

Anti-corruption policies in Asia and the Pacific: Thematic review on provisions and practices to curb corruption in public procurement Self-assessment report Bangladesh

Identifying reform needs, assessing progress and evaluating the effectiveness of anti-corruption policies and practices are central principles enshrined in the ADB/OECD Initiative and its Action Plan. In this context, the present self-assessment report from Bangladesh was prepared as background to the Initiative's thematic review exercise on measures to curb corruption in public procurement in the Asia-Pacific region.

This thematic review on public procurement was initiated in reaction to the findings of the Initiative's 2003-2004 in-depth analysis of the legal and institutional anti-corruption frameworks of the Action Plan's then 21 endorsing countries against the standards of this Plan ("Anti-Corruption Policies in Asia and the Pacific – the legal and institutional frameworks", November 2004). In this study, public procurement was identified as one of the areas requiring particular attention in the Asia and Pacific region and where consequently the Initiative's Steering Group had a vital interest to promote reform.

With this aim, the group agreed to pursue analytical work on corruption in public procurement through a thorough review of relevant existing policies, practices and rules so as to assist participating governments in better understanding the corruption risks inherent in their countries' institutional settings and procurement practices. This thematic review further seeks to assess how countries translate into practice their commitment made under the Action Plan to curb corruption in public procurement. Eventually, the review's findings will provide governments with an analytical framework to design policies and procedures that ensure greater transparency and integrity in public procurement and to identify priorities for reform in this respect.

In line with the Action Plan's principle of self-assessment, the review is conducted on the basis of information provided by participating countries in reply to a questionnaire specifically prepared for this purpose by the ADB/OECD Initiative. The present document represents the replies submitted by Bangladesh in this framework.

Further information on the exercise, on other participating countries and on the analysis' outcome is available at the Initiative's website at <http://www1.oecd.org/daf/asiacom/stocktaking.htm#trpp>.



A. General framework

Legal and organizational framework:

1. Please list and briefly describe laws and regulations related to government procurement, including those that give exemption to the standard government procurement rules. Where available, please attach a copy or indicate an internet-site for download of these regulations, if possible in English language. Ensure to include secondary legislation, rules and procedures. Also, please indicate relevant international or regional agreements¹ that your country is committed under, including its level of involvement (e.g. signature, ratification, implementation).

The Public Procurement Regulations 2003. They are available in on the website www.cptu.org.bd

2. Please explain the repartition of tasks and responsibilities in the procurement process among centralized, decentralized and specialized authorities (in particular: design of policies and standards; capacity building; definition of needs and terms of individual tenders; execution of different procurement stages from advertising to contract awarding; dispute resolution; control of the fulfillment of the terms and conditions by the contractor).

As per the provisions of the mentioned Regulations different authorities are delegated Financial Powers. Any Ministry can finalize procurement up to taka 25 crore. If the cost of procurement is more than taka 25 crore, then it is to place before the Cabinet Committee headed by honorable Finance Minister. All Ministries/ Departments are to follow the instructions of the Regulations, such as publishing advertisement at least in the two National News Papers, making the report of technical and financial evaluation, selection of eligible contractors, furnishing the work order, monitoring the work, ensuring the work as per quality etc. If there is any conflict, any party can put the matter to the conflict resolving authority. Conflict resolving authority usually summons both the parties, gives hearing, scrutinizes the relevant documents and gives the verdict. If the verdict is not acceptable to any party then he or she can go to the proper court of justice.

3. Is procurement of goods governed by the same procedures as procurement of services?

Yes, but if deviation is necessary for national interest, in that case permission for deviation may be taken from the proper authority, such as from the Cabinet Committee for economic affairs. For example Asian Development Bank has selected the consultants, directly to give consultancy services for disaster management last year. Bangladesh government requested ADB after obtaining permission from the proper authority.

¹ e.g. APEC Non-Binding Principles on Government Procurement; WTO Agreement on Government Procurement; etc.

