager*'. Retrieved 26 January, 2015 from <http://comptroller.texas.gov/procurement/pub/contractguide/ContractManagerResponsibilities>

The Chartered Institute of Procurement and Supply. 2012, *Managing Contracts and Relationships in Procurement and Supply*, Profex Publishing Limited, UK.

World Bank. 2002, '*Bangladesh Country Procurement Assessment Report*'. Retrieved 20 January, 2015 from www.lcgbangladesh.org/aidgov/2003-WB-Country%20Procurement%20Assessment%20Report.pdf

Survey Questionnaire

Title of Dissertation: Contract Management Practice for the Procurement of Goods in the Public Sector in Bangladesh: *a case study of LGED*

Researcher: Partha Pradip Sarkar, Assistant Engineer (mechanical), presently works as Project Manager, Sustainable Rural Energy project, Local Government Engineering Department, The Government of the People’s Republic of Bangladesh.

[This survey questionnaire intended to perform an academic research on Contract Management Practice for the Procurement of Goods in the Public Sector in Bangladesh. It is a requirement for the partial fulfillment of the degree of ‘Masters in Procurement and Supply Management’ under the Institute of Governance Studies under BRAC University. Your honest response is valuable for the researcher. The researcher assures that the information given by you will be kept confidential and will be used only for the academic purpose.]

General Information of respondent:

Name: _____ Designation: _____

Project / Unit: _____

Length of service in present position: _____

Years of experience in public procurement: _____

Please tick (✓) your option/options)

(Your choice can be more than one where appropriate)

1. Are you familiar with Procurement of Goods and Related Services?

Yes	No
-----	----

2. What is the cost of procurement of goods and related services (in percentage) compared to the total cost of your annual procurement? -----

3. Major categories of goods you procure in your project:

- a) Office Equipment (computer, photocopier etc)
 - b) Construction Equipment (Road Roller, Compactor etc)
 - c) Utility Equipment (Truck, Dump Truck, Crane, Beam lifter, Tractor etc)
 - d) Office Utility (AC, Fridge, Generator etc)
 - e) Vehicle (Jeep, Pickup, Motorcycle etc)
 - f) QC & Survey Equipment
4. The goods you procure are relevant to your project work and without these achievement of project objectives is not possible.
- a) Always b) Mostly c) Sometimes d) Never
5. Is there any agreed contract management plan (CMP) that you practice in your contract administration process for the procurement of goods?
- a) Always b) Mostly c) Sometimes d) Never
6. Utilization status of Goods you have procured under your project are:
- Construction Equipment: Under-utilized / Unutilized / Best-utilized
- Transport (Vehicle): Under-utilized / Unutilized / Best-utilized
- Office Equipment: Under-utilized / Unutilized / Best-utilized
7. With the existing rules & system, you can ensure the procurement of best quality goods that can bring best benefit to the project.
- a) Always b) Mostly c) Sometimes d) Never
8. What method/methods of procurement do you usually follow in your projects for the procurement of goods and related services?
- a) International Competitive Bidding
 - b) National Competitive Bidding
 - c) International shopping
 - d) Direct purchasing
 - e) Limited Tendering
 - f) Others (please specify).....

09. What are the major clauses / terms that you incorporate in your tender/contract document to manage on time delivery?
- Time is the essence of the contract
 - Liquidated damage clause
 - Termination due to delay
 - Force majeure clause
 - Time extension provision
 - Others (please specify)
10. What are the major clauses / terms that you incorporate in your tender/contract document to ensure quality of the goods being supplied?
- Certification for quality standard (e.g. ISO)
 - Approval of sample before delivery
 - Performance test before delivery
 - Factory visit during manufacturing period
 - Pre-shipment/ Pre-delivery inspection
 - Others (please specify)
11. You have options for pre-delivery or pre-shipment inspection of the goods.
- Always
 - Mostly
 - Sometimes
 - Never
12. Pre-shipment / Pre-delivery inspection is done by –
- Third party experts
 - Relevant technical experts from your organization
 - Effective cross-functional team
 - Non-relevant officials from your organization
 - Ministry officials
 - Others (please specify)
13. You face difficulties with your supplies due to poor pre-shipment inspection:
- Always
 - Mostly
 - Sometimes
 - Never
14. You have options for factory visit during manufacturing period of the goods.
- Always
 - Mostly
 - Sometimes
 - Never

15. What pricing arrangement do you use?
- a) Fixed price contract
 - b) Fixed price with price adjustment clause
 - c) Cost plus fee arrangement
 - d) Gain sharing formula
 - e) Cost plus fixed profit plus incentive for early delivery or penalty for delay
 - f) Others (please specify)
16. What payment terms you use in your tender document?
- a) Payment on delivery in full
 - b) Advance payment
 - c) Major payment on L/C opening, remaining after delivery and acceptance
 - d) Payment with interest for late payment
 - e) Payment after delivery but on availability of fund
 - f) Others (please specify)
17. How do you check compliance of the goods being delivered with the technical specifications offered?
- a) Documents (brochure/product data sheet/certificates) checking
 - b) Physical verification of measurable technical data
 - c) Performance measurement through trial
 - d) Third party Technical Compliance audit
 - e) Just checking the brand and model number of the goods with the offer
 - f) Others (please specify)
18. What are the methods that you expressly mention in your contract document for dispute/conflict management?
- a) Negotiation
 - b) Adjudication
 - c) Arbitration
 - d) Litigation
 - e) Conciliation
 - f) Others (please specify)

19. Key activities you perform to maintain procurement record keeping:
- Maintain separate set of files for each procurement
 - Keep key documents and information relevant to the procurement transaction
 - Retaining procurement records for a required length of time
 - Keep change records and approvals during contract execution
 - Keep payment records
 - Others (please specify)
20. Payment for supply of goods is made according to agreed payment schedule.
- Always
 - Mostly
 - Sometimes
 - Never
21. Time Schedule for Contract Management is Strictly Followed.
- Always
 - Mostly
 - Sometimes
 - Never
22. For ICB for goods, what Inco terms do you usually apply? (Please mention)
- CIP / CIF
 - EXW
 - FOB
 - DAP
 - CFR
 - Others (please specify)
23. What options you put in place to compensate suppliers for payment delay?
- Pay the original contract price anyway (no compensation for supplier)
 - Contract price plus interest for delay period
 - Contract price plus fixed lump sum
 - You consider exchange rate fluctuation
 - You consider cost of supplier's tied up investment
 - Others (please specify)
24. What measures do you take to manage contract risks?
- Insurance coverage
 - Guarantee from third party
 - Sufficient Performance Security
 - Indemnity clause put in place
 - Robust monitoring of supplier's financial status

f) Others (please specify)

25. What is/are your suggestion(s) for effective contract management for the procurement of goods? -----