

# Practices of PPA and PPR on Public Procurement in Bangladesh Water Development Board: A Critical Review

Dissertation submitted in partial fulfillment of the  
requirements for the Degree of  
Masters in Procurement and Supply Management

Submitted by  
Mahbube Moula Md. Mehedy Hasan  
MPSM, Batch I  
ID-12282017

**Masters in Procurement and Supply Management**

December, 2012



Institute of Governance Studies, BRAC University

## Letter of transmittal

December 2012

Md. Zohurul Islam, PhD  
Academic Coordinator/ Assistant Professor  
BRAC University  
Dhaka, Bangladesh

**Subject: Submission of Thesis Paper ‘Masters in Procurement and Supply Management’.**

Dear Sir,

I am very happy of submitting the Thesis Paper entitled ‘*Practices of PPA and PPR on Public Procurement in Bangladesh Water Development Board: A Critical Review*’, a report for partial fulfillment of the requirement for the degree of Masters in Procurement and Supply Management. The whole work is prepared on the basis of practical working experiences, literature review, survey questionnaire, key informant interviews, primary data and secondary data, various academic books and journals and Internet also. I have followed your guidelines as per your direction. I have tried enough to furnish all the materials. What I have achieved during the experience period I shall be highly grateful if you kindly accept this Thesis Paper. This report is very significant as it is one of the most important requirements of completing the Top up Masters Program as said by CPTU. This report is a brief summary of work and experience gained during the research period. I have tried my level best to make this report comprehensive.

I will be pleased to answer any query of you thereby.

Sincerely yours

**Mahbube Moula Md. Mehedy Hasan**

Student ID # 12282017

IGS, BRAC University

Dhaka

## Certification of acceptance

This is to certify that Mahbube Moula Md. Mehedy Hasan, Sub-divisional Engineer, Bangladesh Water Development Board, CIPS ID # 005400138, a participant of CIPS Cohort-1 has completed his Thesis Paper entitled '*Practices of PPA and PPR on Public Procurement in Bangladesh Water Development Board: A Critical Review*' under my supervision. He has completed the report as a partial fulfillment of the requirement for the degree of **Masters in Procurement and Supply Management (MPSM)** in IGS, BRAC University.

The report has been prepared under my guidelines and is a record of the bona fide work carried out successfully.

Signature:.....

Date :.....

Md. Zohurul Islam, PhD  
Academic Coordinator/ Assistant Professor  
IGS, BRAC University  
Dhaka, Bangladesh

## **Acknowledgements**

It is the Almighty Allah who gave me the opportunity to study Masters in Procurement and Supply Management and to complete this dissertation. So at the very beginning I thank the Almighty Allah, all the praise goes to Him.

I sincerely acknowledge the scholastic guidance, valuable suggestions, constant and untiring help of my Thesis Supervisor Dr. Elvira, a dynamic and forward looking research person now working as Academic Research Person in the Institute of Governance Studies of BRAC University.

In designing questionnaire Md. Zohurul Islam, PhD, thesis supervisor helped me immensely. Dr. Rizwan Khair, Director of IGS, BRAC University constantly encouraged me to complete the thesis in time. I take this privilege to express my deep sense of gratitude to all of them.

I must mention here that my beloved wife Jenifa Yasmin always and in various ways helped me a lot to complete this dissertation. She deserves special thanks. At the time of data analysis and writing the dissertation I deprived my wife from her love and affection. I am deeply indebted and grateful to her for her sacrifice, love and support.

Finally I express my thanks and gratitude to all my colleagues in CIPS Cohort-I for their help and cooperation they extended whenever needed. I am also thankful to the respondents of my research questionnaire, without which the thesis would remain incomplete. Last but not the least I express my thanks to all of them whose names are not spelled out here but they helped me in many ways for the successful completion of this dissertation.

**Mahbube Moula Md. Mehedy Hasan**  
Dhaka, December, 2012

## **Declaration**

I hereby declare that I am the sole author of this thesis. I authorize the Institute of Governance Studies (IGS) and BRAC University to lend this thesis to other Institutions or individuals for the purpose of scholarly research only. I further authorize the IGS and BRAC University to reproduce this thesis by photocopying or by other means, in total or in part, at the request of other institutions for the purpose of scholarly research.

**Mahbube Moula Md. Mehedy Hasan**

Student ID # 12282017

IGS, BRAC University

Dhaka.

<b>Table of contents</b>	
<b>Content</b>	<b>Page no</b>
Title page	i
Letter of transmittal	ii
Certification of acceptance	iii
Acknowledgement	iv
Declaration	v
Table of contents	vi-vii
Abbreviations	viii-ix
Executive summary	x-xi
<b>Chapter-1: Introduction</b>	
1.1 Background of the study	1
1.2 Statement of the problem	3
1.3 Hypothesis	4
1.4 Research Questions	4
1.5 Research Objectives	4
1.6 Research Methodology	5
1.7 Scope and Limitations	6
1.8 Thesis Outline	7
<b>Chapter-2: Literature Review</b>	
2.1 Public Procurement Background	8
2.2 Developments towards Public Procurement Acts and Rules	9
2.3 Legal framework of public procurement in Bangladesh	10
2.4 Methods of Public Procurement	11
2.5 Process of Public Procurement	12
2.6 General principals of procurement	14
2.7 Procurement in BWDB	15

<b>Chapter-3: Critical Assessment of Public Procurement Procedures</b>	
3.1 Background	17
3.2 Acts (PPA) and Rules (PPR) and its' impact on Public Procurement	19
<b>Chapter-4: Findings from the Analysis</b>	
4.1. Introduction	21
4.2 PPR and its impact on controlling 'Quality of work'	22
4.3 PPR and its impact on controlling 'total project cost'	23
4.4 PPR and its impact on 'total project implementation time'	25
4.5 PPR and its impact on making procurement process easy.	27
4.6 Minimum time in each stage of Tendering and 'total project implementation time'	29
4.7 Impact of Performance Security to ensure quality of works.	31
4.8 Mean and Standard Deviation calculation	32
4.9 Correlations	33
<b>Chapter-5: Conclusions and Recommendations</b>	
5.1 Conclusions	34
5.2 Recommendations	36
5.2.1 Preparation of Procurement Legislation and Standards	36
5.2.2 Capacity Building	37
5.2.3 Creating a Public Procurement Environment	37
5.2.4 Modernization of Public Procurement	38
<b>Appendices</b>	
Appendix-A: Sample questionnaire	
<b>References/ Bibliography</b>	

## Abbreviations

ACC	: Anti-Corruption Commission
ADB	: Asian Development Bank
ADG	: Additional Director General
ADP	: Annual Development Programme
BWDB	: Bangladesh Water Development Board
CCGP	: Cabinet Committee on Government Purchase
CE	: Chief Engineer
CGFR	: Compilation of General Financial Rules
CIDA	: Canadian International Development Agency
CIPS	: Cratered Institute of Purchasing & Supply
CPAR	: Country Procurement Assessment Report
CPTU	: Central Procurement Technical Unit
DOFP	: Delegation of Financial Power
DG	: Director General
EE	: Executive Engineer
E-GP	: Electronic Government Purchase
EOI	: Expression of Interest
ERD	: Economic Relations Division
ESCB	: Engineering Staff College Bangladesh
GOB	: Government of Bangladesh
GON	: Government of Netherlands
IFE	: Invitations for Enlistment
IFT	: Invitation for Tender
IMED	: Implementation Monitoring and Evaluation Division
LTM	: Limited Tendering Method
MOWR	: Ministry of Water Resources
OTM	: Open Tendering Method
PEC	: Proposal Evaluation Committee
POC	: Proposal Opening Committee
PPA	: Public procurement Act
PPP	: Public Private Partnership



PPPAP	: Public Procurement Processing and Approval Procedures
PPR	: Public Procurement Rules/ Regulations
PPRP	: Public Procurement Reform Project
PQ	: Pre-Qualification
PWD	: Public Works Department
RFQ	: Request for Quotation
SAE	: Sub-Assistant Engineer
SDE	: Sub-Divisional Engineer
SE	: Superintending Engineer
STD	: Standard Tender Document
TEC	: Tender Evaluation Committee
TI	: Transparency International
TOC	: Tender Opening Committee
TSTM	: Two Stage Tendering Method
VFM	: Value For Money
WB	: World Bank

## **Executive Summary**

Until the enactment of the Public Procurement Act in 2006, the legal regime of public procurement in Bangladesh was based on procedures and practices that date back to the British era. The Compilation of General Financial Rules (CGFR), originally issued under the British rule, remained the primary legal framework for public contracts and procurements. Building on CGFR principles, several government departments and autonomous public bodies and corporations developed their own rules and codes of practices for public contracts and procurements. Two forms, 2908 and 2911 were being used as the legal frameworks for procurement purposes before introduction of PPA and PPR in Public Works Department (PWD) and many other government departments and organizations were also using these forms.

In the context of growing concerns for streamlining the country's public procurement system, the government undertook an array of reforms in order to strengthen the public procurement regime. The reform process ultimately led to the making and issuance of Public Procurement Regulations in 2003, providing a unified procurement processing system. The PPR 2003 was supplemented by Public Procurement Processing and Approval Procedures (PPPAP), a revised Delegation of Financial Powers (DOFP) and several Standard Tender Documents (STDs) for the procurement of goods, works and services.

Further later, in order to intensify the improvement measures in the public procurement system, the House of the Nation enacted the much desired law, the Public Procurement Act 2006. Under the Act of 2006, the Public Procurement Rules 2008 were framed and issued, which replaced the Public Procurement Regulations 2003 which until then continued to have effect. Then a transformational change occurred in the public procurement in Bangladesh.

Like other government departments and organizations, Bangladesh Water Development Board (BWDB), a semi-autonomous government organization uses PPA and PPR in its procurement purposes after the enactment of the Acts and Rules.

BWDB is funded by central Government of Bangladesh (GOB). It also collect fund from irrigation activity by supplying irrigation water to farmers, which is very nominal. BWDB also gets fund from various donors and funding agencies like Government of Netherlands (GON), Canadian International Development Agency (CIDA), The World Bank, Asian Development Bank (ADB) etc.

There is a debate about the use of PPA and PPR in procurement functions in BWDB. Many say, PPA and PPR are not helpful and/or effective for procurement works. It makes delay and difficult the procurement functions. The Procuring Entity can not take quick/ right decisions due to Acts and Rules constraints. Others say, PPA and PPR made the procurement functions standardized and a uniform procedure is followed in each public procurement functions. They also opine that PPA and PPR brought transparency and accountability in public procurement. The procurement functions would be fair and effective if the Acts and Rules could be used properly. It is not the fault of PPA and PPR, if there any, it is the fault of its uses, how they are being used in procurement functions. The Acts and Rules could be made error free and flexible on its use.

