

A Study on Rules of Emergency Procurement in PPR 2008 and its Comparison with Different Countries Procurement System during Emergency

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Submitted by
Md. Abu Hanif Mredha
MPSM, Batch I
ID-12282005

Masters in Procurement and Supply Management 2012

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Institute of Governance Studies, BRAC University

Declaration

I hereby declare that this master's dissertation entitled "Rules of Emergency Procurement in PPR 2008 and its Comparison with Different Countries Procurement System during Emergency" is the result of my own research except as cited in the references.

I also confirm that this report has not been accepted for any degree and is not currently submitted in candidature of any degree.

Md. Abu Hanif Mredha

Masters in Procurement & Supply Chain

Batch: Fall,12 Programme: MPSM

Student ID: 12282005

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Chapter-1

INTRODUCTION

1.1 Introduction:

Bangladesh is most vulnerable to several natural disasters and every year natural calamities upset lives in some part of the country. The major disasters concerned here are the occurrences of flood, cyclone and storm surge, flash flood, drought, tornado, riverbank erosion, and landslide. These extreme natural events are termed disasters when they adversely affect the whole environment, including human beings, their shelters, or the resources essential for their livelihoods. Since Bangladesh is a disaster prone country, it is subject to colossal damages to life and property almost every year. It is not possible to avoid disaster. But disaster management may save life of the affected people. During every disaster the different government agency has to take various actions to mitigate losses. The main problem of disaster management is to improve the communication process. If the communication is not improved sharply the relief operation will not be done properly and there is possibility of more damages. Beside this at the southern and south-western part of Bangladesh there are dams for protect the land from salt water. During flood or other natural disaster different parts of the dam get damaged. So it becomes necessary to repair the dam before following monsoon. And all of those are the prime requirement of emergency procurement.

1.2 History of Procurement:

Forms 2908 and 2911 are two forms that have been using for the purpose of public procurement processing. These forms were introduced by the British Colonial govt. These documents were used by all the public procurement since independence of Bangladesh. The first uniform and

standard regulation was prepared and issued by the government and made effective in September 2003 under the title “The Public Procurement Regulation 2003”. After that Jatio Sangshad had passed the Public Procurement Act’2006. Subsequently, the public procurement rule was published at 24th January 2008.

1.3 Provision of Procurement during Emergency:

Within PPR there are different methods for procurement. For each method there are some provisions for emergency/urgent procurement. In case of open tendering method according to rule 61(4) there are minimum time limit for tender preparation and submission which is reduced to 10 (ten) days for emergency procurement. According to rule 61(5) in the case of an urgent national need of Procurement the Government may, if so recommended by the Cabinet Committee on Economic Affairs (CCEA), reduce the time for Procurement processing.

According to rule 63© when there is an urgent need for Procurement of Goods, Works or Services and appear as such that open national or international competitive Tendering would be impractical there is provision for using limited tendering method.

According to rule 69(6) A Procuring Entity may engage in Procurement by means of RFQ Method for Procurement of Goods and related Services required for maintenance and urgent repairs to –

- (a) procurement by Procuring Entity of any spare parts or related Services for the maintenance or repair of any public sector utility workshops (buses, locomotives, rolling stock, ferries, power stations or installations, telecommunication installations, gas installations, water installations, etc), so long as the value does not exceed the amount specified in Schedule II

(b) According to rule 76(k) Procurement of Goods, Works and Services of very urgent or essential nature such as catering services, ambulance services, transportation services, event management services, repair/maintenance services, plumbing services, carpentry services, masonry services, within the thresholds as specified in Schedule II can be performed by direct contracting.

The Procuring Entity may undertake direct cash purchase of low value Goods and urgent and essential Services such as maintenance, repairs, transportation and others in the value and annual aggregate amounts specified in Schedule II, according to rule 81.

1.4 Objective of the Research:

The main research question for this study is whether enactment of public procurement rule 2008 positively improved performance of procuring entity in case of emergency procurement and what are the limitations for procurement during or immediately after natural disaster.

There are few hypotheses for my study listed below:

Hypothesis 1: Procuring entities are not efficient and effective in procurement during emergency.

Hypothesis 2: There are few hindrance in Public Procurement Rule 2008 for procurement during natural disaster.

Hypothesis 3: For emergency procurement there are some areas in Public Procurement Rule 2008 which is necessary for improvement.

My objective is to find out the way to improvement of efficiency and effectiveness of procurement during and immediately after natural disaster.

1.5 Literature review:

Public Procurement Rule 2008 has been reviewed extensively for this research work. The website of Central Procurement Technical Unit (CPTU) and other related website have been

reviewed. Previous technique for procurement by different procurement entity during natural disaster have been searched and reviewed. Different journal and published document on this topic has been reviewed. Moreover related article from different news paper has been reviewed. Different countries procurement policy and guideline have been reviewed. The emergency procurement policy of those countries also have been analyzed.l

1.6 Methodology:

The methodology of the study is analyzing procurement policy of some developed countries. The procurement policy of some developing countries has been analyzed.

The analysis of above developed and developing countries procuring policy has been matched with the procurement policy of Bangladesh. As the research is based on emergency procurement the provision of emergency procurement of those countries has been cross matched with the provision on PPR. There is also some key informant interviews who has experience of procurement during emergency period. The interviewer is selected from the procuring entity of southern part of Bangladesh. This area has suffered most of the disaster. All the data that have been found analyzed. Triangulation process will be used for getting the result from the research.

1.7 Chapter Outline:

The whole research work is presented in five different chapters. The first chapter is the introduction chapter; which gives an outline of the general background of the emergency situation. This chapter also explains the history of public procurement of Bangladesh, the provision of emergency procurement in Bangladesh, the research question, the objective of the work, the methodology to be followed.

The second chapter is the literature review chapter; which gives a generalized concept of the emergency procurement of different developing countries. Most of the developing countries have

policy for procurement during emergency. The policy of USA and New Zealand is reviewed and presented in this chapter.

The third chapter is also the literature review chapter. This chapter consists of procurement policy of different developing countries. Not all the developing countries have their separate procurement policy. The procurement policy of India, Pakistan, Sri Lanka, Nepal have been included in this chapter.

The fourth chapter is the presentation chapter; which expresses the collection of data using the methodology previously explained in chapter one. The comparison of procurement of Bangladesh and developed countries and developing countries is presented in this chapter.

The fifth and final chapter is the conclusion and summary chapter; which summarizes the findings and analysis to explain the expediting the procurement process during emergency. This chapter also gives a guideline to the policy makers to establish policy for emergency procurement.

Chapter-2

EMERGENCY PROCUREMENT POLICY OF DEVELOPED COUNTRIES

2.1 Introduction

An 'emergency' is a sudden unforeseen catastrophe. It can result in injury, loss of life or critical damage to property or infrastructure. An emergency situation may arise in the following circumstances:

- **Natural disasters:** such as earthquakes, cyclones, tsunamis, flooding
- **Failures of critical infrastructure:** such as a major power outage affecting the whole of country
- **Critical health emergencies:** such as a pandemic
- **Political emergencies:** such as a coup or civil insurrection
- **Critical security emergencies:** such as a terrorist attack.

In a genuine emergency, such as the SIDR, agencies will need to be flexible in how they procure the goods and services that are necessary to their response. Agencies are permitted to forgo routine procurement procedures. In adopting a more flexible procurement process agencies should consider what is reasonable and justifiable given all of the facts and circumstances. Agencies are permitted to purchase direct from a supplier if the delay involved in conducting a routine procurement (e.g. which involves advertising and competitive tendering) will prevent them delivering the goods or services in time to bring effective relief. Agencies are to balance the need to act without delay (to save or preserve life, or safeguard buildings or repair critical infrastructure), against meeting their overarching public sector obligations (to be accountable, open, fair, achieve value for money, act lawfully and with integrity).

2.2 New Zealand Government Emergency Procurement Policy

The government of New Zealand classified emergency on two types

- Sudden on-set emergencies: This is where the emergency is unforeseen, or the magnitude of the disaster is greater than the pre-planning anticipated or results in the destruction of the response resources or infrastructure (e.g. the Canterbury earthquake). In these cases the initial intervention can be much more reactive. Example: a catastrophic earthquake which destroys emergency response resources (e.g. the civil defence facilities or supplies) or infrastructure to deliver emergency relief (airports, roads or port facilities).
- Slow on-set emergencies: This is where the possibility of a specific event is anticipated and planned for. In these cases relevant agencies will normally have put in place measures to mitigate the effects of the disaster and be better prepared to respond if it occurs. This normally involves pre-procurement and stock piling supplies. Example: annual cyclone season preparation in the Pacific results in agencies involved in humanitarian assistance being prepared to provide immediate relief supplies through pre-purchased, pre-positioned stocks and an established coordination mechanism.

