

Dissertation Paper

A Comparative study on PPR-2008, Bangladesh and Asian Development Bank (ADB) Procurement Guidelines 2015: Strength and Weakness.

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CERTIFICATE

This is my immense pleasure to certify that the dissertation entitled “**A Comparative study on PPR-2008, Bangladesh and Asian Development Bank (ADB) Procurement Guidelines 2015: Strength and Weakness**” submitted to the Institute of Governance Studies, BRAC University in partial fulfillment of the requirements for the award of the degree of **Masters in Procurement and Supply Management**, is a record of bona fide work carried out by Mohammad Rabioul Hasan, ID No.17382018, under my direct supervision and guidance.

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In the name of Allah, the Most Beneficent, the Most Merciful

“All Praise be to Allah, Lord of the Universe”

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ABSTRACT

The ADB procurement guidelines 2015 and the PPR-2008 gives the proper guidance to the procurement of goods, works and services as per legal framework within restrictive boundary for the parties involved in procurement. This study mainly compares with an aim to find out the strengths and weaknesses of ADB guidelines and PPR-2008 regarding public procurement in context of Bangladesh.

This comparison is done by reviewing the guidelines of ADB Guidelines 2015 and PPR-2008. In ADB procurement guidelines, there are provisions of procurement planning, principles of procurement, procurement processing, joint venture, methods of procurement, applicable law for settlement of disputes, bid opening, evaluation and approval process, bid validity and bid security, domestic preferences, community participation misconduct relating procurement and so on. The ADB procurement guidelines are based ADB procurement policy framework which shall be ensures Core Procurement Principles such as economy, efficiency, fairness, transparency, quality, value for money, integrity, accountability, and addresses conflict of interest, noncompliance, and complaints.

The PPR 2008 delineates provisions of procurement plan, preparation of tender or proposal, committee, principles of public procurement, tender validity and security, specifications, standard, brand names, approval process, notification of award, contract administration and management, records and audit, joint venture, conflict of interest, complaint and appeal procedure, methods of procurement for goods and related services, works, physical services and their use, processing of procurement, professional misconduct, e-Government procurement. The main spirit of PPR 2008 are transparency, accountability, equity, fairness and open competition for ensuring value for money by using of public fund.

There are some strengths and weaknesses in some specific cases of guidelines as well. Strengths in ADB procurement guidelines include performance based procurement, bonus for performance, community based procurement, encouraging joint venture, procurement plan, pre-qualification, misprocurement, misconduct, settlement of dispute and so on. Using the strengths of ADB procurement guidelines, the borrower can achieve the speedy procurement, fairness competition, accountability and value for money. The main weaknesses are absence of sustainable procurement, supply chain issues, whole life cycle costing, and sustainability, strategic partnership with supplier and contractors, disposal policy and so on.

The guidance in the ADB guidelines and PPR-2008 conform to some aspects and differ in others. Because of weaknesses in both guidelines and rules, sustainability and social aspects are compromised in public procurement which hampers long-term value for money. This study emphasizes improvement of regulatory framework by fostering strengths of both guidelines and rules in context of Bangladesh.

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LIST OF ABBREVIATIONS

ADB	Asian Development Bank
ADF	Asian Development Fund
ADP	Annual Development Plan
ADTA	Advisory Technical Assistance
CDD	Community Driven Development
CPAR	Country Procurement Assessment
CPTU	Central Procurement Technical Unit
DG	Director General
DMC	Developing Member Country
EA	Executing Agency
EOI	Expression of Interest
ETP	Evaluated Total Price
GCC	General Conditions of Contract
IBRD	International Bank for Reconstruction and Development (World Bank)
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IDC	Indefinite Delivery Contract
IFC	International Finance Corporation
ITC	Instructions to Consultants
IMED	Implementation Monitoring and Evaluation Unit
LOI	Letter of Invitation
MIGA	Multilateral Investment Guarantee Agency
MDB	Multilateral Development Bank
NGO	Nongovernmental Organization
NOA	Notification of Award
OAGI	Integrity Division of the Office of the Auditor General
PAD	Project Appraisal Document
PCC	Particular Conditions of Contract
PE	Procuring Entity
PEC	Proposal Evaluation Committee
POC	Proposal Opening Committee

PP	Procurement Plan
PPA	Public Procurement Act
PPR	Public Procurement Rules
PID	Project Information Document
PAI	Project Administration Instruction
PPTA	Project Preparatory Technical Assistance
QBS	Quality-Based Selection
QCBS	Quality-And-Cost-Based-Selection
RETA	Regional Technical Assistance
RFP	Request For Proposals
RRP	Report and Recommendation of the President
REOI	Request for Expression of Interest
SRC	Staff Review Committee
SRFP	Standard Request for Quotation
SPD	Standard Proposal Documents
SSS	Single Source Selection
STD	Standard Tender Documents
STP	Simplified technical Proposal
SA	Special Account
SWAp	Sector Wise Approach
TA	Technical Assistance
TD	Tender Document
TEC	Tender Evaluation Committee
TOC	Tender Opening Committee
TOR	Terms of Reference
TS	Tender Security
TSC	Technical Sub Committee
UN	United Nations
UCS	Use of Country Systems
UNDB	United Nations Development Business

CHAPTER-1

Background of the Study

1.1 Introduction to PPR 2008

Bangladesh is a fast growing middle income country having a robust and persistent economic growth. It is one of the emerging economies in the south Asia. In the recent past, Bangladesh spent 249.72 billion USD per year (The Global Economy, 2017) to carry out her development activities. In order to bring a discipline in the public spending, it is of paramount importance to streamline the public procurement in Bangladesh.

The public procurement practices in Bangladesh have evolved from the era of British and subsequently came to the sub-continent and Pakistan rule. Before enactment of Public Procurement Act (PPA) 2006, the legal instrument for public procurement in Bangladesh was based on British rule which was called Compilation of General Financial Rules (CGFR). In that time the public procurement and contracts were governed based on CGFR framework. Following CGFR principles and framework, different Government bodies, corporations, autonomous bodies developed their own rules for their procurement activities. After that, the public procurement was managed in Bangladesh by Public Procurement Regulations 2003 which were replaced through the enactment of Public Procurement Act (PPA) 2006. To guide the procurement and implement the Act the Government promulgated Public Procurement Rules (PPR) 2008 based on PPA 2006. Since, then the public purchases are carried out in accordance with the Public Procurement Act, 2006 and Public Procurement Rules, 2008.

To carry out the purpose of these Act and Rules, Central Procuring Technical Unit (CPTU) was established under Implementation, Monitoring and Evaluation Division (IMED) of the Ministry of Planning. As per the Act and Rules the CPTU is responsible monitor compliance and propose any amendment to the Act, Rules and other tender documents. It has also the authority to issue

guidance and instruction relating to the implementation of the Act and Rules and to prepare Standard Tender/Proposal Documents (STD/SPD) for the procurement of goods, works and services. Every procurement entity uses these standardized documents for public procurement. By following PPR 2008 and STDs, the various public agencies purchases goods, works and services which account for around 70% of Annual Development Budget of the Government. Despite the Government of Bangladesh has developed a comprehensive legal and institutional framework to guide the public procurement, the government purchases face various challenges. They include in terms lack of skilled or trained procurement professionals, absence of sustainability issues, environmental issues, lack of disposal policy for public asset, ignoring the active consideration of whole life costing in economic and financial decision and so on.