To make the procurement functions more effective, two things are important to do, these are preparation of good procedures i.e. Acts & Rules and ensure proper use of these procedures in procurement functions i.e. creating a fair environment for procurement. We have procedures (PPA and PPR) in our hand; we need to make it more suitable, flexible and appropriate for procurement functions. This can be done by discussions, stakeholder participations, research works etc. The second part is more important and challenging i.e. creating a fair environment for procurement functions, specially a third world country like Bangladesh. It requires a strong political and legal commitment from the top of the government, otherwise it could not be achieved. The Procurement Managers/ Procuring Entities need proper training on procurement functions to make the procurement functions more effective. The counter parts, suppliers and contractors also need to be engaged in this loop.

And above all, there need to be establish a fair and unbiased environment that anybody can feel free to take part in the procurement functions (in Tender process). The procuring entity would play a neutral role for all the participants taking part in the tender process. Transparency, accountability and rule of law need to be established to ensure effective procurement.

## CHAPTER : 1

### **Introduction**

#### **1.1 Background of the Study**

From ancient time, procurement is being held among the different societies and also among the people of same society. At the beginning when currency was not introduced, goods or products were being exchanged (counter trade) between two groups or two people. Then people started to procure goods or products in exchange of money after the introduction of currency. In a course of time, the business function and market have expanded all over the world. Now every day we general people procure/buy our daily household products for our necessity. Most of the cases, we buy these goods/products from the spot market and pay instantly. But for some large procurement such as- when we buy a Refrigerator, Air Conditioner or any other costly products we make a deal or contract with the seller. In the same way, government procurements are always huge volume with huge costs. So, there is a contract/agreement with the suppliers to the government buyers all over the world. Beside these, the government buyers have to maintain equality, transparency, accountability and legal obligations for all these procurement.

In the Constitution of the People's Republic of Bangladesh there are no direct provisions that concern public procurement. Despite the absence of direct constitutional provisions, the institutional and legal frameworks for public procurement in Bangladesh can be seen to have derived their legitimacy from the Constitution of Bangladesh. The Constitution, however, mandates that all powers of the state must be exercised on behalf of the people and only under the authority of the Constitution. The above provisions of the Constitution and the nation's foundational values confirm that good governance (or rule of law) imperatives are constitutionally inherent, which undoubtedly bind the public procurement regime.

Public Procurement System in Bangladesh is decentralized. However, while every single department can procure services or goods, it is the Ministry of Finance and the Ministry of Planning which have some distinct responsibilities in relation to public procurement. For

example, to facilitate an efficient and open system of public procurement in Bangladesh the Central Procurement Technical Unit (CPTU) has been working since 2002, providing for, among other things, information and technical know-how required in public procurements. On the other hand, the Ministry of Finance issues, from time to time, instructions as to financial powers which public entities may exercise in procuring goods, works or services.

Two principal legal instruments to deal with public procurement are the Public Procurement Act 2006 (PPA 2006) and Public Procurement Rules 2008 (PPR 2008). Until the enactment of the Public Procurement Act in 2006, the legal regime of public procurement in Bangladesh was based on procedures and practices that date back to the British era. For example, the Compilation of General Financial Rules (CGFR), originally issued under the British rule, which broadly outlined the principles governing government contracts, remained the primary legal framework for public contracts and procurements (World Bank, 2002). Building on CGFR principles, several government departments and autonomous public bodies and corporations developed their own rules and codes of practices for public contracts and largesse to follow. Two forms 2908 and 2911 were being used as the legal frameworks for procurement purposes before introduction of PPA and PPR in Public Works Department (PWD) and many other government departments and organizations were also using these forms.

Interestingly, these Acts and Rules were greatly influenced by international development agencies and banks such as the World Bank, partly because Bangladeshi public procurements tended to rely mostly on external aid. Despite the fact that the primary objective of the pre-1996 legal instruments was to ensure openness and transparency in the public procurement system, the procurement process that was in practice was far from satisfactory.

A World-Bank led assessment of the existing public procurement policy, legal frameworks, and institutions concluded with a finding of just-mentioned drawbacks in the procurement. In the context of escalating concerns for streamlining the country's public procurement system, the government undertook an array of reforms in order to strengthen the public procurement regime. The reform process ultimately led to the making and issuance of Public Procurement Regulations in 2003, providing a unified procurement processing system. The PPR 2003 was supplemented by Public Procurement Processing and Approval Procedures (PPPAP), a revised Delegation of Financial Powers (DOFP) and several Standard Tender Documents

(STDs) and Standard Request for Proposal Documents for the procurement of goods, works and services.

Further later, in order to intensify the improvement measures in the public procurement system, the House of the Nation enacted the much desired law, the Public Procurement Act 2006. Under the Act of 2006, the Public Procurement Rules 2008 were framed and issued, which replaced the Public Procurement Regulations 2003 which until then continued to have effect. Then a transformational change occurred in the public procurement in Bangladesh.

Like other government departments and organizations, Bangladesh Water Development Board (BWDB), the leading water resource semi-autonomous body under Ministry of Water Resources (MOWR) uses PPA and PPR in its procurement purposes after the enactment of the Act and Rules. Bangladesh Water Development Board is funded by central Government of Bangladesh (GOB). It also collect fund from irrigation activity by supplying irrigation water to farmers, which is very nominal. BWDB also gets fund from various donors like Government of Netherlands (GON), Canadian International Development Agency (CIDA) etc. BWDB is the major organization in water resources sector and its activity is spread all over the country. BWDB gets a huge budget every year and most of which are being used in procurement.

## **1.2 Statement of the Problem**

Bangladesh has achieved its independence in 1971 and it is fighting for poverty reduction and development of its people from the beginning. Bangladesh has so many problems in various sectors, though it has some achievements in other sectors. Bangladesh is full of resources but it could not achieve development that was supposed to. One of the reasons for this failure is mismanagement, i.e proper use of resources in a right way. A huge amount of money is spent in each year for the development programme. The annual proposed Budget of GOB for 2011-12 is 1635890.00 million Taka and proposed Annual Development Programme (ADP) portion is 460000.00 million Taka which is 28.12% of total Budget amount. There are also Non-Development Programs. In both development and non-development programs most part of the budget is used in procurement purposes.

Due to the inefficiency in procurement activities and absence of proper procedures, these procurement functions are not done properly and that's why Bangladesh could not achieve its goal so far. There were not present enough training facilities for the procurement managers and not so many research work and development on procurement practice. But in recent days it is improving and procurement functions are being done efficiently. But there are also other problems, such as political influence, corruption, coercion etc. Sometimes government changes Acts and Rules for special purposes and these go in favor of some parties. And overall, doing procurement works fairly and efficiently is very difficult in Bangladesh. In presence of these problems, PPA and PPR have standardized procurement functions among all the procuring agency/department of Bangladesh. Beside these, there are some drawbacks and limitations of these rules and procedures. Due to these drawbacks & limitations, the procuring entity has to face various problems. Some procuring entity demands that the procurement functions and performance were better before the PPA and PPR came into force. The rules and the Acts made the procurement functions clumsier than before.

The objective of my research work is to identify these irregularities and propose suggestions to overcome these problems.

### **1.3 Hypothesis**

PPA and PPR made positive impact on BWDB procurement. The positive impact could be increased by improving PPA and PPR with adequate amendments and/or adding/subtracting necessary acts and rules with these Legal Frameworks.

### **1.4 Research Questions**

- ❖ Do really PPA and PPR improve procurement functions in BWDB?
- ❖ What is the general perceptions of people related to BWDB procurement about PPA and PPR in procurement functions?

### **1.5 Objective of the Research**

To identify and bring out the effect of PPA and PPR in BWDB procurement functions. Are these Rules and Acts keeping adequate role in achieving 'Project Triangle' (Quality, Cost and

Time) or they are creating obstacles (making clumsy) in the procurement functions? Are they adequate to create transparency and accountability in public procurement? Is the procurement in BWDB being managed by these Acts and Rules fairly? If there any problems, what are these and how can these be overcome? Also, propose some Acts and Rules which could be added to PPA and PPR for the improvement in public procurement to ensure transparency and accountability.

The specific objectives of my research work are-

- To identify the positive effect of PPA and PPR in BWDB procurement.
- To identify the Acts and Rules which are not correctly put in PPA and PPR.
- To suggest some necessary amendments for incorrect Acts and Rules.
- To suggest some extra features (Acts and Rules) in PPA and PPR which could improve public procurement in BWDB.

## **1.6 Research Methodology**

The study is primarily focused to explore the reality of the procurement functions in BWDB with and without PPA & PPR and its effect on public procurement. This study will give a clear indication of the necessity of PPA and PPR in BWDB procurement. This study will also clarify the confusions among the procuring entities about the necessity of PPA and PPR.

To reach the said objectives, the study was mainly based on primary data. Secondary sources were also used. In this regard for primary data the study mainly used survey method and then secondary sources were also used to support the survey data. For collection of survey data a questionnaire was designed. The questionnaire was formulated and finalized on the basis of responses and recommendation of a pilot survey made among the officials who all are serving BWDB as procurement managers. The elements of different aspects of public procurement were gathered on the basis of synthesis of relevant literature, responses of the pilot survey and personal experience and expectations of the procurement managers. A 5 point Likert type scale was used in the questionnaire to know the opinion and preference of the respondents about specific elements of public procurement. Opinions of 24 respondents all who are BWDB officials representing the procuring entity through the questionnaire. The respondents were belonging to the rank and status of Assistant Engineer to Executive Engineer. It is to be noted that the respondents were selected randomly.



Different research and evidences have been consulted for secondary sources of data. In this regard various reform reports, working paper and documents regarding public procurement in Bangladesh and various countries has been consulted. Moreover, personal experience and informal interview method were also used to have some more insights into the issue.

## **1.7 Scopes and Limitations**

The study is primarily focused to explore the reality of the procurement functions in BWDB with and without PPA & PPR. This study will give a clear indication of the necessity of PPA and PPR in BWDB procurement functions. This study will also clarify the confusions among the procuring entities about the necessity of PPA and PPR and will provide a comparative analysis between two projects before and after PPA & PPR in effect. This study will also identify the drawbacks and limitations of PPA and PPR and will suggest necessary corrections to overcome the problems.

There are some limitations and constraints on the way of doing this research work. In our country, there are not much research works relating to public procurement like developed countries. So I fear, I may have lack of reference materials. Access of information/data and to get the right data will be very difficult for me. Road communication and movement from one place to another in Bangladesh is not so easy like developed countries. There are also uncertainties, like political instability, strike, accidents etc.

Since this study is a requirement of partial fulfillment of an MA degree in Procurement and Supply Management, the study was required to be completed within a stipulated timeframe, which was very limited. The study was based on both primary and secondary data. But due to time and resource constraints it was not possible to collect data from the right sources. In that case the data were collected randomly for survey purpose. Again scarcity of related academic materials and studies on the subject area in the Bangladesh context was also a major constraint. Moreover time is very short for this research work. There are also budget constraints.