Emergency phases

According to New Zealand government emergency responsiveness can be viewed at three different levels with regard to the immediacy of the threat or danger. The degree of flexibility in procurement process will be determined, to some extent, by the phase that the emergency has reached.

2.2.1 PHASE 1 – Immediate response: *reactive procurement*

In the event of a major catastrophe, such as the Christchurch earthquake in February 2011 (which resulted in a state of National Emergency), it is critical to react instantly to the conditions on the ground. This may involve getting medical equipment to help the injured and securing water, food and shelter for other victims. It could also involve immediately mobilizing staff, equipment or machinery or relocating service centers for major infrastructure provision e.g. power, gas, water and telecommunication, to new safe sites. In this scenario, a common sense approach to procurement must be adopted. Agency staff will be under significant pressure to respond

immediately and must be enabled to do whatever is necessary and within their powers to help. Agencies are not therefore required to follow routine procurement procedure, but simply demonstrate sound reasoning and good judgment when acquiring goods or services. A file note should be made after the situation has stabilized.

Guidance

- Obtain the necessary goods or services direct from suppliers.
- No written contract required.
- Ask suppliers to invoice after the situation has stabilized.
- Attempt to keep a note of what has been purchased.
- Act within existing delegated authority, where possible.
- If there is no existing delegated authority and no time to obtain an approval, then exercise good judgment and be prepared to justify the nature and extent of the procurement in the circumstances.
- If a procurement involves a major expense it is recommended, at the very least, that a verbal approval (followed up in writing) from an officer with sufficient delegated financial authority is obtained before making the commitment.

2.2.2 PHASE 2 – Disaster relief: *emergency procurement*

At some point the necessity to react immediately will change to an ability to respond urgently. This will usually be when there is no further threat to loss of life, damage to major infrastructure or when a state of emergency is lifted. Agencies are permitted to forgo routine procurement procedures where it is justifiable on the grounds that the usual procedures would prevent the agency delivering the goods or services in time to bring effective relief.

Guidance

- Identify, specify and priorities the immediate procurement required to bring relief.
- Consider the operating environment and conditions ‘on the ground’.
- If possible, find out what other government agencies and Non-Government Organizations are doing and, where possible, collaborate.

- Purchase direct from the most convenient suppliers. Whilst price will be a factor in deciding the selection of suppliers, the overriding consideration must be the immediate provision of relief.
- Always obtain financial approval to proceed prior to the purchase. Where appropriate, agencies could make a blanket approval to cover this stage of the emergency response if required.
- Consider options for sourcing, including what contracts may already be in place (All-of-Government supplier, panel contractor or syndicated contract). Even consider using another agency's suppliers where they have been appointed through a competitive process if that supports immediate delivery.
- Where there are no existing contracts, identify what quotes can be achieved quickly and what suppliers are able to deliver immediately. Verbal or e-mail quotes are sufficient. Where verbal make a note of the conversation.
- Check what assurance suppliers can give to delivering immediately, to the right location, the right quantity and quality at the right price.
- Advise suppliers that the purchase is being made as an emergency procurement to provide immediate relief and that a more competitive process will be used for any medium to long term solution.
- Where possible, consider alternative contract solutions, for example, short term lease of equipment rather than purchasing. This may allow you time to source a more permanent solution through a more competitive process.
- Confirm your agreement with the supplier in writing – an email is sufficient. You need include only the basics: what is being delivered, to what specification, when, where, by whom, the price and any other charges, for example freight and insurance.

2.2.3 PHASE 3 – Post-disaster reconstruction: *accelerated procurement*

Once an emergency situation has stabilized, and the response effort is directed towards post-disaster reconstruction and remediation, the purchase of most types of goods and services should return to routine procurement procedures. However, for certain types of procurement, for example, provision of critical infrastructure such as water, sewage treatment facilities and reconstruction of housing or land remediation, agencies may choose to follow an accelerated procurement process.

An accelerated procurement process is where an agency develops a process to fit the specific category of procurement and immediate needs. It will provide more flexibility and greater responsiveness, but sufficient rigour to allow for some level of competition and maintain governance and accountability for the spend. Where an agency develops an accelerated procurement procedure it must be prepared to justify any departure from routine procurement process.

Key considerations

The following key considerations may help your agency respond in an emergency:

- Clarify that the situation meets the criteria for treatment as an ‘emergency’ and that a flexible approach to procurement can be fully justified.
- Identify, specify and prioritize the immediate procurement activities that will bring relief.
- Consider the operating environment and conditions ‘on the ground’.
- Find out what other government agencies and NGOs are doing and, where possible, collaborate.
- Consider your duty of care to suppliers and take appropriate measures to ensure their safety.

2.2.4 Maintaining accountability

- When the emergency moves to Phase 2, consider establishing a governance and management structure to coordinate necessary procurement activities.
- In emergencies there is a higher risk of fraud, bribery, corruption and inflated prices. Be aware of these possibilities and take action to guard against them.
- Be aware of the possibility of conflicts of interest and manage them appropriately.
- Document your emergency procurements during or after the event.
- Clearly state in your records that the purchase was an emergency procurement and record the facts and circumstances justifying this approach. Documents must be filed in accordance with the Public Records Act 2005.
- Whatever procurement process has been adopted it is still subject to audit.
- For agencies subject to the Mandatory Rules for Procurement an exemption for emergencies is available under Appendix 1. However, the award of a contract over the appropriate value

threshold should be published later (on GETS), including the fact that it was an emergency procurement.

2.3 Emergency Procurement Policy of USA Government

Federal Acquisition regulation (FAR) 18 addresses acquisition flexibilities that may be used to facilitate and expedite the acquisition of supplies and services during emergency situations. FAR 26.2 contains recent regulations for implementing other socioeconomic programs as part of disaster or emergency assistance activities.

2.3.1 Generally Available Acquisition Flexibilities

The following authorities are generally available flexibilities that may be particularly beneficial to agencies in emergency situations.

1. Test program for certain commercial items. Agencies are authorized to use simplified procedures, on a test basis through the end of calendar year 2012, for the acquisition of commercial items in amounts above the SAT. Contracting officers may use any simplified acquisition procedure provided in FAR 13, subject to specific dollar limitations applicable to the particular procedure selected. This means, among other things, that agencies are

- exempt from the competition requirements in FAR 6;
- not required to establish a formal evaluation plan or competitive range, conduct discussions with vendors, or score quotations from offerors; and
- permitted to limit documentation required in justifying contract award decisions. (See FAR 13.501 for special documentation requirements.)

2. Interagency acquisitions. Interagency acquisitions offer important benefits, including efficient access to prequalified sources and the ability to leverage resources. Interagency contracts include the Federal Supply Schedules operated by GSA, multiagency BPAs established under a Multiple Award Schedule, government-wide acquisition contracts established under Section 5112(e) of the Clinger-Cohen Act, and multiagency contracts established pursuant to the Economy Act . These contracts offer agencies access to a broad range of goods and services using streamlined procedures that permit rapid response.

Purchases on many interagency contracts, including the Federal Supply Schedules, may be made through “direct acquisition” where the requesting agency (the agency with the requirement) places an order directly against another agency’s contract. A number of agencies also offer acquisition assistance to place orders on another agency’s behalf. When conducting an assisted acquisition, agencies must take extra precautions to ensure a clear understanding of roles and responsibilities between the requesting agency and the servicing agency (the agency placing the order). Interagency acquisitions under the Economy Act must be supported by a determination and finding (see FAR 17.503).

3. Multiple award task and delivery order contracts. When an agency needs to establish a new contract to meet a repetitive requirement, a multiple award contract offers an efficient means of identifying a small number of capable contractors before placing orders. (See FAR 16.504.) The fair opportunity process, described in FAR 16.505(b), governs the placement of orders under multiple award task and delivery order contracts awarded pursuant to FAR 16.5. This process can accommodate situations in which the effort required to respond to a potential order may be more resource intensive (for example, because requirements are complex or need continued development). For these circumstances, FAR 16.505(b)(1)(iii)(A)(5)(ii) describes a multiphase approach that an agency may use to quickly focus the competition on the contract holders most likely to submit the highest value solutions.

