

**Corruption in development partner financed public procurements: Case study on construction related procurements under the Ministry of Primary and Mass Education of the Government of Bangladesh**

**Research Project for Emerging Issues / Advanced Topics Course**

**Diploma in Investigative and Forensic Accounting Program  
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## **Abbreviations and Acronyms**

ACC	The Anti-Corruption Commission of Bangladesh
APP	Annual Procurement Plan
ADB	Asian Development Bank
ADP	Annual Development Programme
BDT	Bangladesh Taka (Currency); USD 1 = BDT 69.
CAG	Comptroller and Auditor General of Bangladesh
CIDA	Canadian International Development Agency
CPI	Corruption Perception Index
CPTU	Central Procurement Technical Unit
DFID	Department for International Development (UK)
DOSA	Dollar in Special Account
DP	Development Partners
DPA	Direct Project Aid
DPE	Directorate of Primary Education
DPP	Development Project Proforma
ERD	External Resources Division of the GoB
FY	Fiscal Year
GDP	Gross Domestic Product
GoB	Government of Bangladesh
IBRD	International Bank on Reconstruction and Development
IDA	International Development Agency (World Bank)
JICA	Japan International Co-operation Agency
LGED	Local Government Engineering Department
MDG	Millennium Development Goals
MOPME	Ministry of Primary and Mass Education
NORAD	Norwegian Agency for Development
OECD	Organization for Economic Co-operation and Development
PEDP-II	Second Primary Education Development Program
PFWG	Procurement and Finance Working Group
PLU	Project Liaison Unit
PP	Project Proforma
PPA2006	The Public Procurement Act 2006
PPR 2003	The Public Procurement Regulation 2003
PPR 2008	The Public Procurement Rules 2008
QCBS	Quality and Cost Based Selection
RPA	Reimbursable Project Aid
SIDA	Swedish International Development Agency
STD	Standard Tender Document
TI	Transparency International
TIB	Transparency International Bangladesh
UNCITRAL	United Nations Commission on International Trade Law
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Education Fund
USD	United States Dollar
WB	The World Bank

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## **DISCLAIMERS**

Case study materials collected purely for research purpose on confidential basis from one of the major development partners and cannot be disseminated without prior approval of the author. Other information used in the research paper is available in the public domain as referenced.

## **SUMMARY**

This research project identifies the frauds that exist in the government procurement systems within the donor funded regime in particular reference to construction procurements under the Ministry of Primary and Mass Education of the Government of Bangladesh for financial year 2005-2006 with possible reasons and way forwards.

The research paper is arranged in three sections: the first section reviews the state of corruption in Bangladesh, role of donors in development efforts of Bangladesh, procurement rules and procedures, review of legal environment to deal with procurement related corruptions etc. Second section deals with a sector specific case study of procurement related corruption in Bangladesh which highlights nature and characteristics of corruptions observed in the case study. The last section of the paper deals with analyzing adequacy and effectiveness of procurement legislation in combating procurement corruptions in Bangladesh.

The research project has observed how procurement rules incorporate provisions to prevent or deter fraudulent and corrupt activities and at the same time also highlights the loopholes that the procurement rule still have to continue corrupt practices at various stages of procurement. The research project utilized indicators as displayed in the some of the outcomes of Detailed Implementation Review (DIR), a proactive diagnostic tool developed by the World Bank in 2001 to evaluate World Bank-financed projects for indicators of fraud and corruption, to analyze the selected Case Study and found almost identical red flags. Release of confidential information to bidders, fraudulent

documentation and dummy bids, exchange of industry price list amongst the bidders, complimentary bidding, contract rotation, contract splitting, bid rigging, bid suppression, same bidder in different names, typical bidding pattern, non-existent complaint etc., are some of the common areas of procurement that was observed in the case study.