4. Does the procurement law establish a Public Procurement Office (PPO)? Is the PPO appropriately staffed against its mandate? In this context, please state the total number of staff involved in public procurement country-wide. Are the procurement entities/PPO provided with adequate financial resources for the execution of their tasks?

There is no PPO in Bangladesh to make Procurement for all Public Offices. Individual Public Office has the authority and resources for procurement. But some departments have central procurement office like defense and health. The Directorate of Defence Purchase procures major items for Army, Navy and Air Force. Accordingly Central Management and Monitoring Unit [CMMU] procures physical facilities for health sector all over the country. Every office has some limited authority to purchase necessary items but it has to follow the Public Procurement Regulations 2003.

5. Please name the sectors, areas or conditions subject to particular procurement rules (if applicable, e.g. military; local governments; state owned enterprises; urgency).

Military Procurement is governed by its own rules. But in some cases PPR 2003 is applicable. Local Governments and state own enterprises are to follow the PPR 2003. If there is any urgency, proposals are to put before the Cabinet Committee for deviation explaining the reasons of urgency.

Procurement policies and practices:

6. Do model tender documents exist (e.g. handbooks, model forms, model contracts, etc)? If yes, is their use mandatory, and do they contain a specific anti-corruption clause?

Yes. The concerned head of the office is to certify about the fairness of the whole process and documents. Concerned offices have to maintain records, model forms and anti-corruption issues are related there.

7. Please provide the latest available economy-wide annual total numbers and values of purchases, with breakdown a) by sector and b) by type of procurement. In this context, please describe the procurement types foreseen by law (e.g. sealed tender, direct purchase; limited tendering) and the policy of your Government towards these types.

No, such statistics is available, nor it is done/required, because each department procures their goods and services under there budgetary provisions and there are different types of procurements such as sealed tender, direct purchase [in case of very small amount i.e. up to taka 15 thousand] restricted tendering etc.

8. Please explain under which conditions pre-selection procedures are conducted.

In some cases, to avoid unnecessary time consumption/delay, pre-qualification process is adopted. Here the past experience, good will, capability, financial solvency etc. are considered while short listing the pre-qualified contractors.

9. If your country is currently engaged in or planning a major reform of its procurement system, please briefly state the scope and objectives of this reform.

Bangladesh has undertaken a public procurement reforms project in collaboration with the World Bank. Promulgation of a Public Procurement Act is under process. The aim of this project is to reduce corruption, to bring transparency and to establish a set procurement system all over the country.

B. Transparency and Fairness

Transparency of general procurement policies and regulations:

10. Are the existing laws, regulations and policy guidelines on public procurement publicly available and, if yes, where/how?

Yes. It is available in the website. Moreover thousands of copies have been published and circulated all over the country.

11. In your country, do certain territorial entities or institutions establish lists of eligible contractors (sometimes called “white-lists”)? If yes, please explain the criteria for a company to be included in or excluded from this list, and what use is made of such lists.

There is no countrywide white list but each department has a list of reputed companies. The experience, good will, financial solvency, social reputation, management capacity, availability of logistics of the company are the basic criteria to be included in the white list.

12. Is a bid security and/or a performance guarantee required from the bidder? What are the procedures for advertisement of procurement opportunities?

Yes, bid security and a performance guarantee are required. For large/huge procurement, advertisements are to publish at least in two national dailies. Purchase up to taka 200,000 advertisement is to circulate in the open places, like notice boards of the important departments.

Transparency of procurement opportunities:

13. Describe where and how tender opportunities are published, including if their publication is mandatory or depends on certain criteria (if so, please list)? Please state if a fee has to be paid to receive tendering documents and – if yes – how this fee is fixed and whether other processing fees apply. Please briefly explain whether your country allows adequate and reasonable time for interested suppliers to prepare and submit responsive bids.