4. Small business set-asides. The Historically Underutilized Business Zone (HUBZone) small business, Service-Disabled Veteran-Owned Small Business, and Small Business Administration’s 8(a) Business Development programs authorize agencies to acquire goods and services from qualified program participants on sole-source and competitive basis. This authority enables agencies to identify and rapidly enter into contracts with capable small business sources. See FAR 19.13, 19.14, and 19.8 for applicable dollar thresholds and additional requirements.

Agencies will soon be able to consider set-asides for woman-owned small businesses (WOSBs) in industries where women have been identified as under presented. At the time this document was published, a FAR case was under development to establish a regulatory framework for WOSB set-asides, based on regulations promulgated by the Small Business Administration.

5. Oral solicitations. FAR 15.203(f) authorizes the use of oral solicitations when processing a written solicitation would delay the acquisition of supplies and services to the detriment of the

government and a synopsis is not required (for example, to support contingency operations or emergency situations). Oral solicitations should be used to the maximum extent practicable for acquisitions described in FAR 13.106-1(c) and (d).

6. Letter contracts. FAR 16.603 authorizes agencies to enter into a “letter” contract (a written preliminary contractual instrument) when the government’s interests demand that work on a requirement start immediately and negotiating a definitive contract is not possible in sufficient time to meet this demand. The undefinitized contract action must include a definitization schedule, and agencies may have additional limitations on their use or approval. Agencies should strive for definitization as soon as possible. Except in extreme cases, the schedule must provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first.

7. Other than full and open competition. FAR 6 allows circumstances permitting other than full and open competition for various reasons, such as when (1) there is only one responsible source, (2) unusual and compelling urgency exists, (3) industrial mobilization or expert services are required, (4) disclosure of the agency’s needs would compromise the national security, (5) award to a particular source is required to maintain the supplier in case of a national emergency, (6) other than full and open competition is in the public interest, or (7) full and open competition is precluded by international agreement.

8. Use of commercial item procedures for acquisitions of noncommercial items. The CO may use FAR 12.102(g) for any acquisition of services that does not meet the definition of a commercial item if the contract or task order has a value of \$30 million or less, meets the definition of a performance-based acquisition (at FAR 2.101), uses a quality assurance surveillance plan, includes performance incentives where appropriate, specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved, and is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order. See FAR 12.102(g).7

9. Waiver of bid guarantees. Bid guarantees may be waived on a transactional basis by the chief of the contracting office or as a class waiver by the agency head or designee when it is determined that bid guarantees are not in the best interest of the government. See FAR 28.101-1.

10. Innovative contracting. Agencies are fully authorized to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Agencies should not assume that a new approach is prohibited simply because the FAR does not specifically recognize it. As FAR 1.102-4(e) states, the fact that the FAR does not endorse a particular strategy or practice does not necessarily mean that it is prohibited by law, executive order, or other regulation. Agencies are encouraged to have emergency COs seek legal assistance in these circumstances to identify their options for innovative contracting.

B. Emergency Acquisition Flexibilities

Acquisition flexibilities intended specifically for emergencies are available

- in support of a contingency operation;
- to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States; and
- when the President issues an emergency declaration or a major disaster declaration.

The flexibilities described in this subsection are in addition to the generally available flexibilities discussed above.

2.3.2 All event emergency acquisition flexibilities:

The following authorities are available during any of the types of emergency situations described below:

a. Relief from registration in Central Contractor Registration. FAR 4.1102(a)(3) exempts contractors from required registration with the CCR when the contract is an emergency acquisition. Though CCR registration is not required prior to award, if practicable, the CO is required to modify the contract or agreement to require registration after award.

b. Relief from use of electronic funds transfer (EFT). FAR 32.1103(e) exempts contract payments through EFT when the award is in support of emergency operations if EFT is not known to be possible or an EFT payment would not support the objectives of the operation.

2.3.3 Contingency operations:

Certain flexibilities are available during a contingency operation. A contingency operation is a military operation designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities

against an enemy of the United States or against an opposing military force, or results in the call or order to, or retention on, active duty members of the uniformed services under Title 10 of the United States Code (Section 688, 12301(a), 12302, 12304, 12305, or 12306), Title 10 Chapter 15, or any other provision of law during a war or during a national emergency declared by the President or Congress.

During a contingency operation, the following flexibilities are available:

a. *Increased micropurchase threshold.* Purchases under this authority may be awarded without soliciting competitive quotations if the purchaser determines the price to be reasonable. The micropurchase threshold increases from \$3,000 to \$15,000 per transaction within the United States when the head of an agency determines the supplies or services are to be used to support a contingency operation. For purchases outside of the United States, the threshold increases to \$30,000. However, agencies must be mindful of lower Davis-Bacon and Service Contract Act thresholds.

b. *Increased simplified acquisition threshold.* Once a contingency operation has been declared, an agency head may increase the SAT from \$150,000 to \$300,000 for purchases inside the United States and \$1 million for purchases outside the United States, when those supplies or services are used to support the contingency operation. Increasing this threshold will also raise the small business set-aside thresholds.

c. *Expanded use of simplified acquisition procedures for commercial items.* When the purchase is in support of a contingency operation, the head of the agency may authorize the use of simplified acquisition procedures to support the purchase of commercial items up to \$12million.

d. *Higher dollar limitations for purchase order-invoice-vouchers (SF 44s).* The normal threshold for the SF 44 is at or below the micropurchase threshold. Agencies may, however, establish higher dollar limitations for certain purchases made to support a contingency operation.

2.3.4 Defense or recovery from certain attacks:

As indicated in FAR 18.202, the following flexibilities are available to support acquisitions to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

a. *Increased micropurchase threshold.* When the agency determines that the supplies or services are to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the micropurchase threshold increases from \$3,000 to \$15,000 per transaction. (See FAR

2.101 and 13.201(g)(1)(i).) For purchases outside of the United States, the threshold increases to \$30,000.

b. *Increased simplified acquisition threshold.* The head of an agency can increase the SAT from \$150,000 to \$300,000 for purchases inside the United States and \$1 million for purchases outside the United States.

c. *Expanded use of simplified acquisition procedures for commercial items.* As above, the test program for certain commercial items allows the use of simplified acquisition procedures up to the \$6.5 million limit. When the purchase is to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the limit can be increased by the agency to \$12 million.

d. *Use of commercial item procedures for acquiring noncommercial items.* Any acquisition of supplies or services that are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack may be treated as an acquisition of commercial items under FAR 12. This allows noncommercial items to be purchased using the policies and practices applicable to commercial items.

e. *Cost accounting standards.* As described in FAR 12.5, certain laws cannot be applied to commercial item acquisitions. However, a contract in an amount greater than \$18 million that is awarded on a sole-source basis for an item or service treated as a commercial item, but does not otherwise meet the definition of a commercial item, is not exempt from cost accounting standards or cost or pricing data requirements.

2.3.5 Incidents of national significance, emergency declaration, or major disaster declaration:

The flexibilities below are available when one of the following is declared: (1) incident of national significance, (2) emergency declaration, (3) national emergency, or (4) a major disaster.

a. *Limited use of full and open competition.* Agencies may limit the use of full and open competition when authorized or required by statute that the acquisition be made through another agency or from a specified source. This includes awards made pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

b. *Evaluation preference.* The CO may use a local area or local firm preference when contracting for major disaster or emergency assistance activities and when the use of that preference is authorized in agency regulations or procedures.

c. *Temporary waiver of Cargo Preference Act requirements.* FAR 47.502(c) allows waiver of the Cargo Preference Act requirements when the Congress, the President, or the Secretary of Defense declares that an emergency justifying a temporary waiver exists and so notifies the appropriate agency or agencies. However, for this exemption, the Cargo Preference Act of 1954 requires that preference be given to U.S.-flag vessels when transportation of supplies by ocean vessel is necessary.

Agencies must give preference to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or must document consideration of potential negative impact. The Local Community Recovery Act of 2006, P.L. 109-218, amended the Stafford Act to add a local area set-aside for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities. A local firm set-aside allows only offerors residing or doing business primarily in the area affected by a major disaster or emergency to compete for that work.