The research paper indicates that integrity level of elites in Bangladesh, who controls commercial, judicial and political power simultaneously, represent serious obstacle for successful reforms. Despite the significant legislative developments, the research project noticed that seriousness of the government officials dealing with corrupt practice is still not apparent. Disregard for law enforcement and judicial systems and pervasively low ethical standards were also observed in the research project. Except for the issues on declaration of misprocurement by development partners, concerns are not visible on the government part on the existence, nature and extent of corruption in procurement. The civil society is taking a big step in creating awareness, but where corruption has become so rampant it is not any more an embarrassment. Government is asking to redefine corruption index from perception to more on specific indicators, apparently in an efforts to keep away from the bottom of the corruption list. Evidence from the country case study highlights directions for some of the future anti-corruption initiatives as follows:

- Pre-bid clarification meeting must be held well in advance. The implementing agencies would ensure mandatory convening of pre-tender meeting in all procurement. Rejection of bidding must be informed with reasons of deficiencies of bid document.



- Requirement definition stage and project implementation phase should be included as part of the procurement rules and review should cover those parts of activities.
- Encourage electronic filing of bidding documents, ensure non-splitting of contract where possible, encourage nation-wide competitive process, where possible, maintain confidentiality of cost estimation.
- Dissemination of Public Procurement Regulations 2003, Public Procurement Act 2006 (PPA 2006) and its associated Public Procurement Rules 2008 (PPR 2008) upto the smaller administrative units (sub-district level). To that end, implementing agency must conduct regular training program. Ensure improvement of capacity and independence of the Foreign Aided Projects Audit Directorate.
- Quality certification provided by user department needed to be independently verified in all cases by independent review team. Executing agencies must submit Risk Management Strategy indicating the achieved performance indicators against the target indicators.
- Development Partners need to continue to pressurize the government by way of declaring misprocurements, so that the Government is forced to ensure that genuine bidders are not eliminated. Legal provisions should be framed so that the legal persons may be prosecuted criminally. Need to improve the capacity and ensure political and administrative independence of the Anti Corruption Commission.

- Introduction of separate and detailed Code of Conduct applicable for each procuring authority to be drawn in light of provisions of Public Procurement Act 2006 with provision of separate enforceability.
- Formation of Public-Private Oversight Committee should be formed through governmental pronouncement who should be entrusted to review contracts beyond a certain threshold.
- Government should take harder stance on corruption allegations and legal enforcement should be instituted against the corrupt officials. Stricter due diligence exercise be carried out by the officials to identify the person or the institution involved behind the bidding process and those should be banned for any future bid participation.
- Government should consider use of forensic accountants as a tool for assisting investigating agencies in more professional manner and at the same time gradually trying to improve forensic accounting specialty within itself to see through successful prosecutions of alleged corruptions.
- Effective political support and commitment is seen as the foremost condition towards success of ACC in Bangladesh.

The research paper concludes that corruption can only be meaningfully addressed if level of integrity is demonstrated from the top level politicians.

## INTRODUCTION

With its 150 million people and half of the population living below the poverty line, Bangladesh is one of the poorest and most populous countries in the world. The Anti-Corruption Commission (ACC) established in Bangladesh in 2004 amid huge development partners (DP) pressure specially by the Asian Development Bank (ADB) who directly supported the ACC (ADB – ‘Support to Good Governance Initiatives’) has so far proven unable to diminish corruption in Bangladesh despite the country being among the most corrupt in the world. Bangladesh has no anti-corruption strategy.<sup>1</sup> Government Revenue, at just 10.3% of gross domestic product, remains far too low to meet the growing demand for infrastructure and social service.<sup>2</sup> Due to its historical dependency on external aid and loans, Bangladesh has one of the strongest local presences of DPs, both globally and within South Asia. Most of such aids and loans are used for the purpose of and complement for government procurements. On the backdrop of such a major issue, the procurement by the Government of Bangladesh deserves special attention.