1.2 Introduction to ADB Procurement Guidelines 2015

There are 67 regional member countries of Asian Development Bank (ADB) on which 48 member countries is from Asia and Pacific region. ADB operations account for 32.2 billion USD in their regional member countries for development activities (ADB, 2017). Bangladesh is a partner of this spending money for development projects.

The ADB has developed its Procurement Guidelines, 2015 for procurement of goods, works, non-consulting and consulting services. The guidelines basically define the procurement procedure to the borrower of ADB financed project in accordance of ADB financed grant, or ADB administered funds in whole or part in the relationship of agreement between the ADB and the borrower. The guidelines outlined the rights and obligations of the borrower of ADB financed project regarding implementation of projects.

1.3 Importance of PPR 2008 and ADB Procurement Guidelines 2015 in Procurement Practices in Bangladesh

As Bangladesh is growing fast to reach middle income country status, the procurement activities are huge to implement development projects. The largest portion of the development budget is spent through procurement activities like Padma Bridge project, Metro rail project, Rapid transit road project, Rooppur nuclear power plant project, Matarbari power plant and so on. PPR 2008 is the legal instrument for public procurement to ensure efficiency, accountability, equal treatment as well as fair competition in public procurement and for the best utilization of public money and also value for money. Along the national vision “Digital Bangladesh”, e-tendering system has

been introduced. Up to November 2018, total 6,804 Procuring Entities of 1273 organizations in all Ministries/Divisions and 51,428 tenderers are registered with e-GP system. By this time 223,418 tenders/proposals were invited under e-GP system and among them 130,399 were awarded (CPTU, 2018).

As stated in the above, Bangladesh is implementing a good number of infrastructure projects; it received financial assistance from various development partners. Asian Development Bank is a key partner in financing development projects. In case of utilizing money from ADB, the government country has to comply with ADB procurement guidelines.

1.4 Key problems in regards to PPR 2008 and ADB Procurement Guidelines 2015

In compliance with both guidelines and rules, the following problems are commonly observed.

Key problems of PPR 2008

- Lack of procurement practitioners
- Lack of skilled or trained people
- Lack of institutional capacity to develop procurement practitioners
- Absence of strategic relationship among the supplier and procuring entity
- Absence of sustainable procurement
- No controlling mechanism to comply PPA 2006 and PPR 2008

Key challenges of ADB Procurement Guidelines 2015

- ADB Procurement guidelines are prepared commonly for their member countries which may not relevant in the perspective of Bangladesh.
- ADB guidelines are to follow strictly which may be difficult for Bangladesh socio-economic culture.
- Absence of sustainability issues for the implementation of project.
- Absence of whole life costing for the procurement of goods and works during evaluation.

1.5 Research Objectives

The objectives of this study are:

- To identify strengths of PPR 2008 and ADB procurement guidelines 2015 in context of Bangladesh.

- To identify weaknesses of PPR 2008 and ADB procurement guidelines in context of Bangladesh.
- To recommend for utilization of strengths and overcoming of weaknesses of PPR 2008 and ADB procurement guidelines in context of Bangladesh.

1.6 Methodology

This study is mainly based on the review of PPR-2008 and Asian Development Procurement Guidelines 2015. In addition, published documents and official data have been used to explain the problems and prospects of these guidelines. Author's professional experience of approximately 12 years has been very critical insights for analyzing the research objectives.

1.7 Overview of the Thesis

The whole study is divided into five chapters which are as follows:

- Chapter-1: It presents the background of the study describing overview of ADB procurement guidelines and public procurement arena of Bangladesh importance of PPR 2008 and ADB Procurement Guidelines 2015 to procurement practices in Bangladesh, key problems in regards to PPR 2008 and ADB Procurement Guidelines 2015, research objectives, and research methodologies.
- Chapter-2: Detailed review of Public Procurement Rules (PPR) 2008 including summary of major sections as well as criticism of PPR highlighting strengths and weaknesses of these Rules in public procurement arena in Bangladesh is presented in this chapter.
- Chapter-3: This chapter describes ADB procurement guidelines, 2015 - including summary of major sections as well as strengths and weaknesses this set of guidelines.
- Chapter-4: presents comparison between two sets of guidelines with particular focus on strengths and weaknesses in context of public procurement in Bangladesh
- Chapter 5: This chapter concludes the study and presents some recommendations for efficiency and effectiveness of the public procurement.

CHAPTER-2

Review of Public Procurement Rules-2008

2.1 History and Background

As an independent country of Bangladesh in 1971, the administrative legacy of British law and rules continued. Public Procurement of Bangladesh is an example. General Financial Rules (GFR) was the main legal framework to guide the public procurement and accordingly, public expenditure was controlled and monitored. From time to time, the Ministry of Finance circulated additional financial guidelines regarding public procurement. After that, the public procurement was managed in Bangladesh by Public Procurement Regulations 2003 which were replaced through the enactment of Public Procurement Act (PPA) 2006 (Act 24 of 2006). Founded on PPA 2006 and with exercise of Section 70 of PPA 2008, the Government issued, on 24th January, 2008, Public Procurement Rules-2008 through gazette notification. There have been subsequent amendments to the PPR 2008 which were widely known through gazette notifications. There are 130 sections, nine chapters and fourteen schedules in the PPR 2008. PPR -2008 shall be applied in any procurement like goods, works, services, and intellectual and professional services using public funds.

2.2 Salient Provisions of PPR-2008

2.2.1 Procurement planning

Rule-16 of PPR 2008 stipulates procurement planning for procuring entity. Annual procurement plan shall be prepared with approval from Head of Procuring Entity (HOPE) by procuring entity in each year. This procurement plan shall be updated on quarterly basis. A typical annual procurement plan (APP) includes list of procurement, official cost estimates and so on. The procuring entity shall disclose the APP on notice board and, web site for the availability of prospective suppliers or contractors.

2.2.2 Preparation of tender or proposal, committee and other issues

Part one of Chapter Two of PPR-2008 deals with preparation of tender or proposal. Rule-4 describes the preparation of procurement related documents and their contents following the Standard Documents in Schedule-1. This rule also delineate the conditions of tender or proposal by procuring entity and precedence of contract documents, alternate design and process of tender preparation for lot-by-lot basis and item-by-item basis tender. Rule-5 discusses the procedure of tender price fixation using the price adjustment process and formula for beyond the period of contract 18 months, items for day-works as well as nominated contractors payment statement by provisional sums. Rule-6 includes the maintaining the records relating the procurement documents distribution using issue number, personal name and address, telephone, fax and e-mail number and any other relevant information.

Part Two of the Chapter Two of PPR-2008 stipulates the details about formation of committees for processing public procurement. According to Rule-7, tender or proposal opening committee is to be formed with three members including chairperson by proper approval from approving authority. Rule-8 includes the constitution evaluation committee and procedure of evaluation following the schedule-2. This committee consists of five or seven members out of whom two members shall be from external organizations with the approval from approving authority. Two external members must sign for validating the evaluation report. For special tender evaluation, the technical sub-committee may be constituted with the three members after taking proper approval. Rule-9 describes the qualification of external members of evaluation committee as well known person having relevant expertise who are not employee of procuring entity. Rule-10 discusses the chairmanship of evaluation committee and rule-11 is shown the approval of tender or proposal as per recommendation of evaluation committee. Rule-12 includes the delegated procurement process and approval by the executing agency that will be playing role as the procuring entity.

