

Role of Supreme Audit Institution (SAI) in Ensuring Transparency And Accountability in Public Procurement: Bangladesh Perspective

Country Paper – SAI Bangladesh

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1.0 Introduction and Presentation Structure

Procurement as a category involves the largest volume of expenditure in the annual development budget of Bangladesh. It also constitutes the second largest category of expenditure in the revenue budget of the government. And the size of Public Procurement in Bangladesh is steadily increasing every year. About 75% of development budget and 25% of revenue budget of the government are spent on public procurement. Major areas of public procurement are construction, civil works, machineries and equipments, consultancy and stand alone¹ services, food grains etc. Realizing the importance of public procurement in the national economy, the office of the Comptroller and Auditor General of Bangladesh (OCAG, Bangladesh) puts particular emphasis on the audit of procurement to ensure that transparency and accountability exists at all stages of the procurement process. This paper will focus mainly on matters relating to public procurement regulations and legislation, procurement methods, Electronic Government Procurement (e- GP), audit objectives, audit procedure, audit findings and Public Accounts Committee (PAC)² deliberations on procurement related audit observations. The paper will also reflect on the challenges ahead in procurement auditing.

¹ Service which is non-intellectual in nature.

² Parliamentary Standing Committee that discusses audit reports of SAI, Bangladesh.

2.0 Public Procurement in Bangladesh

2.1 The Legal Regime

Two principal legal instruments to handle public procurement in Bangladesh are the Public Procurement Act, 2006 (PPA, 2006) and the Public Procurement Rules, 2008 (PPR- 2008), both became effective from 31st January, 2008. Earlier, for the first time, the Public Procurement Regulations, 2003 (PPR-2003) provided a unified procurement processing system. The procurement practices followed until the issue of regulations dated back to 1930s when the 'Manual of Office Procedure (Purchase)' was first issued and amended last in 1977. With the enactment of the PPA, 2006, more transparent and accountable procedures were introduced. PPR- 2008, framed under the act, is a complete document for public procurement that provides scope for procurement under different methods. Some ancillary provisions related to procurement are Delegation of Financial Powers (for Revenue and Development purchases), Donors Guidelines and Administrative Orders etc.

2.2 Methods of Procurement

Procurement methods are based on nature of items procured and the Act explicitly categorizes the items as good, works and services (both stand alone and intellectual). There are five methods for procurement of goods and works. Procurement of intellectual services is made mainly following two methods. Stand alone services are procured using the methods of goods.

Methods for procuring goods and works:

- (i) **Open Tendering Method (OTM):** The open Tendering shall be the preferred method of procurement unless the threshold or special circumstances relating to a specific requirement make it more appropriate for one of the other Procurement methods to be used. Tenders are invited from all eligible tenderers through public advertisement and tender security is mandatory under this method. Other methods of procurement may be resorted to under certain conditions and should be recorded stating the justifications for the method thus selected.
- (ii) **Limited Tendering Method (LTM):** LTM applies when goods and works are available only from a limited number of suppliers or contractors or in urgency when competitive Tendering would be impractical. LTM usually follows an enlistment process and tender security is not mandatory here.
- (iii) **Direct Procurement Method (DPM):** DPM is allowed when, for technical reasons, goods are available from only one source, or for additional procurement of goods and services from the original supplier, or for the procurement of goods, services, and works of very urgent nature. DPM is discouraged as it does not provide the benefits of competition, lacks transparency and could encourage unacceptable and fraudulent practices

- (iv) **Two-Stage Tendering Method (TSTM):** It is followed for large complex facilities or when complete specifications may not be possible in one stage or alternative technical solutions are available in the market. In the First-Stage, a Procuring Entity shall invite un-priced Technical proposals through advertisement on the basis of a conceptual design and for the Second-Stage, the procedures for tender submission, opening, evaluation and award of the contract shall follow the same procedures as for Open Tendering Method.
- (v) **Request for Quotation (RFQ):** RFQ is applied for standard off-the-shelf goods and services, low value simple works and physical services provided that the estimated value of such Procurement shall not exceed the threshold prescribed for this method.

For procurement of intellectual services, mainly **Quality & Cost Based Selection (QCBS)** and **Selection under a Fixed Budget (SFB)** are used. QCBS is the preferred method that shall be used in most cases and shall take into account-(i) the quality of the Proposal and (ii) the cost of the Services. SFB is appropriate only when the assignment is relatively simple and can be precisely defined; and the budget is fixed.

Negotiation is a major issue in service procurement but in procurement of goods and works negotiation is allowed only in DPM. No lottery can be used for selecting a tenderer except in LTM for domestic procurement and where there is a tie in prices for lowest evaluated tenderers.