### **Motivation for work**

Bangladesh constitution has no direct provision on public procurement. It has however enacted Public Procurement Act in 2006 to regulate approximately US\$3 billion per year

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<sup>1</sup> Harald Mathisen, *Donor voices on harmonisation and aid alignment for effective anti-corruption interventions - Lessons learned in Bangladesh*, CMI/U4, p4. (<http://www.u4.no/pdf/?file=/themes/coordination/donor-coordination-bangladesh.pdf> accessed on 10th April 2009)

<sup>2</sup> ADB and Bangladesh 2008 A Fact Sheet ([http://www.adb.org/Documents/Fact\\_Sheets/BAN.pdf](http://www.adb.org/Documents/Fact_Sheets/BAN.pdf) accessed on the 8th April 2009)

of government procurement. Inadequate procurement expertise, complex bureaucratic decision-making processes, lack of transparency, allegations of corruption in the procurement of goods, works and services have contributed considerably to slow down project implementation.<sup>3</sup> Some of the recently adopted laws and regulations enacted by Bangladesh have been strongly inspired by the model law on public procurement of the UN Commission on International Trade Law (UNCITRAL). However, practically Bangladesh remained on the top of the corruption perception index. Transparency International has for some five consecutive years named Bangladesh the most corrupt country in the world.

As a part of education sector, Ministry of Primary and Mass Education (MoPME) under the Government of Bangladesh remained one of the largest recipients of allocation of national annual budget of Bangladesh. A specific program named Second Primary Education Development Program (PEDPII) under the MoPME is being implemented with development budget of USD 1,101.86 million of which Development Partners (DP) commitment is USD 734.653 million which is 66.67% of total project cost. Construction works alone constitutes 53.54% of total budgetary allocation of this program. For reason of high DP concentration in such procurements the author is motivated to analyze various construction related procurement irregularities of Second Primary Education Development Program (PEDPII) under the MoPME.

This research project is intended to identifying the frauds that exists in the government procurement systems within the DP funded regime in particular reference to the construction

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<sup>3</sup> <http://www.cptu.gov.bd/PPRP.aspx> accessed on 10th April 2009

procurements under the MoPME of the Government of Bangladesh for financial year 2005-2006 with possible reasons and way forwards. Financial information for the subsequent years still under audit and are not available for study or examination. The research paper proposes a theoretical approach based on standard procurement policies of the Government of Bangladesh and the conflict the Government is facing with the DPs. Examination is based on the findings of post procurement reviews carried out by the external auditors. Significant data used in the case study of this research project are confidential and for limited circulation and analytical approach is used as part of the methodology. Other data has been collected through Key Informant Interview (KII) and accessing through information available on public domain.

## **DEFINITIONS OF CORRUPTION**

Corruption refers to a wrongful design to acquire or cause some pecuniary or other advantage which may encompass a variety of wrongful acts, such as, among others, bribes, kickbacks, jury tampering, abuse of public office etc for private gain or favour by engaging improper and unlawful means.

**The Merriam Webster's Collegiate Dictionary:** defines corruption as

“inducement to wrong by improper or unlawful means (as bribery).”

**The 'Lectric Law Library's Lexicon** defines

CORRUPTION - An act done with an intent to give some advantage inconsistent with official duty and the rights of others. It includes bribery, but is more comprehensive; because an act may be corruptly done, though the advantage to be derived from it be not offered by another..... Sometimes corruption is understood as something against law; such as, a contract by which the borrower agreed to pay the lender usurious interest. It is said, in such case, that it was corruptly agreed, etc.<sup>4</sup>

### **United Nations Development Program (UNDP)**

In its corporate policy paper, Fighting Corruption to Improve Governance approved by the Executive Committee in July 1998, UNDP defined corruption as: the misuse of public

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<sup>4</sup> <http://www.lectlaw.com/def/c314.htm> accessed on the 28th April 2009

power, office or authority for private benefit – through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement.<sup>5</sup>

**World Bank** mentions corruption is an important aspect of poor governance, and often defined as:

“abuse of public office for private gain” which is a widely used definition applied by the World Bank (World Bank 2007).