Chapter-3

EMERGENCY PROCUREMENT POLICY OF DEVELOPING COUNTRIES

3.1 India Government Procurement Guideline on Emergency

3.1.1 Introduction:

India has a federal constitution, with the responsibility for governance divided between the central and state governments. The Union List, the State List, and the Concurrent List in the Indian Constitution govern the legislative functions of the central, union and state governments. State procurement does not figure in any of the lists as a distinct subject. Under such circumstances the Union Parliament has the exclusive power to make any laws on the subject of procurement. Parliament has not enacted any specific legislation on the subject. Hence Public Procurement is performed through Government policies. The subject is primarily covered by: the General Financial Rules 1963, amended as General Financial Rule 2005 framed by the Ministry of Finance by executive order, and the Delegation of Financial Powers Rules 1978 (again framed by the said Ministry). Further, the Directorate General of Supplies & Disposals (DGS&D) Manual on Procurement and the Central Vigilance Commission (CVC) Guidelines prescribe the procurement procedure to be followed by all central ministries. In furtherance to these Rules, in August 2006 the Central Government, through the Ministry of Finance carried out a detailed exercise and issued three Manuals providing for procurement of Goods, Works and Services. These Manuals are meant to be guidelines to the Government Ministries / Department / Public Sector Undertakings. They are very detailed in nature.

3.1.2 General Financial Rule Provision:

According to General Financial Rule 154, the procuring entity can move to single tender Enquiry. The rule states that

Procurement from a single source may be resorted to in the following circumstances:

(i) It is in the knowledge of the user department that only a particular firm is the manufacturer of the required goods.

(ii) In a case of emergency, the required goods are necessarily to be purchased from a particular source and the reason for such decision is to be recorded and approval of competent authority obtained.

(iii) For standardisation of machinery or spare parts to be compatible to the existing sets of equipment (on the advice of a competent technical expert and approved by the competent authority), the required item is to be purchased only from a selected firm.

The Rule 151 of General Financial rule state this method may be adopted when estimated value of the goods to be procured is up to Rupees Twenty five Lakhs. Copies of the bidding document should be sent directly by speed post/registered post/courier/e-mail to firms which are borne on the list of registered suppliers for the goods in question as referred under

Rule 142 of General Financial Rule- The number of supplier firms in Limited Tender Enquiry should be more than three.

Further, web based publicity should be given for limited tenders. Efforts should be made to identify a higher number of approved suppliers to obtain more responsive bids on competitive basis.

(ii) Purchase through Limited Tender Enquiry may be adopted even where the estimated value of the procurement is more than Rupees twenty-five Lakhs, in the following circumstances.

(a) The competent authority in the Ministry or Department certifies that the demand is urgent and any additional expenditure involved by not procuring through advertised tender enquiry is justified in view of urgency. The Ministry or Department should also put on record the nature of the urgency and reasons why the procurement could not be anticipated.

(b) There are sufficient reasons, to be recorded in writing by the competent authority, indicating that it will not be in public interest to procure the goods through advertised tender enquiry.

(c) The sources of supply are definitely known and possibility of fresh source(s) beyond those being tapped, is remote.

(iii) Sufficient time should be allowed for submission of bids in Limited Tender Enquiry cases.

3.1.3 Provision of Disaster Management Act 2005:

For the procurement in emergency condition they have provision in “India’s Disaster Management Act 2005”. Provisions are

- (1) There shall be a plan for disaster management for every district of the State.
- (2) The District Plan shall be prepared by the District Authority, after consultation with the local authorities and having regard to the National Plan and the State Plan, to be approved by the State Authority.
- (3) The District Plan shall include—
 - (a) the areas in the district vulnerable to different forms of disasters;
 - (b) the measures to be taken, for prevention and mitigation of disaster, by the Departments of the Government at the district level and local authorities in the district;
 - (c) the capacity-building and preparedness measures required to be taken by the Departments of the Government at the district level and the local authorities in the district to respond to any threatening disaster situation or disaster;
 - (d) the response plans and procedures, in the event of a disaster, providing for—
 - (i) allocation of responsibilities to the Departments of the Government at the district level and the local authorities in the district;
 - (ii) prompt response to disaster and relief thereof;
 - (iii) procurement of essential resources;
 - (iv) establishment of communication links; and
 - (v) the dissemination of information to the public;

According to rule 49(1) Every Ministry or Department of the Government of India shall make provisions, in its annual budget, for funds for the purposes of carrying out the activities and programmes set out in its disaster management plan.

(2) The provisions of sub-section (1) shall, *mutatis mutandis*, apply to departments of the Government of the State.

According to rule 50 where by reason of any threatening disaster situation or disaster, the National Authority or the State Authority or the District Authority is satisfied that immediate procurement of provisions or materials or the immediate application of resources are necessary for rescue or relief,—

(a) it may authorise the concerned department or authority to make the emergency procurement and in such case, the standard procedure requiring inviting of tenders shall be deemed to be waived;

(b) a certificate about utilisation of provisions or materials by the controlling officer authorised by the National Authority, State Authority or District Authority, as the case may be, shall be deemed to be a valid document or voucher for the purpose of accounting of emergency, procurement of such provisions or materials.

3.1.4 Disaster Management Guideline

Indian government has disaster management guideline. Which have a provision of a procurement unit leader.

Roles and Responsibilities of Procurement Unit Leader (PUL)

- i. attend to all financial matters pertaining to vendors and contracts;
- ii. review procurement needs in consultation with the FBD;
- iii. prepare a list of vendors from whom procurement can be done and follow proper procedures;
- iv. ensure all procurements ordered are delivered on time;
- v. coordinate with the FBD for use of imprest funds, as required;
- vi. complete final processing of all bills arising out of the response management and send documents for payment with the approval of the FBD, LSC (Logistic section chief) and IC (Incident Commander);
- vii. brief FBD on current problems with recommendations on outstanding issues and follow-up requirements;
- viii. maintain record of activities performed as per IRS Form-004 (enclosed in Annexure-IV) and send to FBD; and
- ix. perform any other duties as assigned by the FBD (Finance Branch Director)

3.1.5 Draft Public Procurement Bill 2011:

Indian Government is going to circulate public procurement bill. They made a draft public procurement Bill named “Draft Public Procurement Bill 2011”. The provisions for emergency procurement are as follows.

There is a provision for Single Source Procurement at 33(1)

A procuring entity may engage in Single Source Procurement if:

(b) Owing to a sudden unforeseen event, there is an extremely urgent need for the subject matter of the Procurement, and engaging in any other method of Procurement would be impractical;

(2) Where the procuring entity engages in Single Source Procurement the procedure shall include the following requirements:

(a) It shall solicit a proposal or price quotation from a single Supplier.

(b) The procuring entity may engage in negotiations in good faith with the Supplier from which a proposal or price quotation is solicited.

(c) The following information relating to the Procurement shall be published on the Central Public Procurement Portal:

i. The solicitation for a proposal or a price quotation;

ii. Notification of the Bidder as successful in terms of Section 28 of this Act.

The procuring entity may engage in Competitive Negotiations according to rule 35(1) if:

(a) There is an urgent need for the subject matter of Procurement, and engaging in Open Competitive Bidding or any other competitive method of Procurement because of the time involved in using those methods would therefore be impractical, provided that the circumstances giving rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;

(b) Owing to a catastrophic event, there is an urgent need for the subject matter of Procurement making it impractical to use Open Competitive Bidding or any other competitive method of Procurement because of the time involved in using those methods;

(c) Where the procuring entity determines that the use of any other competitive method of Procurement is not appropriate for the protection of essential security or strategic interests of the State.

Notwithstanding anything contained in Section 14 of this Act, when the procuring entity engages in Competitive Negotiations, the procedure shall include the following requirements:

(a) Publish a summary notice of Procurement on the Central Public Procurement Portal and in the manner prescribed by Rules made in this behalf which shall include:

- i. The name and address of the procuring entity
- ii. The subject matter of the Procurement
- iii. The principal terms of the Procurement Contract
- iv. The method of Procurement to be adopted
- v. Any other details prescribed by Rules made in this behalf

(b) Directly invite for negotiations regarding the subject matter of Procurement an adequate number of Bidders to ensure effective competition.

(c) Provide the criteria to be used for evaluation of the offers

(d) Negotiate with the Bidders thus invited on an equal basis

Provided, any information which involves a trade secret of a Bidder shall not be disclosed by the procuring entity to other Bidders in the course of negotiations

(e) Request all Bidders remaining in the proceedings to present, within five days of the ending of negotiations, a best and final offer with respect to all aspects of their proposals.

(f) No negotiations between the procuring entity and any Bidder or Bidders shall be permitted regarding the best and final offers presented

(g) The successful offer shall be the one which, in the opinion of the procuring entity, best fulfills the criteria for evaluation;

(h) Notice of the award of contract shall be published on the Central Public Procurement Portal and in the manner prescribed by the Rules made in this behalf

A procuring entity may engage in Procurement by means of Request for Quotations according to rule 37(1) in the following situations and where the estimated value of Procurement is less than the amount that may be specified in the Rules or Regulations:

c. Procurement of Goods urgently required for maintenance or emergency repairs in a Central Public Sector Enterprise's own operations;

37(2) Where the procuring entity engages in Request for Quotations the procedure shall include the following requirements:

a. Quotations shall be requested from as many Suppliers as practicable, subject to a minimum of three;

b. Each Supplier shall be permitted to give only one price quotation.

c. The successful quotation shall be the lowest priced quotation meeting the needs of the procuring entity as set out in the Request for Quotations.

