



# Policy Note



March 2013

## Issues and Challenges in Public Procurement Bidding: Bangladesh's Experience

### 1. Introduction

The economic development of Bangladesh has been plagued and slowed down by the rampant corruption and malpractices in many areas of both public and private sectors. With sometimes nonexistent or weak mechanisms to ensure transparency and accountability, the susceptibility to corruption is greater in public sector. Procurement of goods and services by the government is one of the areas that are often marked by widespread corruption of different forms. According to one source, approximately 75% of the Annual Development Plan (ADP) of the government is spent on the public procurement activities<sup>1</sup>. Since the amount of money spent on the myriad of procurement activities is huge, the question of transparency in public procurement bears much significance. Simultaneously, reports of corruption in the bidding process of public procurement are often cited. There are also frequent incidents of political interference in the procurement process. Most of the intervention can be seen during the tendering process of the public procurement. The contractors tied with the ruling party are often benefitted from favouritism and undue privilege.

There are a number of parties involved in the public procurement process. The first party is the government that procures goods and services from the second party-the suppliers and contractors. Apparently, these two parties are main actors

involved in the public procurement. Nevertheless, despite the primary beneficiaries of public procurement are common people, at large, until now they do not have any direct role in the process. However, to enhance and maintain integrity, transparency and accountability of the process, there are global attempts to involve citizens as a third party.

The paper looks at the existing mechanisms of public procurement and different methods of procurement used by the various government agencies. It then attempts to look for the problems in the existing procurement practices of Bangladesh. The paper ends with suggesting how the third party can be involved in public procurement and what the challenges could be.

### Major public procurement entities in Bangladesh

Although almost all government agencies have procurement activities, there are four leading government agencies that top the list in terms of the amount of money being spent. These agencies include: (a) the Local Government Engineering Department (LGED), (b) Roads and Highways Department (RHD), (c) Bangladesh Water Development Board (BWDB), and d) Rural Electrification Board (REB). These key four procuring entities, according to some estimate source, spend 80% of the total annual development plan<sup>2</sup>.

<sup>1</sup> The Daily Prothom Alo, 03 June 2011, available at: <http://www.prothom-alo.com/detail/news/159422>, accessed on: 30 October 2012.

<sup>2</sup> The Daily Prothom Alo, 30 July, 2011, available at: <http://www.prothom-alo.com/detail/news/173984>, accessed on: 30 October, 2012.

## Methods of public procurement in Bangladesh

As far as procurement at the national level is concerned, there are fourteen procurement methods altogether—six form of goods and works (five national and one international) and eight for services—in place and practice. However, when a procuring entity chooses methods other than open tender, it is required to provide justifications and reason for selecting the other methods. The following section illustrates only the methods for procuring goods and works (national procurement) since it takes the lion's share in entire public procurement cycle. The paper also briefly mentions the methods for procuring intellectual and professional services.

### **Procuring methods for goods and works (national procurement)**

#### *i. Open Tendering Method (OTM)*

Open tendering method is ubiquitous in public procurement and the most preferred tendering method for procurement of goods and works. It is called as such because tenders are invited from all eligible tenderers including government owned factories and enterprises provided that the latter are legally autonomous. In general cases, usually 14 to 42 days are given (14 days for contracts worth of up to 2 crore; 21 days for contracts worth of up to 2-5 crore; 28 days for contracts worth of above 5 crore; and 42 days for international contracts) for preparation and submission of tenders in this method depending of the value of the contract.

#### *ii. Limited Tendering Method (LTM)*

Limited tendering method is used under special circumstances when the procured goods are specialised in nature such as aircraft, locomotives, specialized medical equipment, contraceptives, telecommunication equipments, silos, ports, harbours etc. and are available only from a limited number of qualified suppliers or contractors or there is urgent need for procurement and when it is not practical to go for open national and international competitive tendering. In such cases, the procuring entities choose to go for enlisted suppliers or contractors and avoid lengthy open tendering method which is often not suitable for such cases. In such instances, the procuring entity directly invites tenders from the potential suppliers whose names are already enlisted. In case no such list is maintained by the procuring entities, it can be obtained from other government agencies

which conduct similar procurement. Nevertheless, in order to ensure transparency and accountability it is recommended that the procuring entity advertises in the local newspaper.

The limited tendering method, however, cannot be used without the prior approval of the Head of Procuring Entity or authorised officials. Submission of tender security is mandatory in this method.