## **1.8 Thesis Outline**

### **➤ Chapter 1: Introduction**

Background of the study, Research question, Objective of the study, Research methodology, Limitations and Chapter outline/ structure of the study.

### **➤ Chapter 2: Literature Review**

Literature review related to public procurement, Value For Money in public procurement, Project Triangle, Critical Path Method and Gant Chart.

### **➤ Chapter 3: Critical Assessment of Public Procurement Procedures**

Definition of key terms from PPR-2008, Rules of PPR and impact on Public Procurement, Influence of PPR on procurement in respect of time, cost and quality.

### **➤ Chapter 4: Findings from the Analysis**

Analysis of Findings in respect of time, cost and quality, Findings and analysis of the interview

### **➤ Chapter 5: Conclusions and Recommendations**

Conclusions, Recommendations

## **CHAPTER: 2**

### **Literature Review**

#### **2.1 Public Procurement Background**

In the Constitution of the People's Republic of Bangladesh there are no direct provisions that concern public procurement. The Constitution has, however, expressly mentioned such basic values as- the rule of law, democracy, equality, and justice, which can be interpreted to be the sources of public obligation of integrity in state activities. Despite the absence of direct constitutional provisions, the institutional and legal frameworks for public procurement in Bangladesh, which are of recent origin, can be seen to have derived their legitimacy from the Constitution of Bangladesh. The Constitution, however, mandates that all powers of the state must be exercised on behalf of the people and only under the authority of the Constitution. The executive organ of the state has thus the constitutional competency to enter into and award public contracts for the purpose of procuring goods and services. The above provisions of the Constitution and the nation's foundational values confirm that good governance (or rule of law) imperatives are constitutionally inherent, which undoubtedly bind the public procurement regime.

Public Procurement System in Bangladesh is decentralized. However, while every single department can procure services or goods, it is the Ministry of Finance and the Ministry of Planning which have some distinct responsibilities vis-à-vis public procurement. For example, to facilitate an efficient and open system of public procurement in Bangladesh the Central Procurement Technical Unit (CPTU) has been working since 2002, providing for, among other things, information and technical know-how required in public procurements. On the other hand, the Ministry of Finance issues, from time to time, instructions as to financial powers which public entities may exercise in procuring goods or services.

## **2.2 Developments towards the Public Procurement Act 2006**

Two principal legal instruments to deal with public procurement are the Public Procurement Act 2006 and Public Procurement Rules 2008. Until the enactment of the Public Procurement Act in 2006, the legal regime of public procurement in Bangladesh was based on procedures and practices that date back to the British era. For example, the Compilation of General Financial Rules (CGFR), originally issued under the British rule, which broadly outlined the principles governing government contracts, remained the primary legal framework for public contracts and procurements (World Bank, 2002). Building on CGFR principles, several government departments and autonomous public bodies and corporations developed their own rules and codes of practices for public contracts and largesse to follow. Interestingly, these regulations were greatly influenced by international development agencies and banks such as the World Bank, partly because Bangladeshi public procurements tended to rely mostly on external aid. Despite the fact that the primary objective of the pre-1996 legal instruments was to ensure openness and transparency in the public procurement system, the procurement process that was in practice was far from satisfactory.

The following factors were widely regarded as having contributed to the then tardy and dilatory procurement system: poor advertisement, inadequate bidding period, poor specifications, nondisclosure of selection/competition criteria, award of contract by lottery without having developed the tools of attracting quality bidders, conclusion of one-sided contract documents, negotiation with all bidders, re-bidding without adequate grounds, corruption and outside influences such as political interventions, and, so on.

The so detected poor performance of the public procurement regime in Bangladesh drew the attention of many international bodies. A World-Bank led assessment of the existing public procurement policy, legal frameworks, and institutions concluded with a finding of just-mentioned drawbacks in the procurement. In the context of escalating concerns for streamlining the country's public procurement system, the government undertook an array of reforms in order to strengthen the public procurement regime. The reform process ultimately led to the making and issuance of Public Procurement Regulations in 2003, providing a unified procurement processing system. The PPR 2003 was supplemented by Public Procurement Processing and Approval Procedures (PPPAP), a revised Delegation of

Financial Powers (DOFP) and several Standard Tender Documents (STDs) and Standard Request for Proposal Documents for the procurement of goods, works and services.

Further later, in order to intensify the improvement measures in the public procurement system, the House of the Nation enacted the much desired law, the Public Procurement Act 2006. Under the Act of 2006, the Public Procurement Rules 2008 were framed and issued, which replaced the Public Procurement Regulations 2003 which until then continued to have effect.

### **2.3 Legal Framework of Public Procurement in Bangladesh**

Procurement systems share some common objectives such as value for money (VFM), fair treatment, non-discrimination, integrity, and social and industrial development (Arrow Smith, 2004: 18). Generally, competition and transparency are widely regarded as the two principles which are utilized to achieve these objectives. In terms of employing these principles, the procurement laws in Bangladesh are no exception. The Preamble to the PPA 2006, for example, says that the objective of this law has been to provide for procedures to be followed for ensuring transparency and accountability in the procurement of goods, works and services using public funds and for ensuring equal treatment and a free and fair competition amongst all persons wishing to participate in public procurements. While considerable flexibility is given to government departments with regard to purchases and contracting, accountability remains at the core of concerns of the Bangladeshi public procurement legal regime, as the preamble to the Procurement Act projects.

In the Act of 2006, the term 'procurement' itself has been broadly defined to include purchasing or hiring of goods or acquisition of goods through hiring and purchasing, execution of works and performance of any services by any contractual means.<sup>15</sup> Section 7 aims at widening the scope of the Act covering government, semi-government and statutory public bodies, other procuring entities that use public funds, and even companies that procure by using public funds, and any procurement under any loan, grant, or credit agreements with development partners.

## **2.4 Methods of Public Procurement**

The Act provides for several methods of procurement, prescribes rules to determine prequalification of the potential/participating bidders, if applicable, leverages for competition amongst the tenders, and stages of the procurement processes. The Act divides the procurement into domestic and international classes. As for the domestic procurement of goods, related services, and works, the preferred method prescribed is the open tendering method (OTM). However, procurement methods alternative to the OTM are also allowed with the permission of the head of procuring authority and on technical and economic grounds. These alternative methods are: limited tendering method (LTM), direct procurement method (DPM), two-stage tendering method (TTM), and the request for quotation method (RFQM). There are essential conditions that need to be met before taking resort to each of these alternative methods. For example, LTM applies when suppliers of goods or services are limited in number or the time and cost required to receive and evaluate tenders would outweigh the value of the contract. Direct method is allowed when, for technical reasons, only one tender is available, or for additional procurement of goods or services from the original supplier/contract, or for the procurement of goods, services, and works of very urgent and essential nature. Request for Quotation (RFQ) method may be used for off the shelf low value goods or physical strives available in the market or for the procurement of goods for urgent repairs or maintenance. Two stage tendering methods (TSTM) may be followed for complex and large projects or when complete technical specifications may not be possible at one stage or where alternative solutions are available in rapidly evolving industries.

Similar processes (such as open tendering, limited tendering, quotation method, and the two-stage tendering method) and requirements for international procurements are made mandatory by the Act with certain significant differences to maintain standards and competition. For example, in an international procurement through open tendering method technical specifications should be made in a way that conforms to international standards. Moreover, in case of international procurements joint ventures with local partners by foreign suppliers/ contractors may be encouraged but must not be imposed as a condition. Also, it is mandated that provisions for alternative dispute resolutions should be incorporated in the contract. It should be noted here that the law gives a wide leverage to decide whether to procure locally or to resort to an international procurement. Further importantly, although the law provides for certain conditions to be fulfilled in order for any procurement method to be

conforming to the statutory requirements, it ultimately depends on the discretion of the procuring authority to follow one or the other method. This needs further specification. For example, it has been a condition precedent to taking 'limited tendering method' if and only if the subject matters, by reason of their specialized nature, are available only from a limited number of suppliers/ contractors, local or international, as the case may be. It thus may be argued that despite the existence of administrative control mechanisms, there are open chances for the abuse by procuring entities of the discretion to prefer one particular method to the other. The law also provides for 'emergency flexible purchases'. Section 68 of the PPA provides that in order to meet a national urgency or a catastrophic event, the government in the public interest and with the recommendation of the Cabinet Committee on Economic Affairs may procure goods/services on an urgent basis by following the direct purchase method or any other method as provided in s. 32 of the Act.

It should be noted with emphasis here that the government preserves the power to exempt procurements from the operation of the PPA 2006 in the interest of national security and defense. Although the defense purchases in Bangladesh are also subject to the PPA and PPR as well as internal audit at the Defense Services, there is inadequate information about them in general and about big and complex defense procurements in particular. This gap in the legal control of defense procurements should be considered while initiating reforms in public procurement regime.

## **2.5 Processes of Public Procurement**

Public procurements in Bangladesh are processed mainly through a four-tier process:

- (i) advertising the invitations for tenders/quotations,
- (ii) evaluation,
- (iii) approval, and
- (iv) awarding of contract.

The first step for a procuring entity to take is to advertise Invitations for Pre-Qualification (IFPQ), Invitations for Enlistment (IFE), Invitations for Tender (IFT) and Request for Expressions of Interest (REOI) concerning the procurement of goods with related services, works and intellectual services. The advertisements, following prescribed formats and maintaining the Time frame, are to be published in at least two widely circulating daily news papers, in choosing which the entity should apply 'sound judgment'. It is important to note

that all invitations shall also be advertised in the procuring entity's website, if any. It means that having a website is still not mandatory. Secondly, the procuring entity may opt for inviting only –pre-qualified applicants in which case there is a list of such applicants drawn through the prescribed rule. A procuring entities may undertake pre-qualification for a number of large and complex procurements such as construction works, maintenance works, design and build infrastructure, and so on. However, a procuring entity has a duty to carefully consider the merits and demerits of pre-qualification before initiating the Pre-Qualification process for procurement of goods or works. PQ applications are opened by Tender Opening Committee (TOC), which shall then be evaluated by the tender evaluation committee (TEC) that may be supported by a Technical Sub-committee constituted by the Head of the procuring entity. The next step is the opening of tenders. There is a tender/proposal opening committee (TOC/POC) in each procuring entity. Following the deadline of submitting tenders, the procuring entity convenes the meeting for tenders-opening. Tenders are required to be opened promptly and publicly at the time and place specified in the IFT. Thereafter, the evaluation committee of the procuring entity evaluates the tenders on the basis of pre-disclosed criteria and technical specificities and by following the rules and principles of procurement. The members of evaluation committee, which need to be constituted fairly/transparently, have to sign a declaration of impartiality, and the committee is to certify that evaluation has been made in accordance with the rules of the Act. TEC sends its report along with recommendations to the Approving Authority and, the Approving Authority shall make its decision as to whom to award the contract. As a matter of rule, the lowest evaluated tender being the 'responsive tender', that is the one which does not meaningfully alter or depart from the technical specifications, characteristics and commercial terms and conditions of the Tender Document, becomes the successful tender. A notification of awards then issued to the successful tendered within one week of the approval of the award by the Approving Authority, attaching therewith the contract with detailed terms and conditions.