### **Transparency International**

“Corruption involves behavior on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those close to them, by the misuse of the public power entrusted to them.”<sup>6</sup> Corruption can also take place among private sector parties. Hence, an alternative definition of corruption used by Transparency International (TI) is the misuse of entrusted power for private gain “according to rule” and “against rule”.

### **Asian Development Bank (ADB) defines**

corruption as “the abuse of public or private office for personal gain.” A more comprehensive definition is “Corruption involves behavior on the part of officials in the

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<sup>5</sup> [http://www.undp.org/governance/docsaccount/fighting\\_corruption\\_to\\_improve\\_governance.pdf](http://www.undp.org/governance/docsaccount/fighting_corruption_to_improve_governance.pdf) accessed on the 25th April 2009

<sup>6</sup> See World Bank 1997, p. 8. See also Transparency International 1996. *The TI Sourcebook* edited by Jeremy Pope. Berlin: TI, p.1. The World Bank definition includes the activities of private agents who subvert public policies and processes for competitive advantage. (<http://www.adb.org/documents/policies/anticorruption/anticorrupt300.asp> accessed on the 28th April 2009

public and private sectors, in which they improperly and unlawfully enrich themselves and/or those close to them, or induce others to do so, by misusing the position in which they are placed.”<sup>7</sup>

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<sup>7</sup> <http://www.adb.org/Documents/Policies/Anticorruption/anticorrupt300.asp> accessed on the 28th April 2009.



# SECTION 1

## I. CORRUPTION: A CASE FOR BANGLADESH

“ Corruption means power unbound. It gives the powerful the means to work against and around rules that communities set themselves”

Prof. Wangari Maathai, 2004 Nobel Peace Prize Laureate<sup>8</sup>

### General Overview and international perception

Bangladesh is a developing country, and by definition, poor. Since independence from Pakistan in 1971, Bangladesh has achieved a steady rise in growth of GDP<sup>9</sup> from an estimated 4.2% per annum in the 1975-80 periods to 5.5%+ in the last 5 years. The country still remains one of the poorest in the world, ranking 147<sup>th</sup> out of 179 on the Human Development Index.<sup>10</sup>

Corruption affects the political system itself. Those in power are typically concerned with pursuing private rather than public interests by doing business and amassing wealth. The Bangladesh elite comprised of a relatively small group holding commercial, judicial and

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<sup>8</sup> Hon. Prof. Wangari Maathai is the 2004 Nobel Peace Prize Laureate and founder of the Green Belt Movement. Comments made in the forwarding note captioned Water in the community: Why integrity matters, published in *Global Corruption Report 2008: Corruption in the Water Sector by Transparency International.*( page xix).

<sup>9</sup> Per capita GDP in 2006 was USD 1,155, source: UNDP,( <http://hdr.undp.org/en/statistics/> accessed on 23rd April 2009).

<sup>10</sup> Based on Human Development Reports of 2008, based on statistical value for the year 2006, published by the UNDP ( <http://hdr.undp.org/en/statistics/> accessed o the 23<sup>rd</sup> April 2009)

political power simultaneously. Often the very same individuals are involved both in politics and business. The real incentives of the elite represent a serious obstacle for successful reforms, as they see reforms and institutional strengthening as a threat to the lucrative possibilities of corruption.