2.2.3 Principles of public procurement

Part one of chapter three discusses the principles to be followed in case of selection of procurement methods, application of procurement planning, splitting of multiple packages in a single work and competition in the public procurement. The Rules delineate the selection of procurement method on the basis of availability of local market, quantity, quality, necessity,

kinds of goods, works and services, market risk, approval from HOPE or approving authority etc. This part also gives indication of works splitting and cross discount and ensuring by procuring entity for open competition of public procurement.

2.2.4 Tender validity and security

Tender validity and security are elaborated in part two of chapter three. Rule-19 generally identifies the validity of tender or proposal period ranging from 60 to 120 days. Within this period, tender or proposal shall be evaluated and contract should be performed (Rule-20). With the approval of HOPE for the first time and higher authority approval for second time, validity period can be extended as per Rule-21. This part also stipulates the tender security following certain schedules which amount 1% to 3% of the estimated price rounding the figure (Rule-22). Extension of tender security validity may be allowed and tender or proposal shall be evaluated and contract performance within time period. This part gives another some indication relating to ground of extension of validity, tender security, extension of validity of tender security, verification of submitted tender security, grounds of forfeiture of tender security, procedure of tender security refund as well as performance security following the schedule-2 up to 25% of contract value in case of front loading and retention money.

2.2.5 Specifications, standard, brand names and rejection of tender

Rule-29 to 32 outlines technical specification considering the wide participation of procurement. It may be used for ensuring quality through standard of International Organization for Standardization, International Electro technical Commission, Bangladesh Standard and Testing Institute or any other International standard. This part also mentions restriction of disclosure regarding the information of public procurement process and custody of accepted tender. The following three rules (33-35) discuss the procedure of rejection of tender, proposal or quotation, process of necessary action taken after rejection and informing the reason thereof.

2.2.6 Approval process, notification of award, contract administration and management, and records and audit

Rule 36 describes the approval procedure of public procurement followed by the disclosure of notice of contract performance in Rule 37 as per Schedule-2 and 7 of time limit and standard format respectively.

The procedure of contract management and administration regarding goods, works and consultancy services are detailed in Part Six of Chapter Three gives. This part also discusses termination process of contract and dispute resolution. Key issues discussed in this part include the work planning and methodology, variation order, process of work supervision, verification of testing and laboratory, price adjustment process, payment procedure, grounds of liquidated damages and amount fixation process of LD, defect liability period and grounds of contract termination and so on.

Rule 43 and 44 stipulates maintaining the books of records of public procurement following schedule -2 at least 5 years and availability of records regarding public procurement.

Rule 45 and Rule 46 cover public procurement post review and an independent auditor for public procurement post review following schedule-2 at completion of each year within next nine months.

2.2.7 Qualification of individual bidder and the provision of joint venture

Bangladesh public procurement legal framework emphasizes non-discrimination for ensuring the transparency and open competition. In a way to achieve this goal, qualifications of persons and some important issues have clearly outlined such as,

- technical and professional qualification in case of professional and intellectual services,
- financial capability,
- legal documents,
- necessary documentary evidence in favor of qualifications of persons,
- amendment of specific requirement for a particular special tender like turnkey contract,
- applicable rules for pre-qualification (PQ),
- maintaining books and records of qualified suppliers or contractors by procuring entity which will be updated yearly and
- the provision of sub-contractor or sub-consultant appointment mentioning the lead partner or supplier or contractor.

One progressive aspect in procurement legal framework is joint venture which shall be constituted contracting or signing in the non-judicial stamp by parties mentioning the leading partner (Rule 54). The joint venture particularly joint venture of public and private like Build

Own Operate (BOO), Build Operate Transfer (BOT) may avail the concession contract (Chapter Nine of PPR-2008). Build Own Operate Transfer (BOOT) and similar nature under rule 129. Furthermore, Rule-55 discusses the grounds of conflict of interest mentioning schedule-9 of part-A.

2.2.8 Complaint and appeal procedure

An accountability mechanism has been in-built in public procurement legal framework through the provision of complain and appeal procedure. Rule 56-60 acknowledge bidder's right to complain relating to pre-qualification, open tender, limited tender, direct contract, two-step tender, request for quotation and proposal submission. Complain is to be submitted to the administrative authority for dispute resolution within 7 days from the date cause arisen. Rule-58 discusses regarding the constitution of review panel following schedule-2 in a category of three that is not more than 10 law experts, 10 technical experts relating procurement and 10 experts of contract management. At least 3 persons from each category shall constitute review panel out of them one person shall be chairperson. As per Rule-59, there is a restriction where before resolution of appeal, notification of award shall not be notified. Within 10 working days from the date complain, review panel shall resolve the dispute (R-60). Furthermore, Rule-130 describes the responsibility for monitoring of public procurement. The professional misconduct and offence relating procurement regarding corrupt practices, fraudulent practices, collusive practices, and coercive practices have been described in Rule 127.

2.2.9 Methods of procurement for goods and related services, works, physical services and their use

In all cases, the application of open tender (national) method is preferred (Rule 61-62). Other methods like limited tender, direct contracting, two-step tender, and one step two envelop, and quotation can be used with the approval of HOPE. Limited tender method can be applied, following schedule-2 and with approval of HOPE, for the goods and related service procurement up to Tk. 0.25 million and for the works and related services up to Tk. 20 million (Rule 64-65). The rules -65, 68 stipulate the application of two step tender methods for turn-key contract or any complex nature procurement. For this method, first step is the evaluation of technical matters on the basis of requirements of procuring entity. After the approval of the technical responsive

tenderer second step will be opening financial proposal and evaluation considering best and final tender price.

Part four of chapter four describes national request for quotation tender method application process, required documents for RFQ and RFQ submission procedure, quotation evaluation and award for work order. This part incorporates the national direct procurement methods which shall be applicable in the following manners:

- a. Direct contracting
- b. Additional deliveries
- c. Repeat order
- d. Variation order
- e. Extra work order
- f. Cash purchase
- g. Force account

Rule-83 to 88 describes applications of the international procurement and conditions of open tender methods for international competition. For global competition, domestic preference shall be allowed and ICOTERM should be used for identifying the risk and responsibility for both parties. Two step tendering method, limited tendering method and direct procurement method can also be used for international procurement.

Rule-89 recognizes the framework contract for procurement of goods and related services through open tender or limited tendering method on specified period which is not more than 3 years. For the transportation service procurement is not more than 2 years as framework agreement.

To promote the open competition with transparency, Rule-90 outlines advertisement process and application for the procurement of goods, works and service, professional and intellectual services. The time limit and selection of newspaper to advertise the tender is to follow the schedule-2 of the PPR-2008 in case of threshold value of estimated value for national or international various tendering methods.

2.2.10 Processing of procurement

Rule-91, 93 discuss pre-qualification for goods, works and service procurement. Pre-qualification is , generally needed for large and complex nature procurement like large construction works, large maintenance works, plant and equipment supply and installation, design and infrastructures works, custom designed equipment manufacturing and management contract . Pre-qualification can be done by open tender and this process will be made through opening committee for the tender opening as well as evaluation committee will evaluate the participated organization where no limit to select organization.