2.3 Electronic Government Procurement (e- GP)

The government of Bangladesh is well aware of the irregularities and hassles associated with public procurement. To overcome these problems, the government has embarked upon a plan to introduce Electronic Government Procurement (e-GP) in the country. The e-GP is being introduced in the country to materialize the government vision for building a Digital Bangladesh. This system will be introduced in two phases. In the first phase e-tendering will be introduced in the four targeted departments. In the second phase, e-Contract Management System (e-CMS) will be introduced. Under the e-GP system the tenderers are not required to remain physically present to submit the tenders and thus the tenderers will be relieved from the coercive practices³. This will broaden competition resulting in better procurement. It will usher a new era in ensuring transparency and accountability in public procurement because the Public Procurement Act and the Public Procurement rules will have to be followed by default in e-GP.

³ Threatening persons to influence a decision or creating obstructions in submission of tenders.

3.0 Procurement Audit in Bangladesh

3.1 Audit Objectives

The objectives of public procurement auditing are (1) to ascertain whether the process of acquiring goods and services ensures quality, quantity, accurate time, right price and right source and (2) to ensure whether the objective with which the procurement of goods and services is made has been accomplished. This involves examination and assessment of requirements, placement of purchase orders, storage, consumption, utilization and cost recovery. It is essential to ascertain whether public procurement of goods and services were made through the most competitive rates and whether value for money has been ensured.

3.2 OCAG Bangladesh audit Procedures for audit of public procurement

While conducting audit of public procurement, the OCAG Bangladesh follows certain audit procedures. For every contract, executed under the public procurement rules, audit checks that: i) Adequate publicity and time have been allowed for the prospective bidders to respond, examine advertising channel used and time allowed at every stage of the procurement cycle; .ii) Bidding documents clearly define the bid evaluation criteria ; iii) Bidding documents clearly describe the form of bid iv) standard bidding documents have been used; v) Fees for bidding documents and bid security⁴ amount are not too high that discourage bidders and thereby restrict competition; vi) Bidding documents are precise and clear about the work, location, goods to be supplied, plan and schedule of delivery and installation, minimum performance required; vii) Performance security is in an appropriate form and amount sufficient to protect the borrower in case of breach of contract by the contractor together with liquidated damage to cover loss, extra cost due to delay in delivery, viii) bids are opened in public, read aloud, recorded, no change in substance or price allowed; ix) The evaluation committee is qualified and does not include anyone with a personal interest in the contract; x) all procurement related decisions are recorded in sufficient detail clearly outlining the reasons why such decision has been taken; xi) contract has been awarded to the bidder whose bid has been determined substantially responsive⁵ and offered the lowest evaluated price. xii) Criteria and methodology for selection of successful bidder outlined in the bidding documents have been properly applied. xiii) Terms and conditions of the contract are the same on which bids were asked or prequalification of contractors was invited.

⁴ Between 1-3 % of estimated cost.

⁵ Means qualified for consideration based on evaluation criteria stated in the bid documents.

3.4 Some Findings from Procurement Audit

While auditing any organization OCG Bangladesh employs comparatively more audit resources in the procurement area. Audit experience in the public sector of Bangladesh reveals that most of the financial irregularities occur in the procurement area. Major audit findings in this area include non compliance with procurement rules and regulations. Many Procuring Entities under the government do not observe these rules properly.

i) Under the Public Procurement Rule 16, preparation of procurement plan is mandatory for all Procuring entities. But it is found that many entities do not prepare annual procurement plan and they procure goods and services as and when required basis. This results in slow implementation of Annual Development Plan (ADP) as well as imbalanced expenditure of public funds.

ii) As per Rule 8 of PPR-2008, for certain high value procurement the Tender Evaluation Committee (TEC) shall have representation from external bodies. But audit experience demonstrates that in many cases the Tender Evaluation Committees have been formed without external members, creating scope for manipulation.

iii) Regarding procurement of additional deliveries and repeat orders the rule 77 of Public Procurement Rules states that additional deliveries of goods and related services, from the original supplier, and repeat orders of similar nature from the original supplier or contractor shall be subject to the condition that the contract values must not exceed the threshold prescribed for the purpose. But audit findings reveal that many Procuring Entities are not following this guideline in the course of taking additional deliveries.

iv) Public Procurement Act and Public Procurement Rules are very specific in prescribing that right method of procurement should be adhered to while procuring goods and services. Audit experience, however, shows that in many cases the procuring entities adopt split up technique either to avoid OTM or to avoid the sanction of higher authority including the Cabinet Committee on Government Purchase (CCGP) which is the highest approving authority for procurement of goods and services.

v) Public procurement Rule 90 states that the procuring entity must advertise all Invitations for Prequalification(IFPQ), Invitation for Enlistment(IFF), Invitation for Tender(IFT) and Request for Expression of Interest (ROI) in at least one Bangla language national newspaper and one English language national paper, both having a wide circulation within Bangladesh. The rule has also provision for advertisement in the Central Procurement Technical Unit (CPTU)⁶'s web site for high value procurement. Audit experience, relating to advertisement reveals that many procuring entities advertise in newspapers which do not have a wide circulation or they do not publish in CPTU website. Some entities make advertisement in local news papers when requirement is that the advertisement should be made in the national newspapers.