Importantly, the powers of the approving authorities are limited in terms of the value of the contract to be awarded, i.e., the value of works, goods, and services to be procured. Known as delegation of financial powers, a statutory instrument clearly defines which authority can authorize the procurement of which value and also by following which method of procurement. For example, in a project or work of more than taka 500 million, may purchase goods of taka 15,000 directly, i.e., without following the quotation method.



## **2.6 General Principles of Procurement**

The Act also provides for general guidelines. It provides for public accessibility to procurement documents and related papers, the issuance of standard documents, and for the framing of one yearly procurement plan with regard to development budget and another plan concerning procurements under revenue budget. The procurement regime in Bangladesh is premised on the principle of non-discrimination. The procuring entity is under an obligation not to prevent any tenderer from entering into procurement processes on the ground of race, colour, sex or any other ground. The procuring entity has an obligation to facilitate competition by making available to all concerned all relevant documents, assessment criteria, and the process for evaluation of tenders/proposals, and so on. To facilitate competition, the procurement entity has to disclose well in advance the required qualification or standards of performance which it could require the tender to have possessed and to demonstrate. Importantly, giving of a minimum time for the applicant/tenderer/ to respond has been mandated. There is also a general prescription as not to split a single procurement into several packages, unless it is extremely urgent and unavoidable. It also provides that the 'validity period' of the procurement process/tender, that is the timeframe within which the whole process beginning from the advertisement to the awarding of contract, should be reasonable so that all necessary approvals be obtained by the procuring entity and the contract may be awarded. The law also mandates that the rules relating to deposit of security money, rate of charges of services, and whether any security money so deposited is to be later deducted or rejected in case of unsuccessful bidding, have to be clearly specified. A procurement entity has a duty to maintain the confidentiality of the process from opening of tenders up to awarding of a contract. Further, any person's attempt to influence the process shall lead to the rejection of his pre-qualification, tender, or proposal. However, following the signing of a contract with the tenderer, the winning tenderer may have necessary information about his application. Any other tenderer may seek for information as to why his or her application or tender was unsuccessful. The procurement entity is obliged to maintain records and to administer efficient management of the contract awarded, and to conduct post-procurement review within nine months of each fiscal year.

## **2.7 Procurement in BWDB**

Like other government departments and organizations, Bangladesh Water Development Board (BWDB) under Ministry of Water Resources (MOWR) uses PPA 2006 and PPR 2008 in its procurement purposes after the enactment of the Acts and Rules. Bangladesh Water Development Board is funded by central Government of Bangladesh (GOB). It also collect fund from irrigation activity by supplying irrigation water to farmers, which is very nominal. BWDB also get fund from various donors like Government of Netherlands, Canadian International Development Agency (CIDA) etc. BWDB is the major organization in water resources sector and its activity is spread all over the country. BWDB gets a huge budget every year and most of which are being used in procurement.

To understand procurement functions in BWDB clearly its organizational structure need to be examining carefully. The organization is headed by a Director General (DG) an equivalent rank of Additional Secretary of Ministry. There are five Additional Director Generals (ADG) under the DG of which three are promoted from Chief Engineers to ADGs and two come from the Ministry (ADG Finance and ADG Administration) in deputation. The other three ADGs are Additional Director General (Operation & Maintenance-1), Additional Director General (Operation & Maintenance-2) and Additional Director General (Planning). There are seven Zones headed by Chief Engineers (CE) and 18 Circles headed by Superintending Engineers (SE). There are 54 Operation & Maintenance Divisions (O&M Divisions) headed by Executive Engineers (EE) and 162 Sub-Divisions headed by Sub-Divisional Engineers (SDE). In each Sub-division there are 3 Sub-Assistant Engineers (SAE) under a Sub-Divisional Engineer. Sub-Assistant Engineers are the head of Section offices, the smallest administrative unit of BWDB. There are about 935 Engineers and about 8000 support staffs in these offices. There are also various directorates and support services offices such as Finance Directorate, Accounting Directorate, Establishment Directorate, Training Directorate, Personal and Staff Development Directorate etc. headed by a Director. There are also Chief Planning, Chief Monitoring, Chief Design offices to provide support all over the country in procurement activities.

The procurement function in BWDB is decentralized. In many years ago, procurement were being done in centrally, there were central ware houses (storage) for this purpose. There are some both advantages and disadvantages of centralized and decentralized procurement.

Economy of scale, standardization of items, standard and uniform procedure could be maintained in centralized procurement system but local demand fulfillment, decentralization of power and employee empowerment could not be achieved in centralized procurement system. That's why procurement is decentralized in course of time. Executive Engineer is the procuring entity for most of the procurement functions as they are the division head of important administrative unit O&M Division. There is also individual Project Directors (PD) for development projects. Most cases these projects are funded by development programme. There are three category project directors (Category A, B, C) according to project fund. Category A Project Director (PD, Category A) is for big funded projects and Chief Engineers and above is the Project Directors. Category B Project Director (PD Category B) is for medium projects and Superintending Engineers or equivalent ranking officers is the Project Directors. Category C Project Director (PD, Category C) is for small projects and Executive Engineers or equivalent ranking officers is the Project Directors. Project Directors are categorized according to Delegation of Financial Powers (DOFP).

## **CHAPTER: 3**

### ***CRITICAL ASSESSMENT OF PUBLIC PROCUREMENT PROCEDURES***

#### **3.1 Background**

Despite every sincere effort of the law, the procurement processes in Bangladesh are fraught with demerits of over-bureaucratisation. The rules and processes are exceedingly lengthy, causing delays and thereby discouraging genuine and potential participants. The complex bureaucratic procedures underpinned by open-ended legal discretion may foster practices of corruption. Corruption in Bangladesh has indeed been a major problematic for business and efficiency in the administration, and thus calls for special attention while reforming the public procurement regime. A source of corruption in public procurements might be, for example, the administration's discretionary power to overlook lack of experiences of certain contractors involving works of a prescribed financial value. According to a newly inserted provision of law that has appeared much controversial, in case of domestic procurement of works through limited bidding method involving a value of not more than TK. 20 million, list of contractors should be prepared beforehand and preserved but previous experiences of the contractors are not necessary in determining their 'personal capacity'. This provision is highly likely to generate a scope for corruption or nepotism.

There are multiple layers in the approval and review processes of procurements. There is a line of approving authorities starting from a junior-ranking public servant to the Cabinet Committee. Big and complex projects and purchases/ hiring definitely need high-ranking policy-making bodies. Nevertheless, reduction of approving authorities to a minimum number would facilitate cost-effective and prompt public procurements. There are mechanisms to oversee the post-award progress of contracted works, but those mechanisms are not ideally rigorous. Although the procuring entities are empowered to debar any contractors found to be in default of, or breaching procurement rules and professional standards, the process is not sufficiently transparent and participative. Also, availing of other ordinary remedies against a recalcitrant supplier or contractor under the contract law is not without problems, costs, and delays. It is pertinent here to also note that Bangladesh has not yet established the office of Ombudsman generally to investigate into charges of corruption in public offices. Appreciably, however, Parliament has at its hand a monitoring system to control public expenses and financial irregularities in public offices. Through its public accounts committee and the standing committee on public undertakings, Parliament can potentially control financial corruptions or corruptions through public procurements. The experiences are, however, quite different from this

possibility. While the relevant parliamentary committees continue to stand as a mode of surveillance over government procurements, there are practical problems (Ahmed 2006), both political and legal, that retarded effective parliamentary supervision of public procurements. One the final note on the existing mechanisms of checking corruption in public procurements, reference could be made to prosecution of government officials that might be responsible for bribery or embezzlement of public money in the process of procurements or contracting out. Theoretically, the Anti-Corruption Commission (ACC) can prosecute such offenders and, as discussed above, there are legal checks against them as provided for in the PPA and PPR. As is the case with parliamentary committees, Bangladesh's ACC is plagued with bureaucratic hindrance and with the problem of non-independence to some extent. For example, as the law now stands, the ACC cannot prosecute any government official without prior approval of the government. This is sure to have negative impact on the accountability of public officials engaged in government procurements.

Although the existing procurement documents are by and large of a good standard, there is a lack of adequate professional competence on the part of the public officials who often engage in government procurement processes to manage public procurements. There is only one centralized technical unit at the disposal of the government, which, although it has so far trained a good number of people, cannot simply effectively provide technical support to an increasingly greater member of staff and entities engaged in public procurements. This has an impact, undoubtedly, on the efficiency and accountability of the system.

The existing review and appeal processes are exceedingly bureaucratic, and multi-layered, discouraging an aggrieved tenderer/applicant to seek legal remedies. As seen above, for the same and the one legal injury a potential participant can have resort to a plurality of channels without exhausting which the courts can not also easily be availed of. On the other hand, the judicial constitutional review of public contracts has not yet become robust enough. In order to achieve greater accountability and efficiency in the existing procurement system, there should be installed a systematic mechanism for administrative reviews and appeals. More importantly, the higher judiciary should adopt the public law approach towards scrutinizing public contracts arising from procurement decisions. In the same vein, when the rules disallow procurements valued beyond a monetary ceiling without permission of a higher approving authority, the concerned entity may split the purchase into several slots. This needs further explanation. To take the example of application of financial power of procuring body, when a procuring authority may not purchase goods valued at more than taka 15,000 without advertising and approval of the higher authority, it might tend to purchase goods of taka 15000 through a direct purchase method in several stages. This scope for avoidance of rules may negate the accountability goal that the procurements rules want to ensure.

The current Bangladeshi procurement regime provides for the possibility of electronic government procurement (E-GP), which has not yet been made mandatory. One does not need to press hard to make the point that, by making E-Procurement including the payment through electronic devices compulsory, the state of administrative accountability could have been strengthened to a significant degree.

Also notable is the legal rules that provide the public officials and procuring entities too much discretion to apply in choosing the method or modes of procurements. For example, the rules regarding conditions for national and international procurements and direct and tendering methods are so loosely worded that the authorities may prefer one method to another. For the sake of 'accountability, these leverages need reconsideration.