#### *iii. Two-stage Tendering Method (TSTM)*

The two-stage tendering method is followed in the case of turnkey Contracts or contracts for large complex facilities, such as the supply, installation and commissioning of processing plants, or works of complex nature or communication technology etc. In most cases, it is not possible for procuring entity to prepare technical specification beforehand because of the complex nature of the procured good or frequent and rapid advancement of the technology.

At the first stage of the procurement, the procuring entity invites un-priced technical proposals through advertisement. In response, the tenderers submit proposals with details of the goods, works or services that may be suitable for the need of the procuring entity. The procuring entity will assess the proposals. The authorised officials seek assistance from technical sub-committee or external technical experts who have knowledge of the object of procurement.

At the second stage of the procurement the Procuring Entity revises the tender documents to reflect the agreed technical specifications and to set out the detailed tender evaluation criteria for the second stage tenders. For the second stage, the procedures for tender submission, opening, evaluation, and award of the contract remains the same as the Open Tendering Method.

#### *iv. Request for Quotation Method (RFQM)*

Under the RFQ methods, the procuring entity invites quotations from potential suppliers and tenderers by sending official letter and mentioning the last date for submitting quotation. At least three "responsive" quotations are required. For the RFQ method, it is not mandatory to advertise in the newspaper, but the procuring entity may publish in the website, if there is any, or may put the notice board of the organisation. Time limit for invitation of under this method is less than ten days from the date of invitation for quotations. To ensure competitiveness, it is required to compare between at least three quotations. It should be mentioned

that the amount of money spent through RFQ procuring method cannot exceed the threshold specified for revenue and development budget<sup>3</sup>. The procuring entity cannot use this particular method to bypass more competitive methods like open tendering method.

#### *v. Direct Procurement Method*

The procuring entity can, in certain cases, directly purchase from sole supplier without resorting to tendering or other procurement methods. There is no requirement of advertisement in this method. The procuring entity can directly ask for price of goods and works and services from a tenderer and negotiate price, if necessary.

It is used when there is an urgent need for extra works or additional deliveries in extension of the original contract that was already signed; the procured goods have patents or copyrights that rule out the scope of tendering; the goods have a sole dealer and it cannot be obtained at lower price or there is no substitute for that concerned goods; procurement of agricultural products that the government decides to directly buy from the farmers; or the procured goods are products of government-owned factories and using government funds; procurement of spare parts where buying from other suppliers would mean replacing the machinery itself.

Direct procurement method does not provide the opportunity of competition. There is increased scope for lacks of transparency and fraudulent activities. However, the use of direct procurement method is limited and must be approved by the Head of Procuring Entity (HOPE) or authorised officials.

#### ***Procuring methods for intellectual and professional services (national procurement)***

For procuring intellectual and professional services, eight different procurement methods are followed that include: i) Quality and Cost Based Selection (QCBS), ii) Selection under a Fixed Budget (SFB), iii) Least Cost Selection (LCS), iv) Selection Based on Consultant's Qualification (SBCQ), v) Selection amongst Community Service Organisation (CSOs), vi) Single Source Selection (SSS), vii) Selection of Consultants by a Design Contest, and viii) Selection of Individual Consultants.

## **2. Methodology of the study**

This study has followed a number of research methods. To begin with, a wide range of literature available on public procurement and third party engagement in the process were reviewed and consulted. The existing legislature that administers the public procurement in Bangladesh was meticulously reviewed. Government officials directly involved in the procurement process were interviewed-both individually as well as in Focus Group Discussion (FGD).

For the purpose of this research, a semi-structured questionnaire has been developed to carry out a survey. Six districts (administrative unit) of Bangladesh i.e., Narayanganj, Moulvibazar, Comilla, Potuakhali, Satkhira and Rajshahi have been chosen for the field visits; the locations, however, were purposively selected to properly represent the geographical divergence in the research. The survey was attended by stakeholders usually participates in the public procurement cycle. Three such parties have been identified to select the prospective respondents. First party includes government officials-the procuring entities, while the second party includes suppliers, contractors, and consultants who sell goods, works and services to the government. The third party were the common citizens and includes every other individual except first and second party. Selection of first party and second party respondents were purposive and based on their availability to respond, whereas third party representatives have been randomly selected from local journalists, politicians and elected representatives, and the members of civil society.