A procuring entity may engage in a Framework Agreement procedure according to rule 39(1), in accordance with the Rules, where it determines that:

(a) The need for the subject matter of Procurement is expected to arise on an indefinite or repeated basis during a given period of time;

(b) By virtue of the nature of the subject matter of Procurement, the need for it may arise on an urgent basis during a given period of time.

(2) The Framework Agreement procedure as prescribed shall include:

(a) The manner in which Framework Agreements are to be established including the method of bidding to be followed; and

(b) The manner in which a Procurement Contract has to be entered into using a Framework Agreement

3.2 Emergency Procurement Policy of Pakistan

3.2.1 Introduction:

The standard procurement method for contracts worth more than PKR100,000 (about USD1675) is competitive bidding. Direct purchase is permitted for procurement not exceeding PKR25,000 (USD325), and request for quotations, for procurement not exceeding PKR40,000 (USD670), if other conditions are met. The value limits can be extended for specific agencies by the federal Government at the request of the concerned agency. Direct contracting is also permitted for

emergency procurement. To prevent abuse of this exemption from the standard procurement procedures, the emergency must be declared by an authority vested with that power. However, what constitutes an emergency is not defined. Negotiated tendering is permitted in cases of extreme urgency that do not result from the procuring agency's action, and other cases. Under such circumstances, to prevent abuse of this method, the reasons for the decision to resort to negotiated tendering must be recorded. Also, the procurement rules require procuring agencies to plan upcoming projects in detail one year in advance, to avoid unnecessary emergency procurement. Ample participation in tenders contributes to preventing corruption risks. It avoids tender failure, which would result in direct contracting, and typically increases scrutiny of the procedures. The Procurement Rules 2004 require the advertising of tender opportunities in relation to the value of the contracts that are to be awarded. Tenders worth up to PKR2 million (about USD34,000) must be advertised on the PPRA's central Web site and may also be publicized in print media. Tenders beyond this value should be published in both print media and on the central Web site and may in addition be posted on the procuring agency's own Web site. Once approved by the PPRA, procurement related to national security is dispensed from any form of public announcement; this exception is, however, limited to situations in which the publication of the tender would jeopardize national security. Model tender documents have been developed to increase transparency and uniformity of the procurement process in certain sectors. At present, however, they are not mandatory and are sporadically used.

Procuring authorities are empowered to determine the bidding period, which depends on the complexity of the project. Minimum periods of 15 working days for national competitive bidding and 30 working days for international competitive bidding are mandatory. The bids must be opened in the presence of bidders on the day the tender period ends. The procurement rules, however, do not provide for bid opening right after the tendering period, and hence court fraud or misconduct. PPR 2004 defines the procedures for the evaluation of bids. In principle, the lowest evaluated bid has to be accepted unless this results in a —conflict with laws, rules, regulations or policies of the federal Government.|| This clause can be variously interpreted, and the award decision could become less transparent. Post-award negotiations with the winning bidder are explicitly prohibited.

According to Pakistan Public Procurement Rules Emergency is described as “emergency” means natural calamities, disasters, accidents, war and operational emergency which may give rise to abnormal situation requiring prompt and immediate action to limit or avoid damage to person, property or the environment;

3.2.2 The Provision for procurement at emergency condition

Response time.-

The procuring agency may decide the response time for receipt of bids or proposals (including proposals for pre-qualification) from the date of publication of an advertisement or notice, keeping in view the individual procurement’s complexity, availability and urgency. However, under no circumstances the response time shall be less than fifteen days for national competitive bidding and thirty days for international competitive bidding from the date of publication of advertisement or notice.

All advertisements or notices shall expressly mention the response time allowed for that particular procurement along with the information for collection of bid documents which shall be issued till a given date, allowing sufficient time to complete and submit the bid by the closing date: Provided that no time limit shall be applicable in case of emergency.

3.2.3 Direct contracting:

A procuring agency shall only engage in direct contracting if the following conditions exist, namely:-

(i) the procurement concerns the acquisition of spare parts or supplementary services from original manufacturer or supplier:

Provided that the same are not available from alternative sources;

(ii) only one manufacturer or supplier exists for the required procurement:

Provided that the procuring agencies shall specify the appropriate fora, which may authorize procurement of proprietary object after due diligence; and

(iii) where a change of supplier would oblige the procuring agency to acquire material having different technical specifications or characteristics and would result in incompatibility or

disproportionate technical difficulties in operation and maintenance: Provided that the contract or contracts do not exceed three years in duration;

(iv) repeat orders not exceeding fifteen per cent of the original procurement;

(v) in case of an emergency: Provided that the procuring agencies shall specify appropriate fora vested with necessary authority to declare an emergency;

*(vi) when the price of goods, services or works is fixed by the government or any other authority, agency or body duly authorized by the Government, on its behalf

3.3 Nepal Government Public Procurement Policy

Nepal has passed Public Procurement Act 2007; accordingly they made Public Procurement Regulation 2007. As per the regulation they have the following ways for procurement of work.

A Public Entity may, in order to carry out a construction work , conclude any of the following contracts:-

- (a) **Unit rate contract** : In order to carry out a construction work the quantity of which is not ascertained at the time of conclusion of procurement contract or to provide the per unit activity of a construction work at the rate referred to in the Bill of Quantities, a unit rate contract may be concluded. In such a unit rate the bidder shall have to include the materials, labor and other things required to complete the proposed construction work.

In making payment for the work done pursuant to this contract, payment shall be made of the amount to be found from computing the quantity of construction work as ascertained from measurement of construction site by per unit rate.

- (b) **lump sum contract**: In order to carry out a construction work which is difficult to measure such as installation of underground water pipeline or a construction work that can be measured such as structure of a bridge, a lump sum contract may be concluded. This contract shall be concluded in such a way that all risk

and liability relating to the construction work shall remain on construction entrepreneur.

Provided that if the financial liability of the construction work is increased for the reason that the Public Entity has ordered to make a change of any type in the construction after commencement of the construction work upon conclusion of the procurement contract, the Public Entity shall have to bear such liability.

- (c) **Cost-reimbursement contract:-** In order to carry out a construction work nature of which is high risky and unpredictable conditions of work and a construction entrepreneur does not agree to carry out or cannot carry out under the unit rate contract, cost-reimbursement contract may be concluded. In making payment to the construction entrepreneur for the construction work to be carried out by concluding this contract, payment may be made for the actual incurred cost for carrying out such a construction work, overhead cost thereof in addition to the profit as stated in the approved cost estimate. In having a construction work carried out by concluding this contract, the chief of the Public Entity shall have to fix the maximum amount of cost-reimbursement and if an amount exceeding such limit is to be paid he /she shall have to obtain the pre-approval of the of Departmental chief.
- (d) **Time and material rate contract:-** In order to carry out a work by computing the labor on the basis of time and the materials on the basis of unit rate due to unpredictability at the time of conclusion of procurement contract of the labor and materials required for the repair and maintenance of a construction work, a time and material rate contract may be concluded. This contract shall clearly mention that payment shall be made to a construction entrepreneur as follows:-
- (a) The amount found out after adding to the overhead cost and the profit referred to in the approved cost estimate to the sum find out by dividing the labor of the construction entrepreneur on the basis of per hour or per day or per month, and

(b) The paid amount of the price of the material used for maintenance, subject to the limitation of the amount referred to in the procurement contract.

(e) **Design and build contract:** A design and build contract may be concluded in order to have a design and construction of a construction work to be carried out by the same construction entrepreneur. A Public Entity shall have to start the work under this contract only after causing the design of construction work to be examined and approved by a technician or a team of technicians. The technician or the team of technicians who so examines the design shall have to examine and approve such design, drawing and cost estimate by application of the procedure set forth in this Regulation for examination and approval.

(f) **Management contract:** A management contract may be concluded in order to have a construction work carried out through different sub-contractors subject to the conditions that legal and contractual obligation relating to the quality and completion period of construction work shall be undertaken by the construction entrepreneur himself/herself with whom the Public Entity concludes procurement contract and such work is carried out under his/her management and supervision.

The payment for the work under this contract shall be made only to the construction entrepreneur who has concluded procurement contract with the Public Entity.