### **3.2 Acts (PPA) and Rules (PPR) and its' impact on Public Procurement**

Lalliot (World Bank, Washington D.C) presented the following factors as the elements of a sound procurement system:

- i. **Coverage of the procurement system** - a legal framework, which covers Procurement Act to set principles and methods of procurement, rules of advertising, conduct of contract award process and complaint handling mechanism; Implementation of the regulations; Use of guidelines, manuals and SBDs; Specific institutions; Auditing and oversight mechanisms; and Training strategy for procurement staff.
- ii. **Legal elements** – enactment of a Public Procurement Act or any major regulation is a fundamental requirement for a sound procurement system. It helps enhancing transparency, security and stability of the system.
- iii. **Institutional elements** – dedicated procurement institution based on the needs of the country for example Procurement Regulatory Body, Advisory Body, Complaint Handling Body and Procuring Entities. Professionalization of procurement staff is also equally important factor for standardization of procurement process and for reliability and integrity of the procurement staff. For professionalization of procurement function there is a need for specific training, specific carrier and specific obligation and duties (guided by specific code of conduct). Collateral legal issues such as budgeting and planning process, anti-corruption

measures (Criminal/Penal Act), and Anti-collusion measures (Competition Act) are the other instruments safeguarding good public procurement practices.

iv. **Evaluation tools** – evaluation is the process of analyzing and finding the gaps (if any) between expectation and the actual performance of any system. Procurement is also a system linked to many other systems in the Public Sector Management System. Lalliot indicated Budget system, judicial system, Civil service system and Audit and control system are among the systems linked with the procurement system and OECD-DAC and MAPS are the available tools for procurement assessment.

## CHAPTER : 4

### *Findings from the Analysis*

#### 4.1 Introduction

The study is primarily focused to explore the reality of the procurement functions in BWDB and its effect on public procurement. This study gives a clear indication of the necessity of PPA and PPR and its impact in BWDB procurement. It also clarifies the confusions among the procuring entities about the necessity of PPA and PPR.

The study is mainly based on primary data. Secondary sources were also used. For collection of primary data, the study mainly used survey method and then secondary sources were also used to support the survey data. For collection of survey data a questionnaire was designed. The questionnaire was formulated and finalized on the basis of responses and recommendation of a pilot survey made among the officials who all are serving BWDB as procurement managers. The elements of different aspects of public procurement were gathered on the basis of synthesis of relevant literature, responses of the pilot survey and personal experience and expectations of the procurement managers. A 5 point Likert type scale was used in the questionnaire to know the opinion and preference of the respondents about specific elements of public procurement. Opinions of 24 respondents all who are BWDB officials representing the procuring entity through the questionnaire (**Table-4.1**). The respondents were belonging to the rank and status of Sub-Divisional Engineer to Executive Engineer. It is to be noted that the respondents were selected randomly. About 10 questions were put in the questionnaire among which 8 questions were close ended and 2 questions were open ended. The close ended questions were MCQ type and on the basis of effectiveness of PPA and PPR on procurement functions in BWDB. Other 2 questions were about free opinions of PPA and PPR and proposed suggestions (**Sample questionnaire attached**).

**Table-4.1: Respondents**

	Frequency	Percent	Valid Percent	Cumulative Percent
Sub Divisional Engineer	20	83.333	83.333	83.333
Executive Engineer	4	16.667	16.667	100
Total Respondent	24	100	100	



By analyzing the primary survey data, a mix reaction is found. The Procuring Entities have expressed their opinions for and against PPA and PPR. It is notable that, the opinions against PPA and PPR are not for the faultiness of PPA and PPR but for not following the system properly. In a third world country, like Bangladesh, it is very difficult to enforce a law which is again financing related. Corruption in every step of processing is inevitable. There are also other factors i.e political, socio-economic which also influence the procurement process. So it is not the fault of PPA and PPR for not being establishment of transparency in procurement process.

Different research and evidences have been consulted for secondary sources of data. In this regard various reform reports, working paper and documents regarding public procurement in Bangladesh and various countries has been consulted. Moreover, personal experience and informal interview method were also used to have some more insights into the issue.

#### **4.2 PPR and its impact on controlling ‘Quality of work’**

For any work, quality is very important. In case of procurement work, five rights are very important, these are quality, quantity, cost, time. All these are interdependent. Achieving five rights at a time is the ultimate goal. But it is very difficult to achieve all these rights together. Sometimes we have to trade among these rights depending on the demand of situations. For emergency moment, cost right may not be achieved and needs to be trade with time; and also quality right may or may not be achieved.

Quality is a relative term. There is a misperception among us that, quality means the best one. But it is not always true. Quality can be defined as-‘*fit for purpose*’. For various purposes, we need various types of products. The products/ goods that serves the purpose accurately that is the quality goods.

In procurement in BWDB, PPR obviously control the quality of procurement work. We got perceptions of “How much PPR 2008, as a whole, impact controlling quality of work” from 24 respondents. A qualitative answers have been collected which show positive impact of PPR on controlling ‘quality of work’. Among 24 respondents 10 answered PPR has high positive impact on controlling quality of work and 14 answered PPR has low positive impact on controlling quality of work (**Table-4.2 and Figure- 4.2**). Nobody mentioned that PPR has negative impact on controlling quality of work.

**Table-4.2: Impact on controlling 'quality of work' :**

	Frequency	Percent	Valid Percent	Cumulative Percent
High positive impact	10	41.667	41.667	41.667
Low positive impact	14	58.333	58.333	100
Total Respondent	24	100	100	

**How much PPR 2008, as a whole, impact controlling 'quality of work'**

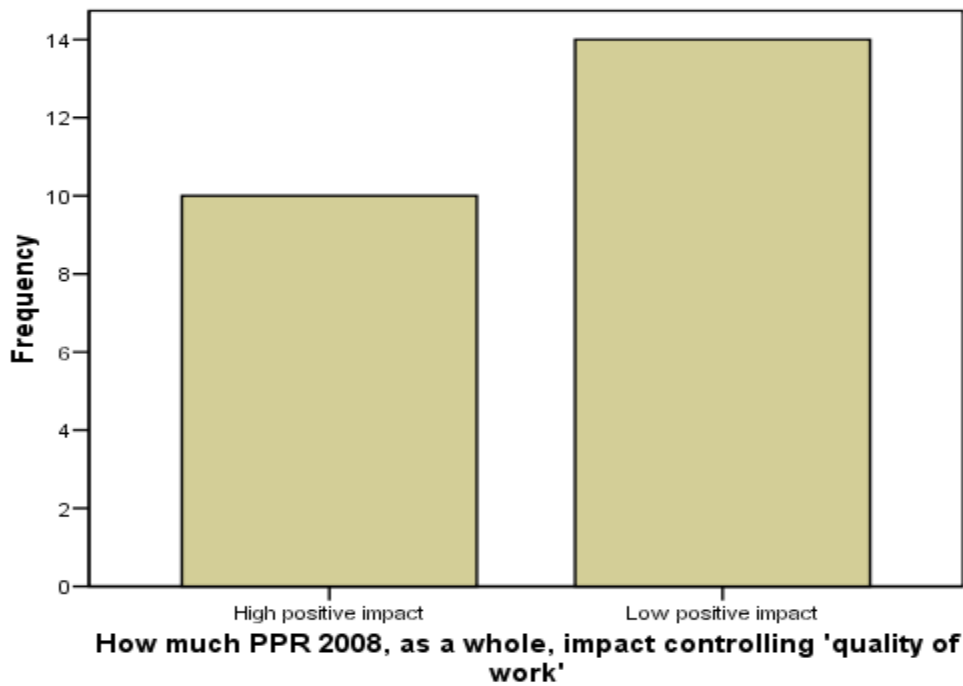


Figure-4.2

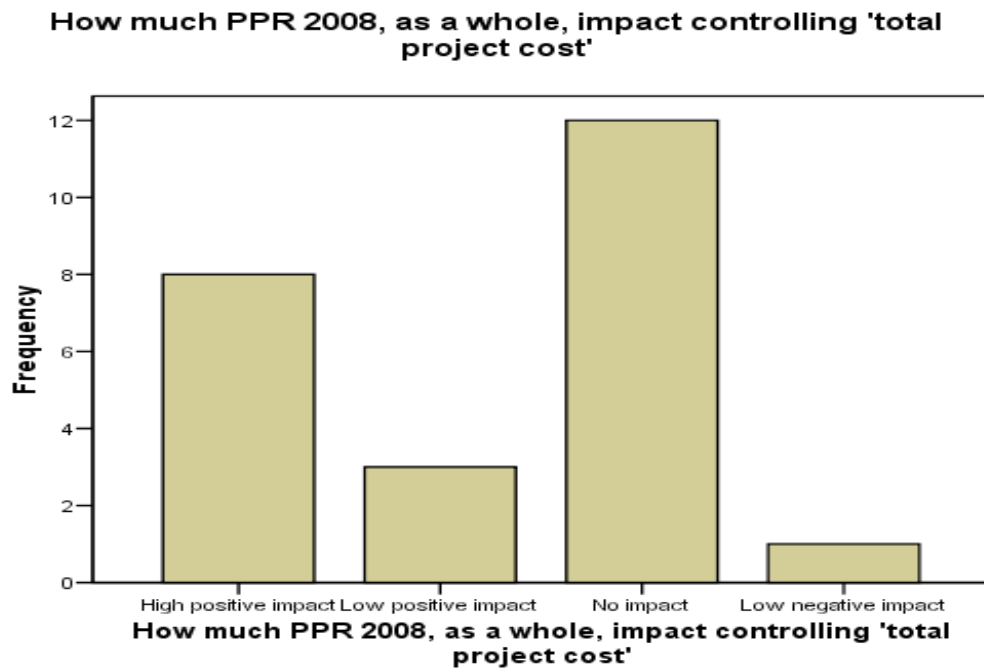
### 4.3 PPR and its impact on controlling 'total project cost'

PPR is the procurement procedure and guidelines for procurement managers. It describes Rules & Regulations, methods, steps, dos & don't dos. As it is a standard procedure, procurement function runs through a regulations and it has an implication on project cost. Project cost would be typical and standard if the procurement function is done through by PPR. But it is debatable, whether project cost decreases or increases for using PPR. We got a

mix reaction about this issue. 11 respondents out of 24 mentioned that, PPR has positive impact on 'total project cost' means PPR helps to decrease total project cost. Again 8 respondents have perception that PPR has '*high positive impact*' on total project cost and other 3 have perception of '*low positive impact*' on total project cost. 12 respondents made opinion that PPR has '*no impact*' on 'total project cost' which means PPR has no impact on decreasing or increasing of total project cost. By following PPR, project cost could be limited in a standard/ typical form. 1 respondent has perception that PPR has negative impact ('*low negative impact*') on total project cost (**Table-4.3 and Figure-4.3**). This perception has been drawn due to huge procedures and formalities needs to be done in each procurement functions. For high value purchasing this is justifiable but for some low value purchasing this is not justifiable.