## **3. Empirical Findings: risks of irregularities in public procurement**

The study has brought in many cross-cutting issues that negatively affect the public procurement cycle in Bangladesh. The findings are empirical and have been organised in the following order:

### ***a) Planning stage***

There are specific irregularity issues in the planning stage which give rise to corruption and malpractices in the public procurement bidding process in Bangladesh. A few general issues in the planning stage that leave room for irregularities include the sluggishness/ procrastination of the

<sup>3</sup>. The financial limit for RFQ is, in revenue budget, one to three lac taka for goods, and for works and physical services the amount is two to five lac taka annually. In development budget two to five lac taka for goods and three to ten lac taka annually. See Public Procurement Rules 2008.

bidding process and taking unnecessarily extra times in preparing tender schedules. Besides, contractors contended that the authorities sometimes call for tender before even approval of the project. The following section will elaborate further deficits illustrated by the concerned stakeholders:

*i) Issues with Public Procurement Act (PPA) 2006 and/or Public Procurement Rules (PPR) 2008*

Tenderers allege that the concerned senior government officials often lack the conception regarding PPR/PPA and deliver decisions that are inconsistent with PPA/PPR. A few government officials raised a concern that the revised PPR is in conflict with the original PPR 2008 (or PPA). Government officers also themselves do not strictly follow Public Procurement Rules. Contractors also alleged that PPR 2008 provides opportunity for the government officials to arbitrarily choose contractors.

*ii) Insufficiently defined selection criteria*

Misrepresenting the needs is one of the key problems in procurement management. Maintaining a cohesive link between the definition of needs and the formulation of the budget for the subsequent year is critical. In some cases, however, it has been alleged that a failure exists in correctly defining future needs, which leaves room for corrupt practices.

*iii) Inappropriate specification and preference for a specific tenderer*

Government officials sometimes manipulate the specification process to favour one competitor over the others. This happens when a specific condition is included in the specification that can only match with a particular tenderer. These premeditated favours are quite frequent.

Besides, hand-tailored specifications are the result of a lack of experience/biased intention on the part of civil servants responsible for the procurement process. Government officials at times simply duplicate the specifications used for preceding contracts. In these cases, it is more of inefficiency than corruption. On other occasions, specifications are formulated from a catalogue of one of the firms that may participate in the tender which naturally provides an edge to that particular firm. Moreover, often, the specifications are more strict than

necessary, limiting the number of tenderers and making the contract needlessly more expensive.

*iv) Irregularities in estimation*

Some procuring entities are not able to prepare exact official estimation. In that case, the tenderers, who have been awarded the tender, specify inflated prices of materials in the schedule which increase budgetary estimation and eventually cost public money. The tenderers who indulge in these sort practices often act in collusion with the corrupt government officials and politicians to secure the job.

There are also allegations from the tenderers that the price estimated for materials during the preparation of DPP and the subsequent market price during the implementation phase do not match which force the tenderers, as they allege, to evade laws to make the entire deal beneficial for them.

*v) Disbursement of fund*

Timely disbursement of allocated fund is a serious issue with regard to the effectiveness of public procurement in Bangladesh. Government or the tendering authority does not guarantee timely disbursement of funds allocated which severely undermines the authority of the government to influence the tenderers to deliver and tenderers take every opportunity to exploit this development to deliver poor, untimely jobs at the cost of quality.

*vi) Communication difficulty*

The most cited allegation regarding the risk of irregularities in the bidding process is tender notice and advertisement. Contractors and civil society members consistently alleged that not publishing tender notice in local newspaper effectively allows room for corruption. Corrupt government officials choose underrated, unknown newspapers for calling for tender which often goes unnoticed of many competent local tenderers. Hence, many tenderers are lately informed about the bid notice or prospective bid notice, which provides ample opportunity to corrupt officials to preclude many tenderers from getting appropriate time for bid submission preparation.

One further allegation from the tenderers' community is the communication. They alleged that, in the case of foreign funded projects, tender documents and schedules are written in English which hinders effective communications with many tenderers.

### *vii) Other issues*

In some cases, there is a lack of transparency in appointing expert consultants, which result in poor monitoring of the job. Besides, sometimes consultants end up with no specific role due to erroneous design of the project. On the other hand government officials and civil society members alleged that many contractors borrow their fellow contractors' licenses, by paying bribe/commission, to submit multiple bids individually (with different licenses). There are some cases that the first, second and third place have been occupied by the same tenderer who then deny the first and second options to choose the third available alternative that best fit its financial costing).