(1) Tender opportunities of huge purchase i.e. more than taka 200 thousand is required to be published in the at least two dailies. Purchase above taka 15 thousand and below 200 thousand is required to be circulated in the open places and purchase by less than taka 15 thousand could be done in spot without inviting any tender.

(2) Yes, a fee has to be paid to receive tender documents and it might be up to 3% of the tender amount, but might be less, it depends on the decision of the proper authority.

(3) Yes, our country allows minimum 42 days for interested suppliers to prepare and submit responsive bids in all most all tenders. But if there is any national emergency for the procurement then the Cabinet Committee can reduce the time. Usually it happens in case of food grains procurement and facing disasters.

14. Are selection and award criteria prescribed by law? If yes, are they prescribed in an exclusive manner? Please name these criteria a) for procurement of goods, and b) for procurement of services (e.g. technical requirements, qualification of the bidder, evaluated price, expertise/experience, etc.) and those that are explicitly excluded (e.g. nationality of the bidder or other affinity, etc.). Is the description of these criteria in the tender documentation mandatory?

(1) Yes, it is to be done as per the guidance of PPR 2003 at present. The promulgation of law is under process and when the law will be enacted, then it will be followed.

(2) All criteria are described in the PPR 2003. Please see the website.

(3) Yes.

Transparency of contract evaluation and award procedures:

15. What is the procedure if none of the bids or too few – relative to a prescribed limit – fulfill the technical requirements as defined in the call for tender (e.g. reopening of the bid, negotiations, etc.)? Do you keep a register of all bids received?

(1) No negotiations are allowed. Re-tendering is a must.

(2) Yes.

16. Where and how are actions and decisions in the procurement process recorded? How long and where are these records preserved, and who can access this information?

(1) Actions and decisions are recorded by the procurement entity.

(2) These are preserved in the offices of the procurement entity. Concerned persons/companies have the access to those.

17. How and to whom is the final decision on awarding the tender disclosed? Do reasons for the selection of the winning bidder have to be stated? Are post-awarding negotiations allowed and, if yes, under what conditions?

(1) In case of above taka 25 crore the final authority is the Cabinet Committee for purchase and head of the government. In case of less than taka 25 crore the Minister in-charge of the Ministry is the final authority. Accordingly there are different stages, depending on the values/monetary involvement of the purchase. After taking permission from the proper authority concerned officer can issue awarding letter.

(2) Yes, it is to be mentioned very distinctly.

(3) No, post-awarding negotiations are allowed under PPR 2003.

18. Are framework contracts allowed? If yes, what measures are taken to control against corrupt or unnecessary demands?

Yes, annual procurement plans are allowed. There are comprehensive monitoring and audit system. If any corrupt or unnecessary demands are placed it is directly thrown out and in some cases punitive measures are taken against the person responsible for corruption or putting unnecessary demands.

C. Integrity

Integrity of procurement personnel:

19. Do codes of ethics or similar instruments exist that explicitly apply to procurement personnel and entities? If yes, do they specifically address corruption risks, and do they contain conflict of interest provisions (e.g. provisions making mandatory the declaration of personal interests by agents and buyers)?

(1) Yes.

(2) Yes.

20. Does your country provide for specific training for procurement personnel that include integrity issues? Please list manuals or policy guidelines that might exist to clarify procurement procedures and principles to procurement personnel (if existing please attach a copy or internet-address for download).

(1) Yes.

(2) (a) Public Procurement Regulations 2003

(b) Public Procurement Implementation Procedure. Please see the website www.cptu.org.bd

21. Is procurement personnel required – and if yes by what regulation and to what institution – to report attempts by suppliers to undermine the impartiality and independence of action by offering bribes, benefits or other forms of inducement?

Yes, Govt. Servants Conduct Rules 1979.

22. Which penal and/or administrative sanctions are applicable to procurement personnel for accepting or soliciting bribes? Are public officials liable for the economic damage that the procuring entity suffers? What is the policy that applies to procurement personnel for accepting or soliciting small facilitation payments such as gifts, benefits, hospitality (e.g. outright forbidden, accepted under certain circumstances, etc.; please explain).