**Table-4.3: Impact on controlling 'total project cost' :**

	Frequency	Percent	Valid Percent	Cumulative Percent
High positive impact	8	33.333	33.333	33.333
Low positive impact	3	12.500	12.500	45.833
No impact	12	50.000	50.000	95.833
Low negative impact	1	4.167	4.167	100
Total Respondent	24	100	100	



**Figure-4.3**

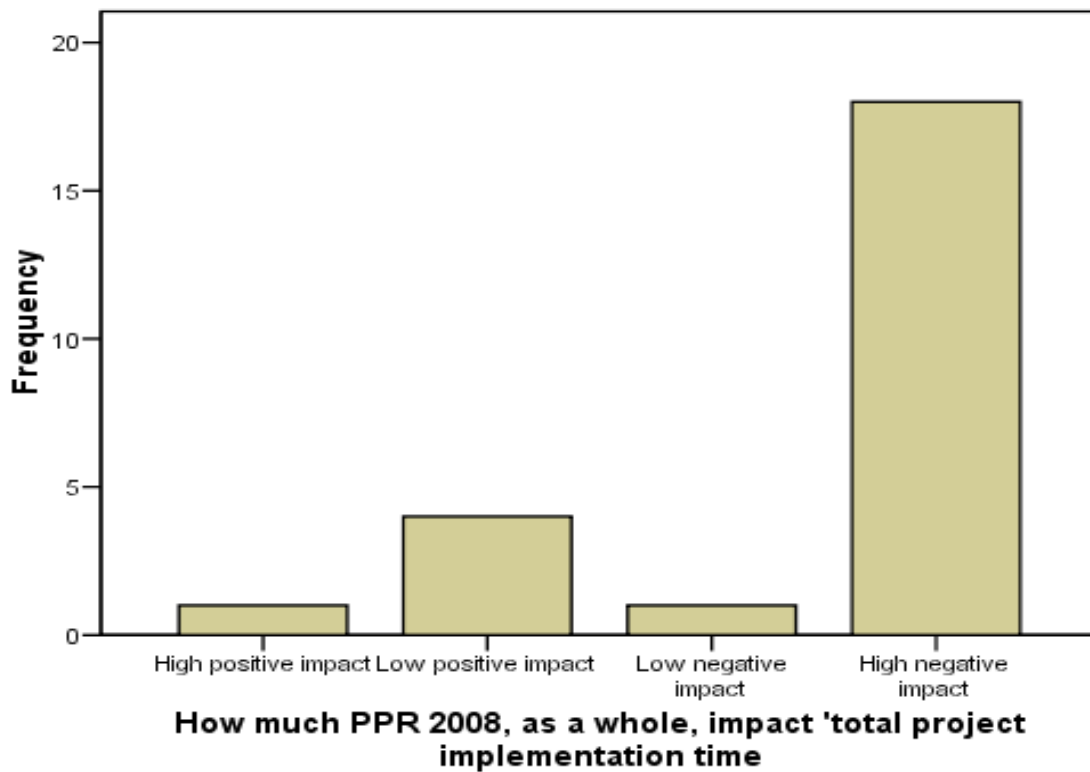
#### **4.4 PPR and its impact on 'total project implementation time'**

As PPR is the procurement guideline, it describes and limits procurement time schedule and duration. PPR strongly mentions and encourages providing a certain minimum time for procurement functions. It is due to ensure huge participation and competition in tendering and for lowest procurement cost. It also ensures transparency, accountability and good governance. But it is difficult and not justifiable to keep the provision for minimum time in critical and emergency project; such as national disasters. Considering these issue, PPR has made provision to meet up these critical situations. But due to lack of proper knowledge and lack of partitions, we percept that PPR delays the procurement functions and most of the procurement managers claim that PPR unnecessarily delays the procurement functions. But we have to consider equality, transparency, accountability, value for money, good governance as we are using public money for procurement functions. However, both positive and negative answers were found from the respondents, where the perception of negative impact governs (**shown in Table-4.4 and Figure-4.4**).

**Table-4.4: Impact of PPR on 'total project implementation time'**

	Frequency	Percent	Valid Percent	Cumulative Percent
High positive impact	1	4.167	4.167	4.167
Low positive impact	4	16.667	16.667	20.833
Low negative impact	1	4.167	4.167	25
High negative impact	18	75	75	100
Total Respondent	24	100	100	

**How much PPR 2008, as a whole, impact 'total project implementation time**



**Figure-4.4**

#### **4.5 PPR and its impact on making procurement process easy.**

The Preamble to the PPA 2006, for example, says that the objective of this law has been to provide for procedures to be followed for ensuring transparency and accountability in the procurement of goods, works and services using public funds and for ensuring equal treatment and a free and fair competition amongst all persons wishing to participate in public procurements. While considerable flexibility is given to government departments with regard to purchases and contracting, accountability remains at the core of concerns of the Bangladeshi public procurement legal regime, as the preamble to the Procurement Act projects.

In the context of escalating concerns for streamlining the country's public procurement system, the government undertook an array of reforms in order to strengthen the public procurement regime. The reform process ultimately led to the making and issuance of Public Procurement Regulations in 2003, providing a unified procurement processing system. The PPR 2003 was supplemented by Public Procurement Processing and Approval Procedures (PPPAP), a revised Delegation of Financial Powers (DOFP) and several Standard Tender Documents (STDs) and Standard Request for Proposal Documents for the procurement of goods, works and services.

Further later, in order to intensify the improvement measures in the public procurement system, the House of the Nation enacted the much desired law, the Public Procurement Act 2006. Under the Act of 2006, the Public Procurement Rules 2008 were framed and issued, which replaced the Public Procurement Regulations 2003 which until then continued to have effect.

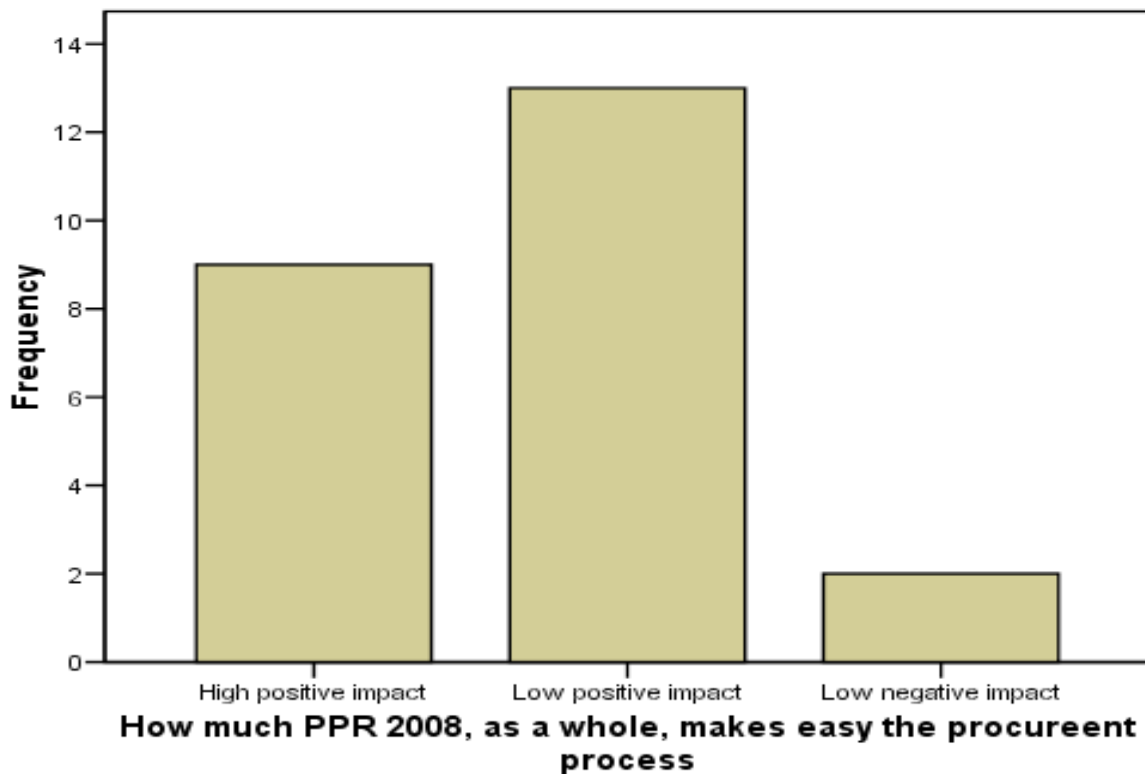
Now PPR has been widely used in BWDB as well as all government departments, autonomous and semi-autonomous bodies and large organizations. It has made the procurement functions unified and standard everywhere. But there is a mix perceptions and opinions about this issue. Mostly the aged procurement managers, who are not willing to change the procurement system and are used to use previous system, they are not feeling suitable to take PPR. But due to use of PPR everywhere they are bound to follow the rules. On the other hand, most of the new comers and procurement managers are welcoming PPR

and feeling better to use it. They are thinking and accepting it for the well being of procurement functions. The reactions of respondents are shown in **Table-4.5** and **Figure-4.5**.

**Table-4.5: PPR and its impact on making procurement process easy :**

	Frequency	Percent	Valid Percent	Cumulative Percent
High positive impact	9	37.500	37.500	37.500
Low positive impact	13	54.167	54.167	91.667
Low negative impact	2	8.333	8.333	100
Total Respondent	24	100	100	

**How much PPR 2008, as a whole, makes easy the procureent process**



**Figure-4.5**

#### **4.6 Minimum time in each stage of Tendering and ‘total project implementation time’**

The stages of tendering can be fragmented as identifying the needs, compilation and preparation of procurement plan (PP), approval of PP, preparation for bidding and invitation for tendering (IFT), dispose of bidding documents to participants, collection of proposals from participants, evaluation of proposals/tenders, approvals of tenders, debriefing etc.

At the initial stage of procurement, the procurement managers identify the needs (what needs to be procured). Generally the demands from the end users are collected. After collection and compilation, a procurement plan is made and sent to competent authority for approval. After getting back the approval, the procurement managers prepare bid documents for tendering and float invitation for tender (IFT) in Newspapers and other publications as and where necessary. The procurement managers are also responsible for easy access of bid documents by the participants. A minimum time duration is kept to ensure huge participation and competition in the tendering. This time duration is also required for the preparation of bid document by the bidders. If any quarries arises, the intending participants have right to know from the procurement managers. And there are specific time duration for this purposes. After the definite time interval, the bid documents/ proposals are collected from the bidders. The procurement managers then hand over the collected bid documents to Tender Evaluation Committee (TEC) for tender evaluation. The Tender Evaluation Committee evaluates tenders/ bid documents and submits Tender Evaluation Report (TER) to competent authority for approval of TER. The TEC generally gets 2 to 8 weeks for tender evaluation purposes depending on the complexity of procurement nature. For the approval of TER, the competent authority gets 1 to 6 weeks depending on the complexity and level of competent authority. And finally, a debriefing session is held before the issuance of Notification of Award (NOA).