(g) **Performance based maintenance or management contract:** A performance based maintenance or management contract may be concluded in order to carry out a construction work without mentioning the equipment required to maintain and manage a construction work and item wise work and by mentioning only the final performance.

(h) **Piece -work contract:** In order to carry out a construction work related to small scale maintenance and repair which requires to be carried out frequently as and

when required, a piece- work contract may be concluded by establishing the list of price of such work.

Generally, the period of this contract shall not exceed one year.

But according to their act and regulation there is not option for emergency public procurement.

3.4 Public Procurement Policy for Sri Lanka

3.4.1 Introduction:

National Procurement Agency formulated by a Cabinet Memorandum dated May 6, 2004 by then President Chandrika Kumaratunga, the President cited an urgent need to formulate a National Procurement Strategy and streamline the National Procurement System and Procedures with a view to eliminate corrupt practices, waste of time and funds and improve transparency and efficiency pertaining to government work.

The National Procurement Agency has turned of in the year 2008. But they had a guideline for the procurement of goods and works.

3.4.2 Force Account

Force Account means the execution of Works by using the PEs own personnel and equipment.

If the PE determines that it has the required workforce to undertake execution of such Works, this method is appropriate in the following circumstances:

- (a) when quantities are difficult to define in advance;
- (b) contractors are unlikely to bid at reasonable prices;
- (c) work should be carried out without interrupting the ongoing work; and
- (d) emergency situations that need urgent attention.

3.4.3 Emergency Procurement

A PE may utilize this method of Procurement –

- (i) in exceptional circumstances, such as manmade or natural disasters;
- (ii) to meet unforeseen social obligations and such other similar situations which shall be determined and declared by the GoSL as being an emergency situation which warrants

Procurements under the provisions contained herein;

(b) to initiate Procurements exceeding the financial thresholds stipulated under Guideline 2.14, a formal approval shall be obtained from the relevant authorities at the first available opportunity.

For Works not exceeding SLR 25 Million (Sri Lanka Rupees Twenty Five Million), the PE may also use any of the following provisions to meet the emergency Procurement requirements:

(a) The bidding document will disclose an itemized priced Bills of Quantity based on the Engineer's/Consultant's estimate;

(b) All bidders who participate in bidding will be allowed to bid a percentage above or below the Engineer's/Consultant's estimate;

(c) The lowest Bid price is selected as the winner provided the Bid is substantially responsive otherwise;

(d) The bidding period may be reduced to three (03) days in the case of limited bidding by invitation and seven (07) days when open advertisement is used;

(e) The concessions given to the suppliers and the contractors in respect to the advance payment/interim payments will be determined by NPA and details will be included in updated circulars as and when required;

(f) Lump sum contracts shall be used wherever possible, with milestone payments identified at intermediate levels;

(g) Purchases from government institutions must be given preference.

Chapter-4

COMPARISON OF DIFFERENT PROCUREMENT POLICY

4.1 Public Procurement Rules 2008:

4.1.1 Introduction

Forms 2908 and 2911 are two forms that have been using for the purpose of public procurement processing. These forms were introduced by the British Colonial govt. These documents were used by all the public procurement since independence of Bangladesh. The first uniform and standard regulation was prepared and issued by the government and made effective in September 2003 under the title “The Public Procurement Regulation 2003”. After that parliament had passed the Public Procurement Act’2006. Subsequently, the public procurement rule was published at 24th January 2008.

According to PPR there are five (5) ways for procurement of methods of procurement for goods and related services, works, physical services. Methods are:

1. Use of Open Tendering Method in the Procurement of Goods, Works, Etc
2. Use of the Limited Tendering Method.
3. Use of Two-Stage Tendering Method.
4. Use of Request for Quotation Method (RFQ).
5. Use of the Direct Procurement Method.

4.1.2 Use of Open Tendering Method:

The open Tendering shall be the preferred method of Procurement for Goods and related Services, Works and Physical Services, unless the threshold or special circumstances relating to a specific requirement make it more appropriate for one of the other Procurement methods to be used.

Condition of this Method:

- The advertisement should be published two widely circulated national daily (one Bengali and one English)

➤ The minimum time allowed for Tenderers to prepare and submit their Tenders for Goods, Works and Physical Services shall not be less than as specified in Schedule II, provided that the Tender Documents are ready for sale and made available by the date of publication of the advertisement.

According to Schedule II the time limits are

- Not less than fourteen (14) days for Procurement up to Tk. 20 million
- Not less than twenty-one (21) days for contacts above Tk 20 million and up to Tk. 50 (fifty) million,
- Not less than twenty-eight (28) days for contacts above Tk. 50 (fifty) million,
- Not less than fourteen (10) days for emergency Procurement following a catastrophe,

Provision for Emergency Procurement: The time limit was 14 days and reduced to 10 days by amendment. There is another provision In the case of an urgent national need of Procurement the Government may, if so recommended by the Cabinet Committee on Economic Affairs (CCEA), reduce the time for Procurement processing.

4.1.3 Use of the Limited Tendering Method.

(1) A Procuring Entity may undertake Procurement by means of Limited Tendering Method in the following circumstances, namely –

- (a) when Goods and related Services and Works and physical Services by reason of their specialized nature such as aircraft, locomotives, specialized medical equipment, contraceptives, telecommunication equipments , silos, ports, harbours etc., are available only from a limited number of qualified potential Suppliers or Contractors ; or
- (b) when there is an urgent need for Procurement of Goods, Works or Services and appear as such that open national or international competitive Tendering would be impractical.; or
- (c) when the circumstances giving rise to the urgency under Sub Rule (1) (b) were neither foreseeable by the Procuring Entity nor caused by delay on its part; or

(d) when the Government establishes a policy to standardize on a certain number of brands to cut down spare parts stock requirements and maintenance costs such as computers, laboratory equipment, research equipment.

(2) The Procuring Entity may invite Tenders from enlisted Suppliers or Contractors when required time and administrative cost for going through Open Tendering would be high compared to the value of the Procurement subject to the threshold specified in Schedule II.

The limited tendering method allows the procuring entity to procurement of works and goods during urgent situation even without advertisement. The rule 64(2) and 64(3) of PPR are

- Procuring Entities, who maintain updated lists of enlisted potential Suppliers or Contractors, for Procurement under Rule 63 (2), invite Tenders from those enlisted Suppliers or Contractors.
- In addition to invitations under above rule, advertisement in the Procuring Entity's website, if any, and where applicable a parallel advertisement in brief in the local press is recommended to increase competition and transparency, if the objective for using this method, i.e saving time and money, is not defeated through such advertisement

At emergency condition the time is critical factor. So procuring entity may avoid to advertisement. But for the use of this method the procuring entity have to take prior permission from the head of the procuring entity (HOPE) or an officer authorized by him or her.

4.1.4 Use of Two-Stage Tendering Method:

A Procuring Entity may use this Method in the following circumstances

- 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.
- The use of the word 'complex' in describing the nature of the items to be procured under Two-Stage Tendering Method covers Procurement requirements for which it may not be in the best interests of the Procuring Entity to prepare complete technical specifications in advance because of rapidly changing technology, and also Procurement requirements for

which the Procuring Entity lacks the capability to prepare a full technical specification because alternative technical approaches may be available, but not within the knowledge of the Procuring Entity.

This method has very limited opportunity for use in case of emergency.

4.1.5 Use of Request for Quotation Method (RFQ):

A procuring entity may use of this method for the following circumstances

(1) A Procuring Entity may undertake Procurement by means of the RFQ for readily available in the market standard off-the-shelf Goods and related Services, low value simple Works and physical Services, provided that the estimated value of such Procurement shall not exceed

- Tk. 200,000 (two hundred thousand) in each Procurement up to annual aggregate amount of Tk. 1,000,000 (ten hundred thousand) for Goods and related Services
- Maximum Tk. 500,000 (five hundred thousand) in each Procurement up to annual aggregate amount of Tk. 2,000,000 (twenty hundred thousand) for Works and physical Services

(2) The Head of the Procuring Entity shall strictly control the use of the RFQ Method in order to ensure that there is no abuse and that its use by Procuring Entities is restricted to the items specified in this Rule.

(3) A decision to use RFQ Method shall be approved in writing by the Head of the Procuring Entity or an officer authorised by him or her unless the RFQ method was scheduled for the said object of Procurement in the Procurement Plan approved by the HOPE or authorized officer by him or her.