This part of the chapter five also describes the tender processing for tender document selling, pre-tender meeting, amendment process of tender documents, preparation and submission of tender documents, tender opening process, and tender evaluation process, applicability of lottery for limited tender, negotiation for professional and intellectual services procurement and direct contracting, criteria for post evaluation process, approval procedure as well as notification of award and contract signing under rule-94 to 102. Pre-tender meeting provision shall be mentioned in the tender documents. Tender opening and evaluation committee shall be formed on the basis of rule-8 to 12 and shall be opened within 3 hours from time of submission closing. Normally, negotiation is not allowed other than direct and professional and intellectual service procurement.

2.2.11 Procurement of intellectual and professional services

This part of chapter six recognizes the methods of professional and intellectual service procurement under the rule-103 to 112. The main methods are as follows:

- a) Quality and Cost Based Selection (QCBS)
- b) Fixed Budget Selection (FBS)
- c) Single Source Selection (SSS)
- d) Community Service Organization Selection (CSOS)
- e) Individual Consultant Selection (ICS)
- f) Selection Based on Consultant Qualifications (SBCQ)
- g) Design Contest Selection (DCS)

QCBS and FBS methods are preferred on the grounds of justifications. However, other methods can be used on the permission from approval authority or HOPE with proper justifications and

nature of professional and intellectual service procurement. This also deals with processing of Expression of Interest (EOI). Minimum four and maximum seven firms through EOI will be shortlisted. After the approval from approving authority the short listed candidates/firms will submit technical proposal and financial proposal. Rule-119 to 126 of PPR-2008 discusses procedure of technical and financial proposal evaluation, negotiation, approval, and contract sign. Responsive candidates can be rejected through negotiation. Negotiation is the integral part of the procurement of professional and intellectual services.

2.2.12 E-Government Procurement

The PPR 2008 stipulates the provision of e-procurement and grants CPTU the authority to formulate the rules of electronic Government procurement (E-GP). If any conflict arises from PPR-2008 to procure via E-GP, then E-GP rules get prevail.

2.3 Strengths of PPR-2008

PPR-2008 regulates the public procurement in Bangladesh. There are some strengths in PPR-2008 which are outlined below:

2.3.1 Independence of procurement committees

PPR 2008 defines the various committees such as TOC, TEC, TSC, POC, PEC, Official estimate committee (rule-16), Committee for enlistment (rule-52), and Technical Inspection and acceptance committee (TIAC). All committees have different terms of references (TOR). The members of committees shall be independent and transparent to sign the respective assessment reports.

2.3.2 Avoidance of conflict of interest

The member of evaluation committee or any other committee shall avoid the conflict of interest in public procurement. Each member of TOC/TEC has to sign individually and collectively a letter of impartiality or no conflict of interest during conducting opening or evaluation of tender or proposal under the rule-8(12) of PPR-2008.

2.3.3 Measures to prevent corrupted practices

The PPR-2008 has defined regarding under rule-127. In case of public procurement, there is strong safeguard against corrupt, fraudulent, collusive, and coercive practices in the public procurement and a procuring entity must maintain the provision of section 64 of PPA-2006 and rule-127 of PPR-2008. These legal provisions state that any of member, staff, person who are engaged in corruption/ fraudulent/ collusive/ coercive practices in the public procurement shall not be capable to participate further procurement activities and they can be punished under the “Discipline and Appeal Rules-2018” or under “Anti-Corruption Commission Act-2004”, or under “The Prevention of Corruption Act-1947.

2.3.4 Provision of grievance redressal

The main spirit of PPR-2008 is to ensure equity and open competition for public procurement. If any person aggrieved by any illegal procurement activities, he or she has the opportunity to file complaints to the Project Director or Line Director or Project Manger or Procurement Officer or any responsible person for the specific procurement firstly within specified time following the schedule-2 of PPR. Aggrieved person will get decision within specified time frame. Furthermore, if he or she is dissatisfied with that decision or expired the time duration and then he can appeal to the Head of Procuring Entity (HOPE). HOPE will make decision defined within time frame. If the aggrieved person is dissatisfied with the decision of HOPE or time expired then he or she can lodge the appeal to the concerned ministry. Ministry gives its decision within specified time and aggrieved person then make appeal to the review panel for getting proper decision. In PPR-2008, Review Panel consists of three persons having one member from judiciary or retired judiciary and other having expert knowledge about public procurement rules and act. This panel will work as quasi-judiciary body. The provision of redressal of complaints boosts people’s confidence in the procurement process and may contribute to the hassle public procurement in Bangladesh.

2.3.5 Non-discriminatory and confidential procurement process

Another spirit of PPR is to ensure free and fair competition through preventing scope for discrimination for ensuring value for money. PPR 2008 is playing vital role for encouraging equal participation for all prospect tenderer.

2.3.6 Confidentiality

Furthermore, Rule 44 of the PPR-2008 and Section-18 of the Section-18 of the PPA-2006 emphasize maintaining confidentiality relating to procurement information up to awarding NOA or signing of the contract except for any explanation from the contractor for particular enquiry and the order of court.

2.3.7 Digitization of procurement system

Within the auspices of Section 65 of PPA-2006 and Rule 128 of PPR-2008, Bangladesh is implementing immense improvement in public purchase through processing E-GP. E-GP was introduced in 2011. The digitization of public procurement system has brought about massive changes in respect of reduction in duration of procurement processing, increasing reliability and accountability, free and fair competition and decreasing the disputes. Table 2.1 shows the e-GP performance up to October 2018.

Table 2.1: Cumulative effect of E-GP performance up to October 2018

Items	Activities/Performance
No. of tender invitations	11017
No. of signed procurement agreement	3115
No. of registered tenderers	1602
No. of users	2769
No. of Banks/Branches	49 Banks

Sources: CPTU, 2018

2.4 Limitations/weaknesses of PPR 2008

2.4.1 Lots of standard documents making procurement burdensome

Thirty Two Standard Tender Documents (STD)/ Standard Proposal Documents (SPD) are available in schedule-1 of PPR-2008. Too many standard documents can arise confusion to the tenderer while application of STD/SPD. Moreover, all standard documents are prepared in English language which may be tough to understand by all participating tenderers who are competent in Bangla.

2.4.2 Absence of provision for sustainable procurement

Three Ps such as People, Planet and Profit take the main stream for considering sustainability issues. Sustainable procurement is absent in PPR of Bangladesh, which may make society and environment vulnerable to degradation. Sustainable issues such as re-use, recycle, energy and end-of-life disposal are not stipulated in preventing wastage in goods and, works procurement.

2.4.3 Absence of total cost ownership/ life cycle costing consideration

PPR of Bangladesh did not consider best price or whole life cycle costing or total cost of ownership. The key aspects of life cycle costing like service, quality, management co-ordination, delivery, price and communication were not included in the PPR-2008 for public procurement. Disposal of equipment or goods and works is the integral part of total cost of ownership which is not recognized by the PPR of Bangladesh in public procurement.

2.4.4 Vague past performance evaluation matrix

Vendor rating or performance evaluation provisions are not mentioned in the PPR of Bangladesh. There is a provision to enlist the contractor under limited tendering method which is regularly updated and reviewed. However, vendor rating is absent for further procurement. There is vague past performance measurement matrix mentioned in E-PWD3 for past performance evaluation (Table 2.2).