⁶ The central public procurement office for overall policy making and supervision of public procurement in Bangladesh.

vi) Public Procurement Rule 81 authorizes the procuring entity to undertake direct cash purchase of low value goods and urgent and essential services such as maintenance, repairs, transportation and others in the value and annual aggregate amounts specified for this purpose. But audit experience reveals that in many cases the procuring entity does not restrict itself to the limit in case of direct cash purchase.

vii) According to the provision of Public Procurement Rule 27, a performance security shall be furnished by the successful tenderer in the amount specified in the Tender Data Sheet (TDS) following the threshold specified for this purpose. In the course of auditing it is, however, found that the Procuring Entity did not forfeit the performance security even in the event of failure of the Tenderer to perform the job.

viii) Preparation of proper tender documents is a prerequisite for a good procurement. Due to lack of proper knowledge procuring entities cannot prepare proper tender documents and goods with low value but high specification are being procured. Many occasions procuring entities prepare tender documents so as to favour a particular bidder.

In addition to the above deviations, other irregularities include excess expenditure due to acceptance of tender at a high price as compared to the estimated cost, acceptance of tender at a much lower price than the estimated price resulting in the failure of the bidder to deliver goods.

4.0 Public Accounts Committee deliberations on OCAG Audit Reports on Public Procurement

In accordance with Article 132 of the Constitution, the Comptroller and Auditor General submits audit reports to the Hon'ble President of the Republic who causes them to be laid before the Parliament. These reports are later discussed by the Public Accounts Committee (PAC) of the Parliament.

A procuring entity under the Ministry of Communication adopted unfair means as regards to the publication of advertisement in the daily newspaper. The audit party was shown an attested copy of advertisement during the course of audit. On verification by the audit party in the newspaper office it was, however, found that actually the tender was not advertised in the newspaper. A huge amount of money was spent, in this case, in the name of construction and maintenance of roads. After hearing the case in its 62nd meeting the PAC recommended that the ministry should form an inquiry committee to see if the work was actually completed and submit a report to this effect within 30 days through OCAG Bangladesh. The PAC also recommended that a certain amount of money should be recovered from the persons involved under the Public Demand Recovery Act.

A procuring Authority under the Bangladesh Railway procured concrete slippers through international bidding. Later on it was found that the slippers were not suitable for use by the Bangladesh railway. After hearing the case, the PAC in its 39th meeting recommended that the money should be recovered from the individuals involved with the procurement process.

A civil surgeon office under the Ministry of Health and Family Welfare procured Medical & Surgical Requisites (MSR) by spending huge amount of money. While auditing this procurement, it was found that the items were purchased at a much higher cost than the prevalent market price, causing huge loss to national exchequer. The PAC of previous parliament recommended the recovery of lost amount from the persons responsible. In the follow up meeting of this case, the PAC of present parliament in its 34th meeting also recommended that the amount should be recovered immediately.

Without having received goods it was shown that the same has been received and in the process a good amount of money was lost in a project of Primary and Mass Education Ministry. After learning that the matter is pending with the Anti Corruption Commission for long, the PAC in its 15th meeting asked for explanation for the delay and recommended for the supervision and follow-up of the case by the Ministry also.

While procuring goods and services in respect of a development project of Ministry of Health and Family Welfare unfair means were adopted by the Procuring Entity as regards to the publication of advertisement in the newspaper. It was a collusive procurement. After discussion, the PAC in its 10th meeting recommended that the money should be recovered from the officials involved in signing the advertisement letter, punitive measures should be taken against them and departmental actions and criminal proceedings should be started against them, if necessary.

5.0 Challenges in the audit of Public Procurement

Audit of public procurement requires special expertise on the part of the auditor. Procurement audit is a complex task. Auditors must develop skill not only in public procurement act and public procurement rules, they will have to develop knowledge on donors' procurement guide lines as well. Besides an auditor also needs to know the technicalities, at least the specification of the goods and works. Not only that procurement rules are vibrant and so are the technicalities. So the greatest challenge in the audit of public procurement is to have proper expertise and up to date knowledge in this area. Another major challenge in auditing public procurement has been the existence of both PPR as well as the earlier regulations in certain areas like Railways and Defense. Advantages of either PPR or other regulations are taken depending on situations that bring in benefit for the procuring entities. On the other hand with the introduction of e- government procurement, all procedures including registration, tender invitation, tender submission, tender opening, evaluation, approval, and work order would be completed online. So auditing techniques have to be more IT based. To meet this challenge, a core group for auditing e-GP should be developed in each audit directorate.

6.0 Conclusion

Public Procurement Auditing is one of the most effective instruments of ensuring Transparency and accountability in public procurement system and practice in Bangladesh. It is the constitutional obligation of the OCAg to ascertain to what extent the Public Procurement activities of the government have adhered to the laid down public procurement policies, guidelines, rules and practice and also to what extent they have brought in desired benefits. The OCAg Bangladesh has been striving hard towards fulfilling this constitutional obligation, thus ensuring maximum dividends for all the stakeholders.

References:

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- [4] The procedures for implementation of The Public Procurement Regulations 2003, IMED, Government of the People's Republic of Bangladesh, March 2004