(4) In deciding or justifying the use of the RFQ Method, the following shall be considered -

- Procuring Entities shall not use the RFQ Method as means to either bypass more competitive methods of Tendering or split large potential contracts into smaller ones solely to allow the use of this method.
- the RFQ Method should not require complex Documentation or all the formalities of a full Tendering process.

(5) Quotations for low value simple Works or physical Services may be requested in the form of

-

- unit rate prices, provided quantities can be estimated with a reasonable degree of accuracy; or
- “cost plus fee” arrangements, when quantities cannot be reasonably determined or estimated in advance; or
- a lump sum, if the Procuring Entity has prepared an accurate cost estimate for the Works or physical Services.

(6) A Procuring Entity may engage in Procurement by means of RFQ Method for Procurement of Goods and related Services required for maintenance and urgent repairs to -

- procurement by Procuring Entity of any spare parts or related Services for the maintenance or repair of any public sector utility workshops (buses, locomotives, rolling stock, ferries, power stations or installations, telecommunication installations, gas installations, water installations, etc), so long as the value does not exceed the amount specified in (1).
- procurement of Goods and related services required for the maintenance and urgent repairs of national carriers not exceeding the amount specified in (1).
- procurement of any spare parts or related Services for the urgent maintenance or repair of any processing or production plant of public manufacturing industries (fertilizer, chemicals, steel & engineering, cement, petroleum, small and cottage industries, etc) if it is maintaining or repairing the equipment in its own workshops so long as value does not exceed the threshold specified in (1).

According to rule 71(2) the use of request for quotation Requests for Quotation do not need to be advertised in the newspaper.

Limitation for the use of this method for emergency procurement are the procuring entity should have to get at least three quotation other wise they have to wait for at least three quotation.

Another limitation of RFQ is the value of procurement applicable for use of this method. This is usable for low value procurement.

There should be requirement of approval from HOPE before use of this method.

4.1.6 Use of the Direct Procurement Method:

The Procuring Entity may use the Direct Procurement method for Procurement for Goods and related Services, Works and physical Services from one source without going through Tendering or other Procurement methods but shall under no circumstances be used to avoid competition or to favour a particular Person, Supplier or Contractor to discriminate among Persons, Suppliers or Contractors.

The decision to use this method shall be approved by the Head of the Procuring Entity or an officer authorised by him or her in order to ensure that there is no abuse and its use is restricted to the circumstances specified in these Rules.

4.1.6.1 Forms of Direct Procurement:

Procurement shall be applicable in any of the following cases

- (a) Direct Contracting; or
- (b) Additional deliveries and Repeat Orders; or
- (c) Variation Orders; or
- (d) Extra Work Order; or
- (e) Direct cash purchase; or
- (f) Force account.

When a Procuring Entity engages in direct Procurement according to this Rule, it shall prepare a description of its needs and any special requirements concerning quality, quantity, terms and times of delivery.

The Procuring Entity shall, in the first place, ask for a priced Offer from a Tenderer directly and afterwards shall be free to negotiate with the selected sole Tenderer.

There shall be no requirement for direct Procurement to be advertised.

A new contract for new Procurements or a revised contract incorporating an amendment to the existing contract in case of variations, extra works, repeat orders or additional deliveries shall be signed except for Procurement under Direct cash purchase and use of Force account.

This method allows the Procuring Entity to invite only one Supplier or Contractor to submit an offer under any of the following conditions -

- Procurement of Goods and related Services of proprietary nature which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item; or
- where the Procurement of critical plant components from a specific manufacturer, Supplier or distributor is a condition precedent to hold such manufacturer, Supplier or distributor to guarantee its project performance in accordance with the provisions of the Contract; or
- those sold by an exclusive dealer or manufacturer which does not have subdealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms; or
- Procurement of perishable commodities such as fresh fruit, vegetables or other similar items on the basis of reasonable market price valid at the time of purchase; or
- Procurement of Goods and related Services under exceptionally advantageous conditions, provided that those are of the latest production, unused and are covered by manufacturer's warranty; or
- Procurement of agricultural products directly from the farmers when the Government determines the purchase price rate at a level in order to ensure reasonable price for the farmers and procurement of essential Goods for which the Government determines the purchase price rate; or
- Procurement of Goods and related Services, in special cases, from a Government-owned industry or factory using government own funds; or

- when the Government wishes to promote small scale local industries for specialized products as per specification approved by certain Governmental agencies and statutory bodies; or
- Procurement of spare parts of existing equipment where a change of Supplier would result in the Procurement of equipment, spare parts or Services which would not be interchangeable with the existing equipment, spare parts or Services, or
- emergency Procurement of Goods, Works and Services arising from natural disasters within the thresholds.

The threshold for this is Maximum Tk.5,000,000 (five million) in each Procurement up to annual aggregate amount of Tk. 50,000,000 (fifty million).

For Emergency Procurement above the thresholds as specified, the Government may, in accordance with Section 68 of the public procurement Act, resort to the direct procurement method for carrying out a procurement activity following the recommendation of the Cabinet Committee on Economic Affairs.

- Procurement of Goods, Works and Services of very urgent or essential nature such as catering services, ambulance services, transportation services, event management services, repair/maintenance services, plumbing services, carpentry services, masonry services, within the thresholds.

4.1.6.2 Extra Work Orders for direct procurement:

The Procuring Entity may issue a Variation Order for Procurement of Works, physical Services from the original Contractor to cover any increase or decrease in quantities, including the introduction of new work items that are either due to change of plans, design or alignment to suit actual field conditions, within the general scope and physical boundaries of the contract .

The Procuring Entity may issue an Extra Work Order to cover the introduction of such new works necessary for the completion, improvement or protection of the original works which were not included in the original contract, on the grounds where there are subsurface or latent physical conditions at the site differing materially from those indicated in the contract, or where there are duly unknown physical conditions at the site of an unusual nature differing materially from those usually encountered and generally recognized as inherent in the work or character provided for in the Contract.

Any cumulative Variation, beyond the 15% of the original contract shall be subject of another contract to be tendered out if the Works are separable from the original contract.

4.1.6.3 Direct Cash Purchase for direct procurement:

The Procuring Entity may undertake direct cash purchase of low value Goods and urgent and essential Services such as maintenance, repairs, transportation and others in the Maximum Tk. 500,000 (five hundred thousand) but not exceeding Tk.25,000 (twenty five thousand) in a single Procurement.

The Procuring Entity may undertake any Purchase under this rule by an officer or a purchase committee, comprising maximum three members, formed by it for this purpose, depending on the nature of the purchase.

Payments for Purchase under this rule may be made by cash or cheque and a purchase order or contract shall not be required.

4.2 Emergency procurement of Bangladesh and that of a developed country:

The developed country like USA, New Zealand, Australia have their procurement policy and also they have separate guideline for procurement during emergency. But Bangladesh has procurement policy of Public Procurement Rules 2008 but no separate policy for procurement during emergency.

In the PPR among five methods of procurement four methods have some relaxation to procure during emergency. But some methods have opportunity for low value procurement. Beside this prior approval of HOPE or his authorized officer is necessary before using the method. So for procurement during emergency the procuring entity have less or no opportunity to make it rapidly or urgently. Another hindrance for approval of the lowest bidder. After selecting the lowest evaluated bidder the procuring entity need to send it to approving authority, which is time consuming.

On the other hand the procuring entity of developed country get different relaxation for procurement during emergency. Those are:

- They can obtain the necessary goods or services direct from suppliers.
- No written contract required.
- Ask suppliers to invoice after the situation has stabilized.
- Attempt to keep a note of what has been purchased.
- Act within existing delegated authority, where possible.
- If there is no existing delegated authority and no time to obtain an approval, then exercise good judgment and be prepared to justify the nature and extent of the procurement in the circumstances.
- If a procurement involves a major expense it is recommended, at the very least, that a verbal approval (followed up in writing) from an officer with sufficient delegated financial authority is obtained before making the commitment.

4.3 Emergency procurement of Bangladesh and that of a developing country:

4.3.1 Rules of Procurement:

A majority of the countries in the Asia and the Pacific region (Australia; Bangladesh; P.R. China; Hong Kong, China; Indonesia; Japan; Korea; the Kyrgyz Republic; Mongolia; Pakistan; Palau; Philippines; Singapore; Vanuatu; Vietnam) have passed comprehensive and widely applicable public procurement laws or regulations. Some of these frameworks are the fruit of recent efforts to establish or substantially modernize procurement. Indonesia and Mongolia passed new procurement frameworks in 2000; Mongolia, in 2005, was preparing institutional and procedural improvements. The Philippines established new procurement rules in 2002. P.R.