The Berlin-based international anti-corruption organization, Transparency International (TI) released its annual Corruption Perception Index (CPI) for 2008 on the 23rd September 2008 results show that Bangladesh has scored 2.1 points in a scale of 0-10, and has continued to be ranked low- 10th from below, which is 147th among 180 countries included in the index this year with same score with other three countries – Kenya, Russia and Syria. Bangladesh was earlier placed at the very bottom of the list for the fifth successive year from 2001-2005 by TI index. In 2006 Bangladesh was ranked in no 3, and last year 7th. With the score of 2.1, almost the same as that of last few years' 2.0, Bangladesh's apparent upward movement in ranking from 7th to 10th does not necessarily indicate any notable better performance over last year, except that other countries may have performed worse.<sup>11</sup> Economists in Bangladesh however questioned Transparency International's methodology as the global corruption watchdog ranked Dhaka as the seventh most corrupt country in its annual Corruption Perception Index.<sup>12</sup>

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<sup>11</sup> Transparency International, *Documents on Corruption Perceptions Index 2008*, released on September 23, 2008. (<http://www.ti-bangadeh.org/CPI/CP2008/CPI2008-data-source.pdf> accessed 25 Apr 2009).

<sup>12</sup> <http://www.hindu.com/thehindu/holnus/003200709270921.htm> accessed on 25th April 2009.

### CPI: Performance of South Asian Countries 2007-2008<sup>13</sup>

Country	Score 2007	Score 2008	Rank from below 2007	Rank from below 2008
Bangladesh	2.0	2.1	7	10
Afghanistan	1.8	1.5	5	4
Pakistan	2.4	2.5	11	14
Nepal	2.5	2.7	12	16
Maldives	3.3	2.8	20	17
India	3.5	3.4	22	22
Sri Lanka	3.2	3.2	19	21
Bhutan	5.0	5.2	35	36

### Bangladesh's Score & Rank Compared to other Low-Scoring Countries 2007-2008<sup>14</sup>

	Score 2007	Rank 2008	Rank from below 2007	Rank from below 2008
Bangladesh	2.0	2.1	7	10
Kenya	2.1	2.1	8	10
Russia	2.3	2.1	10	10
Syria	2.3	2.1	11	10
Belarus	2.1	2.0	12	9
Central African Republic	2.0	2.0	7	9
Ivory Coast	2.1	2.0	8	9
Ecuador	2.1	2.0	8	9
Laos	1.9	2.0	6	9
Papua New Guneau	2.0	2.0	7	9
Tajakistan	2.1	2.0	8	9

DPs are particularly sensitive about corruption in foreign funded contracts because they have to convince their tax-payers that aid funds are being used efficiently and effectively. It is very difficult for a DPs to justify sustaining aid if there is suspicion that a significant proportion of the funds are being siphoned off through corruption.<sup>15</sup> According to TI's 2008 Global Corruption Report, unchecked levels of corruption would add US \$50 billion or nearly half of annual global aid outlays – to the cost of achieving the UN

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<sup>13</sup> Transparency International, *Documents on Corruption Perceptions Index 2008*, released on September 23, 2008 (.(<http://www.ti-bangadeh.org/CPI/CP2008/CPI2008-data-source.pdf> accessed 25 Apr 2009).

<sup>14</sup> *Ibid.*

<sup>15</sup> Frederick T. Temple, World Bank Ex- Country Director, Bangladesh served in Bangladesh between 2000- 2003, *Introductory Remarks at PARC Workshop*

Millennium Development Goals on water and sanitation alone.<sup>16</sup> The fight against bribery and corruption ranks high on the reform agenda of Bangladesh, as corruption constitutes an obstacle to investment, economic development, and welfare. One of the major areas of potential corruption is government procurement which is approximately US\$3 billion per year. Despite the efforts, corruption generally and especially bribery in public procurement remain recurrent in Bangladesh. Apart from bribery, rent-seeking and misappropriation of funds, the performance of public organizations is adversely affected by a host of other factors like excessive lobbying, delays in service provision, pilferage and larceny, irresponsible conduct of officials, bureaucratic intemperance, patronage and clientelism.<sup>17</sup>