### ***b) From advertisement for tender to contract awarding and contract management***

The respondents were asked to identify, from their own experience, various risks of irregularities in each stage of procurement cycle (from advertisement for tender to contract awarding and management). They have come up with a wide range of issues elaborated below:

#### *i) Syndication*

Collusion among tenderers, contracting authorities, and politicians have been widely reported in media and by tenderers themselves. Civil society members alleged that some tenderers act in collusion with the Procuring Entities and some with the political quarters to influence the bid. Sometimes tenderers, political quarter and government officials all become the part of same syndicate to serve a particular tenderer. In the latter case, government officials even decline to sell schedules to other tenderers. Parties involved in collusion rarely disclose information; and it is difficult to prove such violations. In cases when there are grounded suspicions of collusion among candidates, the contracting authority, however, can decide to cancel a procurement procedure.

#### *ii) Tough conditions and complex procedures*

Sometimes unnecessarily tough conditions are set to discourage common tenderers to participate in the bidding process and to give a few advantages over the others. Also complex procedures and bureaucratic red-tapism in some instances discourages tenderers.

### *iii) Perjury practices and inappropriate verification process*

Many tenderers not only submit fake and false documents to support their bid application which go unattended, but also they use fake licenses to bid for the tender. Another serious perjury practice is to submit fake bank guarantee by the tenderers with the help of Bank authority. Submitting false work experience certificates is also rampant in bid submission process.

However, due to time constraints and lack of adequate resources, fake tenderers get away with it. Government officials accept this reality refuting that they are not allowed enough time to scrutinise the bulk of tender documents submitted by the tenderers that gives rise to document manipulation. Besides, government officials do not conduct a thorough check with regard to specification and technical specification mentioned in the schedule. There are also allegations that the Head of Procuring Entity (HOPE) and Tender Evaluation Committee (TEC) do not verify all the information submitted by the tenderers while selecting contractors though PPR clearly specifies it.

#### *iv) Resource constraints and lack of coordination*

Government officials cited that they have lack of skilled personnel to do all the verification check of the documents submitted by the tenderers and to effectively discharge the job within stipulated time. They also mention that the members of TEC often remain absent in the meeting indicating a lack of coordination among the government agencies/ departments.

#### *v) Systemic lacuna and split contracts*

There is now a provision that, for works' tender, a contractor does not need a prior experience to participate in a procurement worth of 20 million taka (despite the fact that they require to submit VAT and Tax certificates) which considerably increases the chance of corruption, nepotism and mal-practices. Vested interest groups make the best use of this provision to serve their clients. Often they divide a bigger job into several smaller parts (making it under 20 million taka), so that they can discretionarily choose the tenderers without prior working experiences—only for works (not goods and services)

Besides, there is a provision of cross-department auditing (one department is supposed to audit

another and at least 30-50% projects have to be randomly audited); however, the experience shows that the accountants of same department frequently conduct the auditing. There is also a provision of procurement post review by independent consultant in the PPR (Rule 46) which is not practiced most of the time.

#### *vi) Ineffective penalty provision*

There are certain Contract remedies in the PPR (Rules 38) which allows the government to impose liquidated damages, and delay payment if a contractor does not get the job done on time or fails to meet the deadline. However, the penalty measures remain largely ineffective.

#### *vii) Conflict of interests*

There is a risk of conflict of interest between the government officials and the tenderers, particularly when government officials may have a business relationship with potential tenderers.

### **4. Recommendations from the stakeholders**

The stakeholders also came up with various and diverse suggestions to help reduce the chance of irregularities in the bidding process. The recommendations have been clustered primarily based on their proximity to problems cited above.

#### *i) Planning stage*

At the planning stage, there was a suggestion for a separate office for managing public procurement related issues. Stakeholders suggested for maintaining a strict timeline as per Public Procurement Rules (PPR). Sufficient legal and systemic safeguards were also asked to be in place to curb the rent seeking practices by the government officials and politicians.

Engaging local citizens as a watchdog in the planning stage (determining specification etc.) could meet the local demands while engaging them in the implementation process could enhance the quality of the job.

#### *ii) Estimation and Disbursement of Fund*

Stakeholders emphasized that the price has to be accurately estimated in the tender documents and very little room should be allowed to make any change or alteration to it. Government has also a role to ensure the timely disbursement of committed funds so that development works are not hampered for shortage of funds.