Table 2.2: Past performance measurement process

Aspect No	Aspect	Point	Score	Remarks
01	Total Number of works contract completed within only PE's organization during last 5 years.	140	Score1= Number of completed contracts of the tenderer/ highest number of completed contracts among the tenderers X 140	
02	Total value of works contract completed within only PE's organization during last 5 years.	100	Score2= Value of completed contracts of the tenderer/ highest value of completed contracts among the tenderers X 100	
03	Total value of on-going works and current	60	Score3= Value of on-going contracts of the	

	commitment under all PE's organization as shown in Tender Capacity Formula.		tenderer/ highest value of on-going contracts among the tenderers X 60	
04	Total Points	300	Total Score = Score1+ Score2+ Score3	

2.4.5 Use of lotteries

In the limited tender method, there is an option to use lotteries to select contractor when the lowest evaluated price is same in a tender more than one tenderer (Rule-98 of PPR 2008). There is an opportunity to limit the transparency and fair competition of public procurement process because of lotteries.

Another downside of PPR 2008 of Bangladesh is to give opportunity to procure using direct contracting which also limits the fair competitive public procurement and discriminates the equality (Rule-76).

2.4.6 Limited specification

Specification is the main elements to procure the quality product with best price for ensuring value for money. Under Rule-29 of PPR-2008 outlined specifications and scope of goods or works as performance based specification and conformance based specification. However, other wider aspects of specification like specification by sample, grades, standards or the chemical properties are absent in PPR of Bangladesh.

2.4.7 Too many methods

There are lots of methods in PPR of Bangladesh such as six methods for the procurement of goods and works and eight methods for the procurement of professional and intellectual services which are confusing to apply and also some of methods are overlapping each others.

CHAPTER-3

Review of Asian Development Bank Procurement Guidelines 2015

3.1 History and Background

ADB's Vision is an Asia and Pacific region free of poverty. ADB procurement guidelines are aligned with these vision which are applicable for projects financed in whole or in part by a loan, ADB- financed grant, or ADB-administered funds. ADB procurement guidelines are updated on some interval basis. Latest version of ADB procurement guidelines has been published on April 2015 and guidelines for the use of consultant services has been published on March 2013. ADB procurement guidelines follow on the basis of ADB Procurement policy such as purpose, general conditions, core principles of economy, efficiency, fairness, transparency, quality, value for money, fitness for purpose, eligibility, development of domestic industry, integrity, conflict of interest, accountability, noncompliance, complaints, alternative procurement arrangements, E-procurement, procurement plan, and procurement for non sovereign operations.

3.2 Salient Provisions of the ADB Procurement Guidelines

ADB procurement guidelines contain three main chapters consisting sixteen sub-chapters of chapter one, forty one sub-chapters of chapter two, fifteen sub-chapters of chapter three and along with three appendixes and two chapters for the guidelines of ADB procurement for the use of consultant services along with two appendixes. The salient provisions are described below.

3.2.1 Scope and purpose

ADB procurement guidelines apply to ADB financed project as a loan, grants or ADB-administered funds. In the beginning the relationship and agreement between the borrower and ADB are outlined with regards to procurement of goods, works other than consultant services. It describes the right and obligations of the borrower and the supplier governing the bidding documents and contracts signed by the borrower and the providers of goods and works.

There are five basic general considerations of the procurement guideline for maintaining efficiency and economy of ADB financed project in the implementation of the project such as,

- i. ADB's loans or grants from special funds can be used for procurement of goods, works, and services produced in, and supplied from, developed member countries and ADB's ordinary capital or ADB-administered funds can be used for procurement of goods, works and services produced in, and supplied from, member countries;
- ii. Following the efficiency and economy in the implementation of the project;
- iii. Equal opportunity for the developed and developing countries to compete the bidding process;
- iv. Encouraging the domestic manufacturing countries;
- v. Transparency and open competition of the bidding and procurement process. In case of international competitive bidding, domestic preferences should be followed for the domestic contractors under prescribed procedures.

For ensuring the competition, ADB allows all eligible countries to participate in the bidding process and does not allow any condition to the borrower where the bidders are barred from participation of bidding process. Borrower should consider with due diligence on the technical and financial capabilities of bidders for a particular contract.

There are some exceptions which are as follows:

- i) Where any restriction by the compliance of the United Nations Security Council decision taken under Chapter VII of the Charter of the United Nations. Any prohibitions from the borrower countries to import of goods from any other countries and prohibitions for a particular firm by act of compliance.
- ii) Where a firm has been engaged to borrower consulting services relating the project and any of its affiliates, shall be prohibited or disqualified from participation of further bidding process.
- iii) In case of autonomous body operating under commercial law where are not dependent agencies of the borrower or sub-borrower as Government-owned organization in the borrower's country may participate as a bidder.

- iv) If any firm affected by the ADB's Anticorruption Policy and Integrity Principles and Guidelines shall be ineligible to participate in the bidding process for period of time determined by ADB.

Before financing agreement between borrower and ADB, ADB encourages to precede the procurement process with following ADB procurement guidelines including advertising. Eventually, ADB shall review the procurement process of borrower to make signing for financing by ADB. Prior signing to the financing agreement is referred to as retroactive financing if the contract is signed and reimbursement by ADB for any payment is made by borrower.

3.2.2 Joint ventures

ADB does not allow mandatory joint venture for any contract for an ADB financed or ADB administered project.

3.2.3 Principles of procurement

This chapter includes the procedure to review the borrower's procurement process, documents, bid evaluations and contracts to justify with agreed procedures. In this regard, the procurement plan is to be reviewed and approved by ADB in respect of different categories of procurement.

If the borrower does not consider the ADB procurement guidelines to procure goods, works and services with the financing agreement of ADB, then ADB will declared as misprocurement and normally cancel ADB finance portion of procurement or contracts. If the ADB declare misprocurement, the borrower may permit rebidding after taking remedial action. Even if, under ADB financing project, the borrower is awarded contract after taking NO OBJECTION certificate from ADB, ADB reserves the right to cancel the agreement to declare misprocurement on the basis of incomplete, inaccurate or misleading information or the terms and conditions of the contract had been substantially modified without ADB's prior approval. If any contract is financed by ADB wholly or partly, then reference must be mention in the bidding documents with prescribed format which is shown ADB procurement guidelines.

3.2.4 Misconduct

For ADB financed procurement or contract, ADB Anticorruption Policy must be followed by the borrowers, suppliers and contractors. In the perspective of ADB guidelines the highest ethical standards include the followings:

- i) Prohibited practices like corrupt practice, fraudulent practice, coercive practice and collusive practice.
- ii) Audited by ADB appointed auditors to inspect bidders, suppliers, and contractors' accounts and records and other relevant documents.
- iii) The borrower's country's laws against fraud and corruption including bribery.
- iv) Conflict of interest.
- v) Compliance of applicable laws and regulations.
- vi) No exchange of fees, gratuities, rebates, gifts, commissions or other payments which are not mentioned in the contract documents.

3.2.5 Procurement plan

As per ADB guidelines, the borrower of ADB financed projects or contracts will prepare the procurement plan which will be reviewed regularly and taken approval from ADB setting process:

- a. the particular contracts for the goods, works and/or services required to carry out the project during the initial period of at least 18 months,
- b. the proposed methods for procurement of such contracts that are permitted under the financing agreement, and
- c. the related ADB review procedures.