### **Bangladesh commitment on anti-corruption**

The Anti Corruption Commission (ACC) Bangladesh was created through an Act promulgated on 23 February 2004 that into force on 09 May 2004. The first set of office bearers were appointed on 21 November 2004 with a commitment to make a difference to the nation's anti corruption initiatives and a fresh mandate.<sup>18</sup> However, it continued to have the politically influenced decisions. Soon after the 1/11 event in 2007, when the military backed civilian caretaker government took over suspending Constitution for two years, the ACC immediately following its reconstitution in February 2007, began working with renewed vigor and impetus duly acceding to the United Nation's

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<sup>16</sup> Transparency International, *Documents on Corruption Perceptions Index 2008*, released on September 23, 2008 (<http://www.ti-bangadeh.org/CPI/CP2008/CPI2008-data-source.pdf> accessed 25 Apr 2009).

<sup>17</sup> Zafarullah H. Siddiquee, *Dissecting Public Sector Corruption in Bangladesh: Issues and Problems of Control*, Source: *Public Organization Review*, Volume 1, Number 4, December 2001, pp. 465-486(22)

<sup>18</sup> Predecessor, the Bureau of Anti Corruption (BAC), was abolished on the same day.

convention against corruption that was adopted by the General Assembly on 31 October 2003.

### **Recent actions of ACC and political ramification**

The Anti Corruption Commission (ACC) till 16th February 2009, has over 1,500 pending investigations relating to charges of misappropriation of money, bribery and extortion, and illegal acquisition of wealth. Some 836 cases and 808 allegations are under investigation in total. The ACC has filed 1,216 cases over the last two years (Feb 2007-31st Jan 2009), since Lt. Gen (Retd) Hasan Mashhud Chowdhury, ex-Army chief, took over as Chairman. Of the total cases, 341 were filed by the Commission and 495 by police or other agencies. Some 156 cases have seen convictions, 521 cases are under trial, charge sheets of about 151 cases are under process, rest still under investigation. Of the cases under trial, five special courts in Dhaka are trying 81. The higher courts have stayed 645 cases, of which 301 were later withdrawn while 344 stays remain. The Commission has also served wealth statement notices on a total of 436 persons during the period. Of them, 335 submitted their accounts and 90 more are expected. Eleven failed to furnish their accounts, 6 of them were convicted for it.<sup>19</sup>

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<sup>19</sup> Source: Website of Anti-Corruption Commission of Bangladesh (<http://www.acc.org.bd> accessed on the 17th April 2009)

**Summary of prosecution status of ACC of Bangladesh are as follows:**

**PROSECUTION STATUS of the Anti Corruption Commission of Bangladesh**  
(Updated upto 01.09.2008)<sup>20</sup>

Status	No
Number of FIR Lodged by ACC	1146
Number of Inquiry in Progress	678
Number of Wealth Statements Asked For	373
Number of Investigation in Progress	725
Number of Charge Sheet in Progress	58
Number of Writ Petition	308
Number of Criminal Miscellaneous Cases	220
Number of Stayed Cases in HCD due Writ	64
Number of Stayed Cases due Criminal Miscellaneous Cases	182
Number of Appeals in which the Stay Order of the HCD were stayed by the Appellate Division and the Appeals were finally disposed off	60
Number of Appeals in which the stay order of the HCD were stayed by the Appellate Division firstly for a limited period then extended till disposals of the appeals. But the appeals are still pending for disposal by the full court of the Appellate Division	80
Number of Appeals in which the stay order by the HCD have been challenged but not stayed by the Chamber Judge in the Appellate Division and still pending for hearing in the full court of the Appellate Division and stay orders by the HCD are still in force	40
Cases Stayed in Trial Courts	37
Total Number of Cases in Court (Charge Sheeted)	117
Number of Cases disposed off in the trial courts	87

It is interesting to note that almost most of the anti-graft charges that were brought by the ACC during the last two years were against most politicians of the country that included cabinet ministers, parliament members, local government, political leaders as well as very limited number of bureaucrats and a few businessmen.<sup>21</sup> The large number of corrupt government bureaucracy largely remained out of the net, for unknown reason.