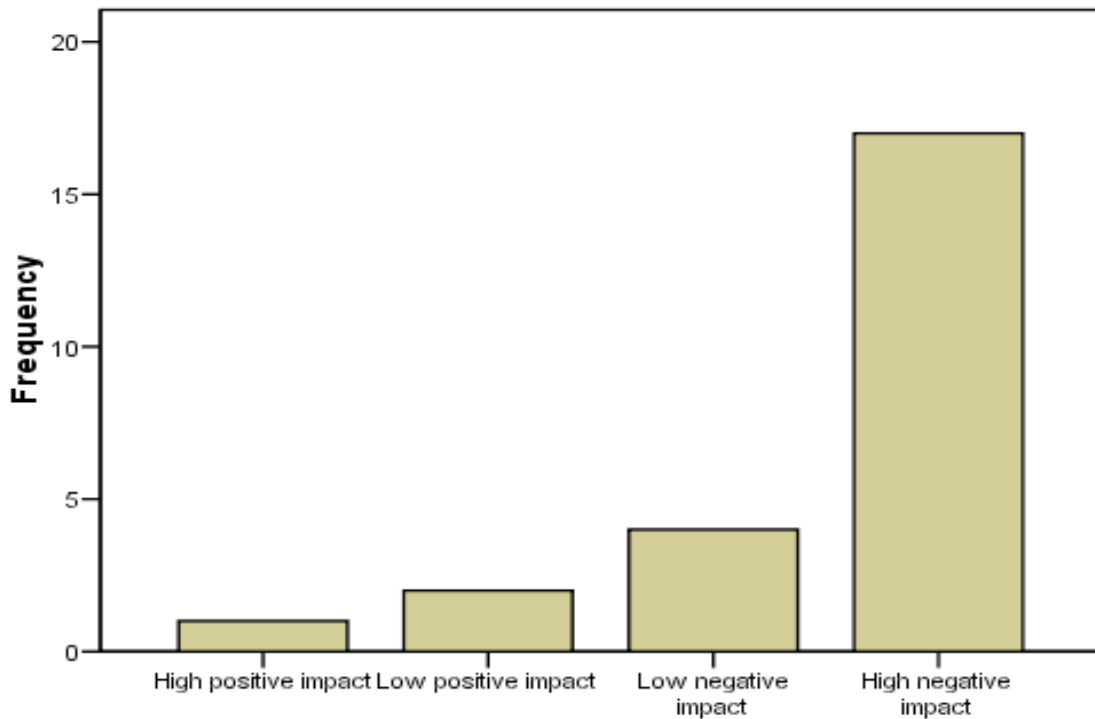
One thing needs to be remind, all these time durations in each stage of tendering are provided to ensure huge participation and make competition in tendering to achieve the lowest procurement cost. And it is important to ensure transparency, accountability and good governance as we are using public money for procurement functions. However, both positive and negative answers were found from the respondents, where the ‘high negative impact’ governs (**shown in Table-4.6 and Figure-4.6**).



**Table-4.6: 'Minimum time in each stage of tendering' and 'total project implementation time':**

	Frequency	Percent	Valid Percent	Cumulative Percent
High positive impact	1	4.167	4.167	4.167
Low positive impact	2	8.333	8.333	12.500
Low negative impact	4	16.667	16.667	29.167
High negative impact	17	70.833	70.833	100
Total Respondent	24	100	100	

**How much 'minimum time in each stage of tendering' impacts 'total project implementation time'**



**How much 'minimum time in each stage of tendering' impacts 'total project implementation time'**

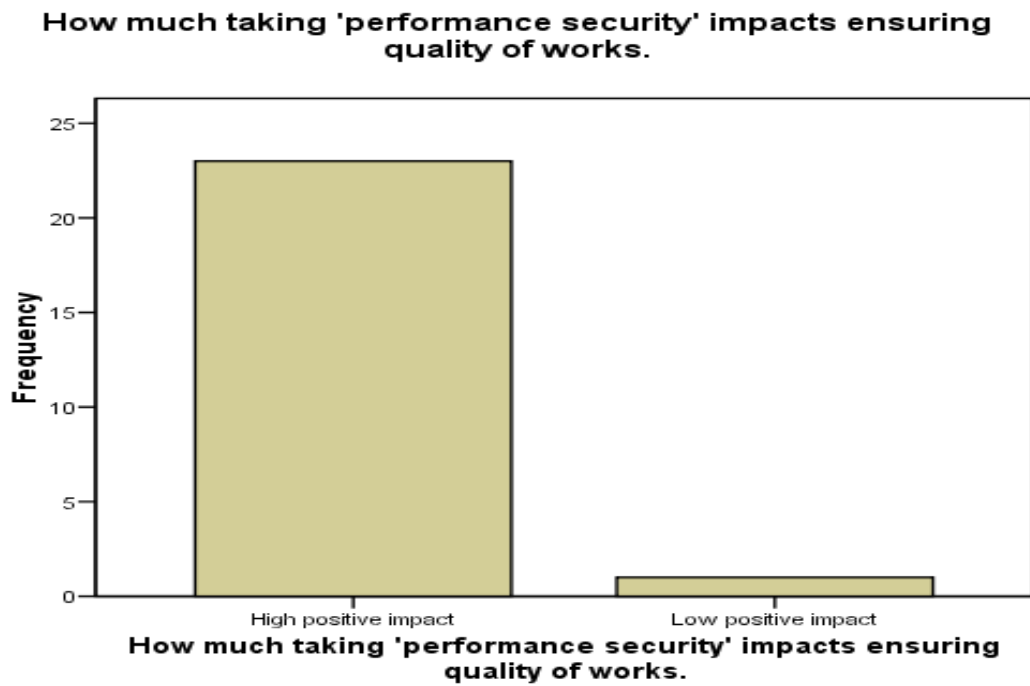
**Figure-4.6**

#### 4.7 Impact of Performance Security to ensure quality of works.

Performance Security plays a vital role in contract management. It always acts as a pressure on contractors/ suppliers. This performance security is provided by the contractors at the time of 'Contract Agreement' and validity period of this security is generally 28 days beyond the contract completion time. So it keeps a pressure on contractor to supply quality goods and services. The performance security may be in the form of Bank Draft, Pay Order or Bank Guarantee. Performance security also covers defect liability of goods and services. If the contractor does not changes/ repairs the defects found in supplied goods/ services within the defects liability period, he will be punished by cutting a specific amount from the performance security for not meeting up the defects. All the respondents opined that, performance security plays a great role to ensure quality of works (shown in **Table-4.7** and **Figure-4.7**). But there is a drawback of taking performance security from the contractor. A certain amount of money/ liquid assets are tied up for this purpose and the contractor runs shortage of capital to supply goods and services.

**Table-4.7: Impact of performance security to ensure quality of works :**

	Frequency	Percent	Valid Percent	Cumulative Percent
High positive impact	23	95.833	95.833	95.833
Low positive impact	1	4.167	4.167	100
Total Respondent	24	100	100	



**Figure-4.7**

#### 4.8 Mean and Standard Deviation calculation.

**Descriptive Statistics :**

	N	Minimum	Maximum	Mean	Std. Deviation
How much PPR 2008, as a whole, impact controlling 'quality of work'	24	1	2	1.583	0.504
How much PPR 2008, as a whole, impact controlling 'total project cost'	24	1	4	2.250	0.989
How much PPR 2008, as a whole, impact 'total project implementation time	24	1	5	4.292	1.334
How much PPR 2008, as a whole, makes easy the procureent process	24	1	4	1.792	0.833
How much 'minimum time in each stage of tendering' impacts 'total project implementation time'	24	1	5	4.417	1.139
How much taking 'performance security' impacts ensuring quality of works.	24	1	2	1.042	0.204
Valid N (listwise)	24				

## 4.9

## Correlations

### Correlations :

Variables	'quality of work'	'total project cost'	'total project implementation time'	procurement process	'minimum time in each stage of tendering'	'performance security' impacts ensuring quality of works'
1	1.000	0.655	0.642	-0.009	0.543	0.176
2	0.655	1.000	0.601	0.330	0.444	0.162
3	0.642	0.601	1.000	0.057	0.317	0.113
4	-0.009	0.330	0.057	1.000	0.279	0.053
5	0.543	0.444	0.317	0.279	1.000	-0.078
6	0.176	0.162	0.113	0.053	-0.078	1.000

## CHAPTER : 5

### *Conclusions and Recommendations*

#### **5.1 Conclusions**

For Bangladesh's social and economic development there is no alternative to good public governance. An important yardstick of good governance is a system of efficient and accountable public procurement. This paper has argued that despite a modern procurement law in Bangladesh, the level of accountability, transparency and efficiency in public procurement is still far from satisfactory. Needless to say, public procurement policies or systems are inherently complex but are society-specific. Despite certain global standards, procurement policies of any given country often go through changes. In the light of above analyses, it can be said that Bangladeshi procurement laws too have certain limitations which should be overcome in order to achieve wider accountability of the government in procurements. On a general level, taking the experience of some Southeast Asian nations, Jones (2007: 3) identified some common problems with public procurement systems: "fragmented procurement procedures; the lack of professional procurement expertise; the absence of open, competitive tendering, especially for foreign suppliers; widespread corruption; and the lack of transparency". In the context of these failings, he found two twin challenges the states under his review needed to meet -- the need to reinforce the recent procurement reforms and to translate them into actual practices (Jones, 2007). These observations are true also for Bangladesh's public procurement system. At present, the challenge that faces Bangladesh is to make its public procurement regime more transparent and operational through simplifying the procedures, and also by encouraging the officials concerned to avoid bureaucratic dilatory practices but not at the cost of transparency.

In the South Asia Region Public Procurement Forum held on 26–28 April, 2011 in Kathmandu, Nepal a country paper on Bangladesh was presented by Amulya K. Debnath, Director General of CPTU. Bangladesh's procurement reform process was started from 1999, when WB and ADB conducted joint review of the Country Portfolio Performance and prepared an action plan. The CPAR, which was prepared in 2002, identified following lacking in public procurement of Bangladesh:

- Absence of legal framework
- Bureaucratic procedures leading to delay in decision making
- Lack of competent staff to carry out procurement functions

- Poor quality documentation
- Ineffective contract administration

To overcome the above mentioned deficiencies, the CPAR recommended establishing a policy unit, carrying out reforms, and improving procurement capacity. As a response to these recommendations, Bangladesh had a Public Procurement Reform Project (PPRP) from 2002 to 2007 and the second phase of the project – PPRP II is continuing from 2007 onwards to 2013. As a reform initiative, in 2002 Bangladesh established a nodal procurement agency – CPTU and in 2003 Public Procurement Regulations (PPR 2003) was issued. CPTU launched its web site - *www.cptu.gov.bd* in 2005. The reform process gained momentum and as a consequence the Public Procurement Act 2006 was passed, which was actually enforcement in 2008. Public Procurement Rules was issued in 2008. In the year 2004 to 2006, 25 national level trainers were developed. In the process of institutionalizing the capacity development function, under the first phase of the capacity development initiative, procurement faculty were developed and significant numbers of public entity officials were trained. Twinning arrangement was also made between ITC-ILO and MIAM/BIM and CPTU.