3.2.6 Bid opening, evaluation and award of contract

Following procedures are stipulated in the guidelines:

- A reasonable time for preparation of bids is to be given to the bidders which is normally not later than 6 weeks from the date of invitation. In an exceptional circumstance, a longer period may be allowed.
- All bids are to be opened at a predetermined time and place and in public in presence of the bidders or their representatives, if any.

- After opening of bids, all forms of related information are kept confidential. After notification of contract award, it can be published publicly.
- The bids are to be examined based on the criteria mention in the bidding documents. Any bidding document which is non-responsive because of material deviation is not considered later on.
- Bidding documents clarify the evaluation criteria depending on which evaluation will be made. In case -any arithmetical errors are found, this can be corrected. During evaluation and price comparison CIF, CIP, Tax and other duties are taken in to cognizance.

3.2.7 Methods of procurement

The ADB procurement guidelines contain the following methods of procurement.

- Two-stage bidding or two-envelope
- Limited International Bidding (LIB)
- National Competitive Bidding (NCB)
- Shopping is another procurement method
- Direct Contracting
- Force Account
- Procurement from Specialized Agencies
- Procurement Agents,
- Inspection Agents,
- Procurement in Loans to Financial Intermediaries,
- Procurement under BOO/BOT/BOOT,
- Under Performance-Based Procurement (PBP)
- Procurement under Loans Guaranteed by ADB,
- Community Participation in Procurement,
- Under Procurement under Disaster and Emergency Assistance

Details of these methods are described in Annex I.

3.2.8 Type and size of Contracts

Contract type and size shall be stated in the bidding documents and include all relevant information in the proposed contract provisions such as,

- a) Basis of payment like lump sum or unit prices or combinations thereof.
- b) Contract nature, scope and locations for the supply of goods and works and/or installation of different items of equipment and plant.
- c) Alternative contract options.
- d) A group of similar contracts (Packages)
- e) All bids or combinations of bids shall be received at the same deadline as well as opening and evaluation.
- f) The offered prices should be the lowest evaluated cost to the borrower.
- g) In the context of turnkey contract, the borrower can be acceptable to invite bids for a single responsibility contracts for the supply and installation of all goods and works under design and build and management contracting.

3.2.9 Pre-qualification of bidders

Pre-qualification may be needed for the borrower for complex projects or turnkey contracts on the consideration of experience and past performance on same projects, capabilities with respect to construction or manufacturing facilities and financial position. The scope of contract clearly stated for the requirement of prequalification to prospect bidders with giving minimum six weeks period to submit documents to limit number of bidders.

3.2.10 Validity of bids and bid security

Borrowers have option for the requirements of bid security with the period of validity of bid. If borrower wants bid security for specific bid by mentioning the bidding documents in consideration of evaluation of bids, review the recommendation of award with ADB (if prior review is required), and obtain all approval for awarded of contract. The borrower shall maintain the period of bid security of four weeks beyond the validity period of the bids. The unsuccessful bidders shall get refund bid security with the releasing by the borrower after awarding the contract to the winning bidder. Performance security is required by the winning bidder which is defined deadline to the bidding documents.

3.2.11 Standards and use of brands names

Standards can be used for the wide competition and equitable for the all bidders for the procurement of goods, works and services. International standards can be encouraged which is certified by International Standards Organization (ISO) for the equipment or materials or workmanship. The borrower can also be use national standard where international standards are unavailable or unreasonable or inappropriate.

However, as per ADB procurement guides, brands names or reference to brands, catalogue, and similar specification are discouraged.

3.2.12 Procurement processing

For ensuring the open competition or competitive bidding, timely notification is required and the borrower is required to prepare a general procurement notice to submit ADB containing borrower information, amount and purpose of the loan, scope of procurement under ICB and the name, telephone number, email address or fax number and address of borrower's agency responsible for procurement and the address of the website of the borrower. ADB will take arrangement for publication of the notice. There are some restriction to publicly open bid where pre-qualification is required. Following are sites for publication of notice

- ADB's Website
- A national circulation newspaper of borrower's country (at least in one English language newspaper).
- On in internationally known and freely accessible website in English

Borrowers shall use ADB's Standard Bidding Documents (SBDs) by minimal modifying of contract specific conditions through bid or contract data sheet or through special conditions of contract. Borrower can also be used any other international standard bidding document which is accepted by ADB. Electronic system may also use to distribute bidding documents by ADB's satisfaction of securing the data to avoid modification of bidding conditions. Bidding documents must be provided in print copy if any bidder request for hard copy.

ADB's working and official language is English. Accordingly, the borrower shall prepare all bidding documents including advertisement in English. If more than one language is used by the borrower, then the English version shall prevail.

The borrowers shall provide all information relating to bidding documents for ensuring equal opportunities of all prospective bidders. The borrower may arrange a bidders conference or meeting with the potential bidders to clarify the bidding documents or any other clarification in person or online. Minutes of bidding shall be circulated to the all potential bidders as well as ADB.

In case supply of goods from abroad, the Incoterm like CIF or CIP shall be used and locally supplied goods EXW shall be used in bid documents. In case of turnkey contracts, the bidders shall be bid all supply items, installations, related services, commissioning according design, maintenance and operation including all kinds of duties and taxes.

According to the ADB procurement guidelines, there are some provisions to include the price adjustment clause which are as follows:

- Clearly state in the bid documents where price adjustment are allowed.
- The contracts period shall be long period or more than 18 months period.
- The major components like labor, equipment and materials prices are changed where the bidder and borrower has no control over there.
- The method of price adjustment regarding the changes of major components of price clearly indicates in the bidding documents.

In addition, borrower will be provided all information regarding transportation and insurance of supplier or contractor for prompt payment in freely replaced lost or damaged goods.

Some other important aspects of contract processing are as follow:

- The total bid price in different currencies shall be converted to a single local currency with the exchange rate
- Terms and methods of payment shall be mentioned in the bidding documents and shall be consistent with international commercial practices.

- Total contract conditions which include both General conditions of Contract (GCC) and Special Conditions of Contract (SCC) determine the whole scope of the work to be executed.
- In order to compensate the borrower, the bidding document specifies the sufficient performance security that is not more than 10% of payment.
- There is room for domestic preferences for the borrower.
- Lowest evaluated bidders became the winning bidders subject to the post qualification of bid.
- The winner, responsive and capable bidder shall be awarded to execute the contracts within stipulated time and within the period of validity of bids.
- The borrower shall take “No objection” certificate from ADB’s with recommendation of contract award to publish all information relation winning bidder, offered cost and evaluated price, the name of rejected bidders and reason of rejection thereof.

There is a provision of debriefing the bidders as to why the bidders are not selected.

3.2.13 Applicable law and settlement of disputes for complaint and appeal

For settlement of disputes, there shall be provisions of dispute review board. In this connection International Commercial Arbitration may also be used for settlement of disputes.

In general no alteration of the bids is allowed after the submission of deadline request for clarification may be sought in writing to the borrower, if any.

3.3 Strengths of ADB Procurement Guidelines-2015

There are some strengths of ADB procurement guidelines 2015 which are outlined below:

- **Bonus clauses:** There is a bonus provision of ADB procurement guidelines for earlier completion of contract.
- **Performance based procurement:** An ADB procurement guideline recognizes the performance or output based procurement which can improve or incentivize the suppliers or contractors for earlier completion of contract or project.
- **Misprocurement:** If any borrower does not comply with the ADB procurement guidelines and ADB financing agreement, ADB can declare it is a misprocurement and has right to cancel the loan disbursement for that portion of project.