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<sup>20</sup> *ibid*

<sup>21</sup> For complete list of conviction by the Anti Corruption Commission of Bangladesh (April 2007 – November 2008 ) visit <http://www.acc.org.bd>.

A complete list of conviction as published by the Anti Corruption Commission covering period April 2007 and November 2008 would indicate that over a hundred politicians including their spouse were charged and convicted, mostly long imprisonment including confiscation of property as well as penalty, for amassing massive wealth beyond known source of income through corrupt practices including abetting corrupt practices of the spouse. Total list of prosecution indicate only a handful number was prosecuted.

It is observed that soon after the elected government took over, the nature of prosecution and conviction got slowed down and in many cases, charges were found to be withdrawn by the ACC, a clear indication of strong political influence and pressure on an independent "Anti Corruption Commission".

With the election of new civilian government on 28th December 2008, after suspension of Constitution for two years, the new Prime Minister Sheikh Hasina told in the first session of the new parliament that the Anti Corruption Commission should be "reconstituted" to ensure its own accountability. She said people had hailed the ACC's anti-graft drive, "but it came under suspicion when it was aimed at elimination of politicians".

The continued pressure from most political fronts including the PM herself left the ACC chairman feel isolated on nation's commitment on anti-graft drive and Anti-Corruption Commission chief stepped down on 2nd April 2009, ending the most challenging task he took up to fight corruption during the caretaker government's rule. ACC Chief concluded at the time of his resignation. "Corruption has not been properly addressed yet and there

is enough scope to work to that end. I hope those who will be leading the drive against corruption in future will carry on well," He said "Our work will best be evaluated if our initial steps leave any positive effect in the country," in his last lines before leaving the Commission office for the last time.

In a further move, the Cabinet of the Government of Bangladesh has decided on the 12<sup>th</sup> May 2009 to streamline the Anti Corruption Commission by proposing amendments in the Anti-Corruption Commission Act 2004 which would now require, among other things, prior approval of the Prime Minister to institute any case against any person by the ACC. In a meeting held on 15<sup>th</sup> March 2009 between the Finance Minister of Bangladesh and the donor group representatives of 33 donor countries and organizations led by the ADB and the World Bank country chiefs, the group strongly denounced any move to amend Anti Commission Act.

The country's anti-graft commitment had a colourful two years of heavy handedness on politicians and ultimately succumbing at least temporarily to the politicians. The ACC has so far proven unable to diminish corruption in Bangladesh despite the country being among the most corrupt in the world. <sup>22</sup>

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<sup>22</sup> Luis Alfonso de Alba, President, UN Human Rights Council, *An Open Letter to the UN Human Rights Council by the Asian Human Rights Commission, , c/o OHCHR-UNOG, SWITZERLAND, RELEASE August 8, 2006, AHRC-OL-041-2006.*



## **II. ROLE AND CONTRIBUTION OF DEVELOPMENT PARTNERS IN BANGLADESH ECONOMY**

### **Background**

Due to its historical dependency on external aid, Bangladesh has one of the strongest local presences of DPs, both globally and within South Asia. This large presence has created the need for mechanisms that can help to coordinate the activities of the various DPs and the Government of Bangladesh.

### **Foreign Aid in Bangladesh**

In Bangladesh, foreign aid serves to bridge the gap between savings and investments and make up the deficits in the country's balance of payment. The DPs of foreign aid to Bangladesh include individual countries, multinational financial institutions and international agencies and organizations. Foreign aid to Bangladesh is classified on the basis of terms and conditions, source, and use. Accordingly, the various types foreign aid are loans and grants, or bilateral aid and multilateral aid, or food aid, commodity aid, project aid and technical assistance. Project aid, a part of foreign aid, is the provision of grants and loans for the financing of project costs. It also finances the import of equipment and commodities related to projects. In Bangladesh project aid relates to a large extent, over 40%, to the financing of projects included in the Annual Development Program (ADP).<sup>23</sup>