(1) Public Servants Discipline and Appeal Rules 1985, Penal Code and Anticorruption Act.

(2) Yes.

(3) This is not permitted at all. There are widely circulated published instructions not to accept any gifts, benefits or hospitality from any kinds of suppliers.

Integrity of bidders and suppliers:

23. Which penal sanctions are applied to a bidding company as a legal person and to its employees if it is found guilty of corruption related to the bidding procedure? Is the company liable for the economic damage that the procuring entity suffers?

(1) Under Public Procurement Regulations (PPR) there is provision to black list the liable company. Anticorruption cases also can be started against the guilty or corruption related persons/company.

(2) Same as above

24. Do your country's laws and regulations permit authorities to suspend, temporarily or permanently, from competition for public contracts and/or from other commercial activities an enterprise determined to have bribed a public official? If yes, is such disqualification mandatory or optional and which body decides on the disqualification and its exact terms? Which means are employed to implement the disqualification (e.g. publicly available list, declaration in the bidding process...)?

(1) Yes.

(2) Mandatory. The procuring entity.

25. Do bidders have to explicitly declare their abstention from any means that could improperly influence the procurement process or decision and, if yes, do such declarations also cover such unlawful practices by subcontractors or other third parties?

Yes; yes.

26. Do bidders have to disclose commissions, gratuities, or fees that have been or have to be legally paid to individuals or sub-contractors for their services provided for instance in the preparation of a bid or the execution of the contract?

No.

D. Accountability

Separation of responsibilities and independent scrutiny:

27. Which means are employed to avoid insulation of procurement staff and to ensure mutual control? (e.g. rotation of officers, decisions taken/validated by more than one actor, etc.)?

For this purpose at least two members are included from outside the procuring entity in the Tender Evaluation Committee [TEC]. Moreover at least five members are to be present to take decision. The TEC recommends the proposal. Then it goes to the office head or to the Cabinet Committee as per Regulations. The head of the office or Cabinet Committee again scrutinizes the whole process and can accept or reject the decision/recommendation of the TEC.

28. Are there regular and systematic internal and external audits of procuring entities/PPOs? If yes, are they mandatory; which bodies are in charge of this audit; are the audit reports publicly available? Are independent actors/NGOs invited to monitor the procurement procedures and what is the setting prescribed by law?

(1) Yes, the independent office of the Comptroller and Auditor General audits the procedure in regular interval. Reports of this office are submitted to the President of the Republic and then it is placed in the Parliament for discussion and comments.

(2) No, but sometimes, if necessary second or third expert committee is formed consisting external resource persons like university teachers, distinguish members of the civil society etc. Media personnel are always kept briefed about the procurement and process.

Review and complaint mechanisms:

29. Do your laws and regulations provide for review and complaints procedures? If yes, are they at administrative and/or judicial levels; what is the time limit for complaint/appeal, if any? How many complaint cases related to procurement are handled per year?

(1) First to the higher administrative authority and up ward accordingly. Later any one can go to the court. It is fundamental right of all citizens.

(2) Statistics is not available at this moment.

30. Who is entitled to initiate a complaint procedure (e.g. competing bidders, any citizen, etc.) and how are potential informants protected against retaliation (e.g. confidentiality, anonymity)? Are the decisions of the body handling complaints binding? What are the consequences if a complaint is proven valid (e.g. reopening of the bidding, liquidation of damages, etc.)?

(1) Competing bidders, any citizen, media report, or any body else can file complain and even can go to the court. Yes, confidentiality is maintained where necessary.

(2) If complain is proved valid, punishment is given as per gravity of the offence. If the company is proved guilty it could be black listed and money suit could be filed against the company. Even the management of the company could be brought to the police custody. Accordingly, if the concerned employees of the procuring entity are proved guilty they might loose their jobs, may go to prison or any other punishment could be imposed.