- **Brand Names:** Specific brand name or manufacturer name is prohibited to mention in the tender documents and to use brand name or catalog number by ADB procurement guidelines. It checks nepotism in choosing any pre-determined brand.
- **Community participations procurement:** The involvement of local entrepreneurs or community can be encouraged to participation in the procurement process. It widens the local ownership.

3.4 Weaknesses of ADB procurement guidelines 2015

- **Absence of sustainability issues:** ADB procurement guidelines remained silent regarding sustainable or eco-friendly procurement. This is not compatible with the era of Sustainable Development Goals (SDGs).
- **Absence of whole life costing in procurement:** ADB procurement guidelines do not consider whole life costing in the pre-requisite conditions. As a result, value for money may not be achieved.
- **Ignoring supply chain issues:** Supply chain takes the chain of multiple tiers of supplier and user or customers to achieve customer satisfaction in terms of value for money. Strategic relationship of supplier and customer recognize the agility, economy, efficiency and effectiveness for any procurement of goods, works and services. ADB procurement guidelines are more restrictive and ignore the supply chain issues.
- **Auction policy:** The cost of disposal is not taken into consideration when calculating the total cost of procurement. ADB procurement guidelines do not mention any guideline for total cost of procurement including cost related to disposal after expected life of assets or goods.
- **Absence of Electronic procurement system:** There is no explicit stipulation of managing procurement through electronic means in ADB procurement guidelines 2015, despite digital management of procurement ensures fair competition, accountability and value for money.

CHAPTER 4: Comparison between PPR 2008 and ADB Procurement Guidelines 2015 in context of Bangladesh

Table 4.1 presents comparison between two sets of guidelines with particular focus on strengths and weaknesses in context of public procurement in Bangladesh

Table 4.1: Comparison between PPR 2008 and ADB procurement guidelines 2015:-

S.L. No.	Issues	PPR 2008	ADB Procurement Guidelines 2015	Strengths in Bangladesh context	Weaknesses in Bangladesh context
01	Procurement plan	Annual procurement plan (APP) is mandatory by procuring entity (PE) for development or revenue budget at the beginning of every year	Annual procurement plan is mandatory for all projects by borrower.	Supplier or contractor make plans and take strategic decision for particular procuring entity.	It is difficult to implement procurement plan.
02	Procurement processing	Tender document selling, pre-tender meeting, amendment scope in tender documents, clear tender opening, and evaluation process, applicability of lottery for limited tender,	For ensuring the open competition or competitive bidding, timely notification is required and ADB financing project, the borrower is required to prepare a general procurement notice to submit ADB containing borrower	-Domestic preference. -Fair competition. -Negotiation for professional and intellectual services procurement. - Publication of the notice. - Notification of award and contract signing.	-Direct contracting option. -Lottery option for limited tendering method.

		negotiation for professional and intellectual service procurement and direct contracting, criteria for post evaluation process, approval procedure as well as notification of award and contract signing.	information, amount and purpose of the loan, scope of procurement under ICB and the name, telephone number, email address or fax number and address of borrower's agency responsible for procurement and the address of the website of the borrower. ADB will take arrangement to publication of the notice.		
03	Principle of procurement	Means of communication, application of procurement planning, splitting of multiple packages in a single work and competition in the public procurement. Selection of procurement method on the basis of availability of local market, quantity, quality, necessity, kinds of goods, works and services, market risk, approval from HOPE or	Review the borrower's procurement process, documents, bid evaluations and contracts to justify with agreed procedures. In response to the borrower's failure to comply with ADB procurement guidelines, ADB may declare it as misprocurement and normally cancels ADB finance portion of procurement or contracts.	-Means of communication. - Work packages - Splitting -Cross discount -No Objection Certificate from ADB	The borrower may not implement ADB's guidelines due to lack of knowledge of procuring entity.

		approving authority etc.			
04	Specification, standard and use of brands	Technical specification considers the wide participation of procurement. It can ensure quality through standard of International Organization for Standardization, International Electro technical Commission, Bangladesh Standard and Testing Institute or any other International standard.	Specific brand name or manufacturer name is prohibited to be mentioned in tender documents and to use brand name or catalog number by ADB procurement guidelines.	-Ensuring wide participation. -Ensuring fair competition. -Ensuring value for money	Sometimes, procuring entity may use standard or brand names due to expertise of specification writer.
05	Bid validity and security	Bid validity period: minimum 60 days and maximum 120 days on the justification of nature of procurement and bid security shall be 1 to 3% of submitted price of contractor which is defined to the documents as fixed amount rounded by procuring entity beyond 28 days	Bid security is required to submit beyond four weeks of the bid validity period that shall be mentioned in bidding documents.	-Time limit the for bid validity -Bid security	In reality, it is difficult to implement procurement activities within specified time period.

		of the bid validity period.			
06	Methods of procurement	Open tender (national) is preferred. Other methods like limited tender, direct contracting, two-step tender, and one step two envelop, and quotation can be used with the approval of HOPE.	Methods like Two-Stage Bidding, Limited International Bidding (LIB), National Competitive Bidding (NCB), Shopping, Direct Contracting, Force Account, Procurement from Specialized Agencies, Procurement under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements, Performance-Based Procurement (PBP), Community Participation in Procurement, Disaster and Emergency Assistance.	- Open tender - Two-Stage Bidding, Limited International Bidding (LIB) Performance-Based Procurement (PBP) -Community participation in procurement	-Direct contracting. -Repeat order -Shopping
07	Pre-qualification	Pre-qualification for short listing the organization for different large and complex nature of procurement using different Standard Pre-qualification Documents (SPQD).	Pre-qualification is not recognized.	Pre-qualification Documents (SPQD).	ADB procurement guidelines does not recognize regarding pre-qualification.

08	Opening, evaluation, approval and NOA process	Time-bound approval procedure and disclosure of notice of contract performance of standard format. Contract management and administration regarding goods, works and consultancy services: work planning and methodology, variation order, process of work supervision, verification of laboratory testing and price adjustment process, payment procedure, grounds of liquidated damages and amount fixation process of LD, defect liability period and grounds of contract termination.	A reasonable time for preparation of bids is to be given to the bidders, not later than 6 weeks from the date of invitation. After opening of bids, information is kept confidential. After notification of contract award, it can be published publicly. Bidding documents clarify the evaluation criteria depending on which evaluation will be made. In case any arithmetical errors can be corrected. During evaluation and price comparison CIF, CIP, Tax and other duties are taken in to cognizance.	-Publication of NOA -Reasonable time for evaluation -Price adjustment option	Lack of expertise among procuring entities.
09	Joint ventures	Domestic preference for making joint ventures by Bangladeshi	Joint venture by domestic or abroad firms with joint or several liabilities which	-Allow Joint ventures	Legal process of JVCA is sometime difficult.

		firms.	shall not be mandatory.		
10	Complaint and appeal	Complaints submitted to the administrative authority for dispute resolution; Review panel for hearing final appeals.	Dispute review board; International Commercial Arbitration may also be used for settlement of disputes.	- Administrative authority -Review panel	-Inadequate functional review panel. -Huge time for settlement of disputes.
11	Code of conduct and misconduct	The PPR-2008 describes the professional misconduct and offence relating procurement regarding corrupt practices, fraudulent practices, collusive practices, and coercive practices.	ADB financed procurement or contract, ADB anticorruption policy should be followed by the borrowers, suppliers and contractors.	Strictly follow the code of conduct and ethics guidelines between the procuring entity, borrower and the supplier or contractor.	Lack of knowledge regarding ethics of procurement, various coercive practices among contractors, presser groups, gifts etc.