#### *iii) Communication and participation*

Communication received higher attention from the stakeholders and they presented a wide range of suggestions to address communication-related issues. Some participants mentioned that tender notice should be mandatorily and on priority basis published in the local newspaper so that local tenderers become aware of the tender and get adequate time for preparation. Besides, they also suggested curtailing existing time of publishing advertisement.

Implementation of Right to Information Act was suggested by a few stakeholders who also opined that the introduction of electronic government procurement (e-GP) can considerably create the level-playing field and increase the chance for common tenderers.

#### *iv) Undue influence*

Politicians and elected representatives have a strong role to play in establishing accountability and transparency in the bidding process. Their primary role should be to distance themselves from the unscrupulous practices and to help the government officials and law enforcers to maintain the integrity of the whole process.

#### *v) Conditions and procedures*

A good number of suggestions have been proposed with regard to conditions and procedural issues in the bidding process. Some stakeholders submitted that following opening tender process, documents have to be retained until Tender Evaluation Committee (TEC) meeting. As to the change or alteration to the price quotation, there was a proposal that contractors should not be allowed to change or alter the price quotation once they are submitted. Besides, tender documents should be unsealed in an open meeting attended by all concerned. Some proposed the inclusion of new contractors each year so as to ensure maximum participation in the bidding. Contractors also demanded that the tender documents should not be sold to someone other than enlisted tenderers which would lessen the chance of perjury practices.

Participant stakeholders were of the opinion that technical audit should be carried out in some randomly selected projects. They suggested that the attendance of the members of evaluation committee in tender evaluation meeting has to be made mandatory and there should be a penalty provision if someone remains absent for trivial reasons. Besides, the number of TEC members has been suggested to be reduced to three.

#### *vi) Monitoring mechanism*

Some stakeholders put forth to introduce one-stop service to deal with all issues relating to contract and bidding management. A proposal was also forwarded to conduct monitoring and evaluation by external monitoring and evaluation authority. A rewarding mechanism can also be introduced for best-performing contractors.

#### *vii) Conflict of interests*

To avoid conflict of interests in the bidding process, stakeholders proposed that before initiating any procurement procedure, HOPE (Head of Procuring Entity) and TEC (Tender Evaluation

Committee) members should declare their conflict of interest in the competition. Other people, who are not members of these committees but retain some influence, however, might still be able to exert some influence over procurement outcomes.

#### *viii) Other issues*

To address untoward law enforcement issues, a suggestion that the assistance of law enforcing agencies could be sought while accepting the bids and opening/unsealing tenders. A team consists of members of law enforcing agencies, politicians, government officials and citizens can be formed in this regard to deal with these problems.

## **5. Conclusion**

Given the limited resources of the country and fierce competition amongst political actors to gain control over the distribution of those makes public procurement in Bangladesh the centre of political muscle flexing—both at the national and local level. Besides, the winner-takes-all political culture has only deepened the crisis. While national level procurement projects are relatively bigger and invites greater public scrutiny from media and civil society, the local level public procurement encompasses of medium and small projects that often entertain local patron-clientelism of political-incentive-network usually misses same public outcry. The reasons are manifold: there is an apparent absence of active civil society at the local level and the media people are too contented to be compromised with coterie interests. At the same time, corrupt government officials and contractors act in collusion to obtain the contracts. The apparent sufferers of these malpractices are the common tenderers with no political or establishment linkage; however, the ultimate sufferers are the people of respective locality who receive poor infrastructure and services at the end.

Suggestions from the stakeholders to ameliorate the situation are varied. Some opted for addressing legal and technical aspects of the procurement cycle including revisiting Public Procurement Act and Public Procurement Rules so that legal loopholes and systemic lacuna can be addressed to help punish corrupt people and fill gaps, if any. Many went for addressing specification, estimation and selection criteria issues at the planning stage; as well as relaxing tough conditions and complex procedures etc. A few others stressed for curbing political influence and syndication and introducing a penalty provision for defaulting tenderers.

Besides, as a few participants suggested, introducing electronic tendering process through orienting technologies could provide a better safeguard against many of the issues discussed herein. However, the government has to devise a realistic and comprehensive plan to mainstream the electronic tendering mechanism in all stages of the procurement cycle, at all levels and in all government agencies across the sectors. In the end, it is the government of the day who has to ensure the best value for public money and make the procurement process more accountable and transparent.

## **DISCLAIMER**

The views expressed in this publication are those of the Institute of Governance Studies (IGS), BRAC University and do not necessarily reflect the views of the Government of Bangladesh.

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