China did the same in 2003, as did Bangladesh, the Kyrgyz Republic, and Pakistan in 2004. A similar reform process started in Kazakhstan in 2002. In 2005 India revised its General Financial Rules, which lay down the principles for central government procurement, and passed new procedures for the defense sector. Indonesia has adjusted its procurement framework repeatedly in 2003–2006. Vietnam enacted procurement legislation in mid-2006, and supplementary decrees are expected to be passed in the second half of 2006. Papua New Guinea’s procurement system was undergoing reform in 2006, following the promulgation of new legislation on finance instructions in relation to procurement. Bangladesh has passed the procurement Act in the year 2006 and rules in the year 2008 where as Nepal has passed their legislation in the year 2007. Some of the recently adopted laws and regulations—notably those of Bangladesh, the Kyrgyz Republic, Mongolia, and Pakistan—have been strongly inspired by the model law on public procurement of the UN Commission on International Trade Law (UNCITRAL). The proposal to revise Thailand’s procurement regulations is also based on the model law. However, regulations on public procurement in Cambodia, Malaysia are still fragmented and are spread over several legal documents.

The laws in many countries provide for conditions under which procurement rules do not apply (cases of emergency in P.R. China, Indonesia, Samoa) or alternative methods such as negotiated contracting or limited tendering may be used instead (P.R. China; Hong Kong, China; India; Kyrgyz Republic; Mongolia). Such provisions, which meet essential practical needs, require sound protection against the deliberate creation of a situation of emergency. Some countries achieve such protection by enumerating the possible grounds for an emergency as Korea has done and by excluding delays in procurement scheduling from the definition of an emergency. Bangladesh requires the approval of a superior authority for a change in procurement method.

4.3.2 Bidding period:

In many countries (e.g., Australia; P.R. China; Hong Kong, China; India; Mongolia; the Philippines; Singapore) the procurement frameworks thus prescribe a sufficient period for the submission of bids. Many countries also set minimum periods for the preparation of bids—14 days in the Cook Islands and Singapore; 15 days in the Kyrgyz Republic; 20 days in P.R. China; 21 days in India and Thailand; 25 days in Australia; 30 days in Kazakhstan, Mongolia, Pakistan

(for unrestricted/international tendering), and Vietnam; 40 days in Japan. In Nepal and to some extent in Korea, the time allowed depends on the value of the procured goods or service. In Bangladesh, the minimum submission period can be shortened in cases of emergency.

4.3.3 Selection of Procurement Method:

Setting clear conditions for deviating from the standard procurement method is necessary but not sufficient to contain the risk of arbitrary selection of procurement method. Verification and oversight of this important decision are essential complements, particularly because manipulations at this early stage are difficult to detect, and even if they are detected, repeating a full tender is often impractical. To meet this objective, the Kyrgyz Republic and Vietnam have opted to require prior approval of the change in the procurement method by an administrative unit at a higher level. In Pakistan and Palau, the deviation from open tendering must be justified in writing. India, under its General Financial Rules, requires the reasons for the resort to single-source procurement in cases of emergency to be recorded and approved beforehand by a competent authority. In Korea, the audit body must receive notice of contracts awarded through methods other than the standard procurement method. Bangladesh requires the approval of the use of the procurement method during the period of emergency.

In Bangladesh and P.R. China, deviation from the standard procurement method in cases of emergency must be reported to a superior authority. In other countries like Vanuatu, the procurement decision itself must be approved by a superior authority; in the case of Vanuatu, such approval is required for contracts beyond a certain threshold value.

Chapter-5

CONCLUSION & RECOMMENDATION

5.1 Introduction

This chapter includes the conclusions and recommendations that would help in improving the procurement process during emergency or period of natural disaster for the procuring entity for procurement of works and goods in Bangladesh.

Emergencies may come in many forms (*e.g.* tornadoes, cyclone, earthquakes, floods etc.). The impact may be restricted to just a small area or it may cover an entire region. Damages from an emergency could be repair and easily handled by local government agencies if they are properly authorized or it could be severe.

5.2 Recommendation

5.2.1 Additional Procurement Guideline for Emergencies:

There may be additional procurement policy which will be applicable during emergency.

Purpose of such guidelines:

This policy sets out the requirements for public authorities to ensure that appropriate management practices are in place for the procurement of goods and services under an emergency, in accordance with the provisions of emergency-related legislation.

Policy Scope:

This policy applies to procurements undertaken by public authorities in responding to an emergency, in accordance with the provisions of the Emergency Management Plan, or formal arrangements outlined in related legislation.

The policy should only be applied in the early response to an emergency, where urgent needs demand expediency in procurement processes. It may not be applied for emergency-related procurements, for the purposes of avoiding due planning, approvals and competitive tendering processes. This policy does not cover ‘urgent’ or ‘unplanned’ procurements undertaken by public authorities as part of their normal, ongoing operations.

Public authorities are required to establish a strategy to ensure their readiness for undertaking procurements in the event of an emergency. The strategy should be concise, and outline the key procurement related actions the public authority will take in the event of an emergency. This will ensure decisions are made without undue disruption and delay when undertaking the procurement.

The emergency management procurement strategy will address issues such as:

- the identification of responsible officers and applicable reporting and communication lines;
- the maintenance of ethical procurement and probity requirements;
- linkages with organizational risk management, business continuity and health and safety strategies;
- the establishment of pre-arranged procurement arrangements in anticipation of them being required in an emergency;
- record keeping and documentation required (eg emails, diary notes, memos);
- the determination of appropriate levels of financial, procurement and contract approval delegations for responsible officers, including establishing predetermined approval processes for purchase orders and the payment of invoices.

5.2.2 Negotiated Procurement during Emergency:

In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities the procuring entity may have the option to undertake the project through negotiated procurement.

Negotiated Procurement is a method of procurement of goods, infrastructure projects and consulting services, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant in any of the following cases:

All Procuring Entities should have to maintain a registry of suppliers, contractors, and consultants as basis for drawing up the short list and/or selecting the suppliers, contractors, and consultants for negotiations. The procuring entity may invite and engage in negotiations with a sufficient number of suppliers, contractors or consultants to ensure effective competition.

Any requirements, guidelines, documents, clarifications, or other information relative to the negotiations that are communicated by the procuring entity to a supplier, contractor, or consultant have to be communicated on an equal basis to all other suppliers, contractors, or consultants engaging in negotiations with the procuring entity relative to the procurement.

Following completion of the negotiations, the procuring entity may request all suppliers, contractors, or consultants remaining in the proceedings to submit, on a specified date, a best and final offer with respect to all aspects of their proposals.

The procuring entity shall select the successful offer on the basis of such best and final offers which should meet the procuring entity's minimum technical. To make it fair, in all stages of the negotiations, observers may be invited.

5.2.3 Cost-reimbursement contract for emergency procurement:

In order to carry out a construction work during emergency, when it is difficult to make proper estimate of the work and time is of essence the procuring entity may use cost reimbursement. In making payment to the construction entrepreneur for the construction work to be carried out by concluding this contract, payment may be made for the actual incurred cost for carrying out such a construction work, overhead cost thereof in addition to the profit as stated in the approved cost estimate. In having a construction work carried out by concluding this contract, the chief of the Public Entity shall have to fix the maximum amount of cost-reimbursement and if an amount exceeding such limit is to be paid he /she shall have to obtain the pre-approval of the of Departmental chief.

5.2.4 Increase the threshold for request for quotation:

During the emergency the threshold of request for quotation may be increased and the binding of getting at least three quotations may be omitted. This will be applicable only for emergency situation, which should be declared by proper authority. On the other hand the prior approval require for approving authority may be relaxed only for during emergency.

5.2.5 Increase threshold for cash purchase:

At present the Procuring Entity may undertake direct cash purchase of low value Goods and urgent and essential Services such as maintenance, repairs, transportation and others in the Maximum Tk. 500,000 (five hundred thousand) but not exceeding Tk.25,000 (twenty five thousand) in a single Procurement. The threshold of this may be increased during emergency and may be applicable for all type of procurement.

5.3 Conclusion:

A low-lying country with more than 230 waterways, Bangladesh is one of the most disaster-prone nations in the world. Fifteen per cent of its land floods annually on average. In 2004 that figure reached 34 per cent and in 2007 two floods and a cyclone together killed 4,000 people and caused economic losses of about \$3 billion. Disaster causes the damage of road, bridge, culvert which affect the supply of relief to the disaster affected people. So post disaster losses of life increase. It is the most important to improve the communication process so that the affected people may be connected to the main land. So special attention to procurement during emergency is necessary for country like Bangladesh.

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