A comparison around code of conduct and ethical issues of public procurement that exist in the ADB procurement guidelines and PPR-2008 are illustrated in Table 4.2.

Table 4.2: A comparison of code of conduct and ethical issues shown in ADB procurement guidelines and PPR-2008

SI No	Issues	ADB Guidelines	PPR-2008
01	Conflict of Interest	Yes (ADB Procurement Policy, Para-11)	Yes (Rule-55)
02	Non-discrimination	Yes (ADB Procurement Policy, Para-7)	Yes (Rule-47)
03	Fair Competition	Yes (ADB Procurement Policy, Para-5)	Yes (Rule-90)
04	Domestic preference	Yes (ADB Procurement Guidelines, Para - 2.55)	Yes (Rule-83)
05	Gifts	No (ADB Procurement Policy &	No (Rule-127)

	Guidelines)	
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There are some aspects in which both guidelines differ from each other as follows.

Market survey for official estimates

This is important to prepare official estimates for a particular procurement with market price. In the ADB procurement guidelines, there is no option to justify the market price of goods and works. In contrast, PPR 2008 has allowed procuring entity to prepare official cost estimation with justification of market survey for public procurement (Rule 15 & Rule 16).

Declaration of misprocurement

If any borrower does not comply with the ADB procurement guidelines and ADB financing agreement, then ADB can declare the misprocurement and has right to cancel the loan disbursement for that portion of project. However, PPR-2008 does not recognize the option of misprocurement.

Pre-qualification

PPR 2008 has taken cognizance of pre-qualification for short-listing the organizations for different large and complex nature of procurement using different Standard Pre-qualification Documents (SPQD) in opposed to ADB procurement guidelines.

Bonus clauses

There is a provision bonus in ADB procurement guidelines for earlier completion of contract, which is absent in PPR.

Performance based procurement

ADB procurement guidelines have given independence of supplier or contractor for completion of delivery or completion of works by output based procurement for national or international procurement. There is no provision of performance based procurement in PPR.

CHAPTER 4:

Conclusion and Recommendation

This study scrutinized the strengths and weaknesses in various aspects of the ADB procurement guidelines 2015 and PPR-2008, based on an extensive review of these operational guidelines.

The study suggests that there are strengths and some areas of weaknesses in both ADB procurement guidelines and PPR-2008. More specifically, PPR is designed on the basis of socio-economic structure of Bangladesh where as ADB procurement guidelines is developed considering the global impact or 67 regional ADB member countries. The study also shows that there are some important qualitative changes in the public procurement in Bangladesh after implementation of PPR. In order to overcome the limitations further amendments need to be made in PPR. Areas of amendment are as follows:

- Reduction in standard documents,
- Streamlining procurement methods,
- Finding alternative to lotteries; or transparency in use of lotteries, and
- Incorporate sustainable procurement, disposal process and project life cycle costing

Moreover, the PPR can be improved by taking in positive aspects from ADB procurement guidelines such as:

- bonus for performance,
- declaration of misprocurement,
- performance-based procurement, and
- community participation in procurement.

Furthermore, the present pressing issues need to be incorporated in both guidelines and rules. They include:

- Sustainable procurement,
- Full life costing for procurement,
- Auction policy,
- Strategic partnership with supplier and contractor,
- Past performance measurement process,
- Supply chain issues,
- Enrich enforcement capacity,
- Creation of separate law wing for clarification regarding procurement issues.

For implementation of the stated suggestions the follow-up actions should be undertaken principally in policy level. Here is the primary role of CPTU to sort out the improvement areas and take those to the national policy makers. In this regard, CPTU should be granted with more functional autonomy.

The decision of policy level must carry forward to the functional or operational level to execute the policy decisions. The efficiency and effectiveness of the functional level is the main part to implement policy for ensuring the transparency, equality, fair competition as whole value for money for economic growth of Bangladesh. People should be skilled through effective training to adopt all policy and rules. Effective team and commitment, and cooperation are the paramount among employees at the functional or operational level.

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Annex I: Methods of Procurement

Two-Stage Bidding procedure can be followed where turnkey contracts or contracts for large complex facilities or works of a special nature or complex information and communication technology where complete technical specification is impracticable in advance. So, un-priced technical proposal may invite and clarify it to make amended and final technical proposal to submit priced bid in the second stage.

Another procedure of two-stage bidding such as Two-envelope procedures can be used where complete technical and financial proposals are received simultaneously for the procurement of goods, works or turnkey contracts. The borrower may consider the following ways:

- 1) Two-envelope process under single-stage bidding.
- 2) Two-envelope process under two-stage bidding.

Limited International Bidding (LIB) is used when the number of suppliers is low and contract amount is not large. It is invited directly without following open advertisement.

National Competitive Bidding (NCB) is the preferred method for the procurement of goods and works in the national level. In that case advertisement is circulated through daily national news paper, website in local language.

Shopping is another procurement method used by ADB for procurement under which quotation price is collected from potential contractors (minimum three) and contract is awarded following the fundamental principles of open bidding.

Direct Contracting is a form of single source contracting which may take several forms out of which additional delivery and repeat orders are predominant. Direct contracting is used when standardized product is required; the product is found only from one bidder and during natural disaster.

Force Account is intended for carrying out some construction works when the scope of the work cannot be determined in advance and urgent execution is needed.

Procurement from Specialized Agencies, In the ADB procurement guidelines, there are provisions for procurement from specialized agencies in the sectors like health and education.

Procurement Agents, ADB procurement guidelines also empower the borrower to engage procurement agents for conducting procurement in favor of the borrower.

Inspection Agents, For ICB, there are also provisions for employing inspection agents to certify the quality and quantity of the imported goods.

Procurement in Loans to Financial Intermediaries, In case of loan to financial intermediaries, the procurement may be undertaken by following the existing private sector practices.

Procurement under BOO/BOT/BOOT, Concessions and Similar Private Sector Arrangements, ADB has its own stance regarding the execution of the project under BOO/BOT/BOOT and some other related methods.

Under **Performance-Based Procurement (PBP)** procurement is undertaken based on functionality and output of the product or services. PBP focuses on technical specifications in terms of reliability and quality.

Procurement under Loans Guaranteed by ADB, For any guaranteed loan disbursed by ADB, ADB assures the repayment of that loan.

Community Participation in Procurement, There are also provisions for ensuring local participation in the procurement particularly local NGOs, marginal peoples and local technology in the ADB procurement guidelines.

Under **Procurement under Disaster and Emergency Assistance** ADB procurement guidelines, emergency procurement enjoys some flexibility, for example ICB may be exempted and NCB is desired.

Annex II: Components of bidding documents

- Location of the work
- Place of the supplied goods
- Place of the delivery
- Place of the installation
- Schedule of delivery or work completion
- Minimum requirement of performance
- Warranty

- Maintenance period
- Any other terms and conditions
- Goods tests
- Standards
- Methods of the work performance
- Clear specification
- Drawings of work
- Pricing
- Evaluating of bid procedure
- Alternative designs and materials
- Payment terms and process
- Project site handover and visit process
- Any other criteria which is mentioned to the bidding documents