Capacity development phase II focused extensively in strategic intervention under which all procuring entities of four targeted agencies would have at least one trained staff. In ESCB, procurement faculty was established. Through local institute - ESCB, in collaboration with international firm, 3-week residential training was implemented. Mobilizing the local institutions, short term training was institutionalized and through CIPS, UK and BRACU-IGS, MCIPS and Master in PSM were also introduced.

For behavioral change and to enhance social accountability through public awareness, comprehensive communication strategy has been developed. Nationwide communication campaign was launched (through workshop, newsletter, slogan, bill-board, posters, stickers, street drama, cartoon, TV/radio commercials etc.). Similarly, civil societies were also engaged for better procurement outcomes. For involving civil societies in public procurement, Public Private Stakeholders Committee (PPSC) is functioning, Government – Contractors Forum has been initiated, and approach for Third Party Monitoring is being developed. It is expected that more involvement of civil society less chances of making wrong decisions. Despite of its best effort, Bangladesh has identified following challenges:

- There is lacking of understanding of procurement rules among procuring officials/staff and bidding community.
- Demand for capacity building of all public sector organizations and bidding community but the resources are limited.

- Prevalence of collusive/inappropriate bidding practices
- Interference of political activist at grass root level (Local level) in procurement process
- In-efficient contract management

In order to achieve the better value for money, with improved transparency and efficiency, Bangladesh has introduced e-GP, which was started from April 2004, with the establishment of procurement web portal. In March 2006 e-GP Readiness Assessment was carried out; in June 2006 e-GP Implementation Road Map was prepared. From September 2007 phase wise e-GP implementation was started. For, e-GP implementation Bangladesh now has related Acts and Regulations such as PPA, PPR, ICT Act and e-GP Guidelines as well as infrastructure and web services and supporting system (portal, hardware and software and connectivity). In addition, readiness of the procuring entities and the private sector were also noticed for implementation of e-GP. However, Bangladesh has following challenges to meet for effective implementation of e-GP:

- Expansion of eTendering to all government entities
- Awareness building and adoption of eGP among key stakeholders
- Users capacity building– i.e. of government officials and of bidding communities
- Practical enhancement of the eGP system so as to fit in the real life scenario, and
- Continuity and self sustainable arrangement of the e-GP system

## **5.2 Recommendations**

To make the procurement functions more effective, four things are important to do, these are:

- Preparation of Procurement Legislation and Standards
- Capacity Building
- Creating a Public Procurement Environment
- Modernization of Public Procurement

### **5.2.1 Preparation of Procurement Legislation and Standards**

For establishment of sound public procurement system and the standards to be used for Public Procurement, the following recommendations can be made:

- a. There is a need for public procurement legal framework enforceable under court of law under which broader principles and guidelines of public procurement can be issued.
- b. Procurement rules should allow for complaint redressing mechanism which should be backed up by an Independent Review Panel or Body.
- c. There is a need for independent public procurement regulatory function

## **5.2.2 Capacity Building**

Capacity building has been the fundamental of good procurement system. The capacity building shall ensure sustainability of procurement capacity and empowerment of procuring institutions and personnel as well. The following recommendations can be made for capacity building:

- a. Professionalization of procurement- a separate procurement cadre for public sector needs to be developed at institutional level. For this, procurement courses need to be developed and implemented at university level curriculums to create opportunity for learning and skill development. Besides this, an accreditation mechanism for public sector officials working in procurement units is to be developed.
- b. Capacity development mechanism – a need for proper mechanism to provide adequate opportunity for capacity development in the field of procurement. For this, first identify the stakeholders, for example, government officials, contractors, consultants, suppliers, civil society organization, regulatory/overseeing bodies, auditors, judiciary and media and second, hold interactions with major stakeholders including trade organizations. Third, develop and implement university courses, training modules, mobilize Medias and bill boards and finally, identify appropriate implementing agencies and implement effectively.
- c. Involve stakeholders – establish critical linkage between broader Public Financial Management and Procurement and involve academia and related institutions in procurement capacity development.
- d. Impact monitoring – for impact monitoring of capacity development of public procurement, an independent organization is a must which shall carryout impact monitoring on regular basis and provide feedback for updating and necessary modification of capacity development strategy.

## **5.2.3 Creating a Public Procurement Environment**

The public procurement environment - internal and external environment. Norms, values, culture, technology, socio-political and economic factors are identified as the external factor influencing public procurement practices. The factors in internal environment are identified as:

- Actors – reflected in individual's behavior such as professionalism, capacity, and integrity and should be guided by code of ethics.



Process– shall be defined. There shall be clarity on roles, process simplification, process harmonization, performance measurement and enforcement mechanism.

Control mechanism– effective use of technical and financial auditing, listen to the voice of the private sector, effective oversight agencies, strong media and active civil society.

After examining external and internal environment, the following can be done for enhancement in public procurement environment:

- a. Promote procurement function as a profession
- b. Support Supply-side Capacity Building Initiatives (Contractors, Suppliers, Consultants and others)
- c. Establish information and communication mechanism amongst all stakeholders
- d. Promote/encourage Civil Service Organizations and Media for genuine initiatives

#### **5.2.4 Modernization of Public Procurement**

Three main areas for modernization of public procurement are:

- a. Choosing new procurement alternatives (non conventional ones)
- b. Use of IT based technology: e-Procurement, and
- c. Modernization of Contract Management

##### ➤ **Choosing new procurement alternatives (non conventional ones)**

New procurement alternatives to the conventional ones such as Framework contract, Public Private Partnership (PPP), Design and build / Turnkey, and Output / performance based contract can be introduced. **Framework contract** is suitable for regularly purchased/off-self commodities, which helps avoiding repetition of same tasks (writing specifications, publishing tender notice/ invitation etc.), where every public entity at lower level may not have required competency hence helps increasing efficiency. While using framework contract, short-Listing process need to be fair and to ensure the suppliers in standing list are really qualified to date a monitoring mechanism shall be developed.

For adopting **PPP** as an alternative, self assessment of the prevailing managerial capacity and legal framework are suggested to be assessed and a favorable socio-political environment is identified as a precondition to assure the envisaged return on the investment made. For successful implementation of the PPP concept identification of feasible and suitable sectors/projects (willingness to pay the tariff or toll levied) is essential. It is recommended to start with simple intermediate models towards PPP than leaping into full fledged PPP.

Under **design and build** modality construction of a bridge with longer maintenance liability period (of 5 years) may be considered and handing over a stretch or road for 10 years can be taken as example of **output/performance based contract**.

➤ **Use of IT based technology (e-Procurement)**

Use of IT based technology marks the modernization of the process or the system as well as help reducing use of force, intimidation, coercion and possibility of curtailing information and help increasing competition and transparency in public procurement. The following can be suggested for establishment of e-procurement:

- Implement on pilot basis – apply for some selected projects and/ or identify some threshold for application of e-procurement.
- Plan for phase-wise implementation such as from just establishing a procurement monitoring tool like Procurement Plan, uploading of notice, e-tendering etc.
- Identify legally accepted authentication system (Digital Signature or some other system from any third party) supported by respective country's legal system.

➤ **Modernization of Contract Management**

The third aspect identified for modernization of public procurement is contract management. Introduction of Value engineering and Process re-engineering (in Special Conditions of Contract) helps moving towards better contractual performance i.e. achieving lower bid price and timely completion of the project. For this, there shall be a provision to encourage contractors to come up with better/cheaper solutions during execution and there should also be provisions/clauses for sharing benefits/savings. Similarly, contract processes can be made simpler and efficient such as introducing payment clause like 80% within 7 days of the submission of Invoice without having to approve/check (subjected to alternations on later Invoices).

## REFERENCES

- Arrowsmith, S., & Trybus, M. (Eds.) (2003). *Public Procurement: The Continuing Revolution*. New York: Kluwer Law International.
- Arrowsmith, S. (2003). *Government Procurement in the WTO*. The Hague/ London/New York: Kluwer Law International.
- Callendar, G. & Mathews, D. (2000). "Government Purchasing: An Evolving Profession?" *Journal of Public Budgeting, Accounting & Financial Management*, 12 (2): 272-290.
- Elliott, F. J. (2004). "Procurement Reform in Sierra Leone: A Public Choice Model of Analysis." Paper presented at the International Public procurement Conference, October 21-23, Fort Lauderdale, Florida, U.S.A.
- Gianakis, G., & Wang, X. (2000). "Decentralizing the Purchasing Function in Municipal Governments: A National Survey." *Journal of Public Budgeting, Accounting and Financial Management*, 12 (2): 421-440.
- Hinson, C., & McCue, C. P. (2004). *Planning, Scheduling & Requirement Analysis*. Herndon, VA: National Institute of Governmental Purchasing, Inc.
- Huber, Bill and Rajiv Gupta. "[Procurement Outsourcing: Trends, Challenges, Benefits and a Roadmap for Implementation](#)." TIP, September 2010.
- McCue, C., & Pitzer, J. T. (2000). "Centralized vs. Decentralized Purchasing: Current Trends in Governmental Procurement Practices." 20 THAI *Journal of Public Budgeting, Accounting & Financial Management*, 12 (3): 400-420.
- National Institute of Governmental Purchasing, Inc. (1999). *Advanced Public Procurement* (5 ed.). Herndon, VA: Author.
- Taylor, T. K. (2003). "The Proper Use of Offsets in International Procurement." *Journal of Public Procurement*, 3 (3): 338-356.
- Thai, K. V. (2001). "Public Procurement Re-examined." *Journal of Public Procurement*, 1 (1): 9-50.
- Transparency International. (Undated). *National Integrity Systems: The TI Source Book*. [On-line]. Available at [www.transparency.org](http://www.transparency.org).
- Tucker, T. (1998). "A Critical Analysis of the Procurement Procedures of the World Bank." In S. Arrowsmith & A. Davies (Eds.), *Public Procurement: Global Revolution* (pp. 139-157). London: Kluwer Law International.
- Huber, Bill and Rajiv Gupta. "[Procurement Outsourcing: Trends, Challenges, Benefits and a Roadmap for Implementation](#)." TIP, September 2010.

## STATUTES

- The Constitution of the People's Republic of Bangladesh (1972).
- The Code of Ethics for Public Procurement 2007.
- The Public Procurement Act 2006.
- The Public Procurement (Second Amendment) Act 2006.
- The Public Procurement Rules 2008.

Appendix- A

Questionnaire