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<sup>23</sup> *Annual Development Plan (ADP) is the annual investment program of the Government of Bangladesh (GoB) which details different projects being undertaken by the GoB, together with the costs, cumulative expenditure, projected expenditure during the period, source of financing etc. ADP for 2006-*

The Organization for Economic Co-operation and Development (OECD) established in 1960 is a major provider of foreign aid and capital to developing countries. Most major DPs of foreign aid to Bangladesh are now members of an Aid Consortium, often referred to as the Aid Group<sup>24</sup>, which meets every year to review developments in the economy of Bangladesh and to pledge aid.

Foreign aid disbursed to Bangladesh<sup>25</sup> during 1971-72 to 2006-07 was USD 46,460.80 million.<sup>26</sup> Total DP commitment during the same period was USD 204,935.787 million indicating only 22.7% of commitment amount could be utilized or disbursed. A major weakness of the Government of Bangladesh is its historical inability to properly utilize project aid and for many years the project aid disbursement averaged less than 20% of the opening pipeline. This was due to delays in identification, preparation and approval of projects, attempted corruptions, slow release of funds, poor infrastructure support, inefficiency in project management, the tied nature of aid and institutional weaknesses in meeting DP conditionalities.

As a percentage of the country's GDP in current prices, foreign aid was 9.3% of the GDP in 1975, 7.0% in 1982, 6.76% in 1993, 4.53% in 1996, 3.67% in 1998 and 4.22% in 1999. The gradual decline in the foreign aid-GDP ratio during 1972 -99 despite the

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2007 was BDT 216,000 million (USD 3153 million) of which project aid and technical assistance was Taka 8932.66 (USD 1304.03 million) which is 41.35%.

*24 Members of the Aid Group include Australia, Belgium, Canada, Denmark, France, Finland, Germany, Italy, Japan, Netherlands, Norway, Sweden, Switzerland, UK, USA, IDA, ADB, EU, IFAD, UN agencies, the Ford Foundation and Asia Foundation. Non-Aid Group donors of foreign aid to Bangladesh include China, India, Kuwait, Pakistan, Saudi Arabia, South Korea, Spain, UAE, the IDB and OPEC.*

*<sup>25</sup> Bangladesh became an independent state on the 16th December 1971.*

*<sup>26</sup> This does not include IMF credit, some special drawings including Ministry of Defense, Ministry of Foods, private sector, NGOs.*

consistent increase in the volume of foreign aid took place because of the increase in GDP during the same period. Historically it is observed that ADP of Bangladesh is largely dependent upon the DP funding.

Bangladesh is facing an increasingly competitive aid environment. DPs often face budget constraints due to an increase in the number of countries requiring aid. Further, DPs' assistance to Bangladesh is now contingent on implementation of reform programmes and efficient utilization of foreign aid.

### **Significance of ADB and IDA as Development Partners in Bangladesh**

Multilateral agencies comprise the largest contributor to the overall DP contribution and as a consequence to the ADP. Multilateral agencies contributed to 46.78% of total DP disbursements made during 1971-72 to 2006-07. IDA and ADB together shared 74.66% of contributions made by all the multilateral agencies during the same period. During 1971-72 to 2006-07, disbursement of IDA and ADB together was USD 16,230.5 million comprising 34.93% of total food, commodity and project aid received by the country.

Total DP commitment during 2006-2007 was USD 2256.18 million against which commitment of Asian Development Bank (ADB) and International Development Agency (IDA) during 2006-2007 were USD 860.41 million and USD 374.96 million respectively indicating 54.75% share in the DP budget. <sup>27</sup>

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<sup>27</sup> Source: *Flow of External Resources into Bangladesh as of 30 June 2007* published by Economic Relations Division of the Ministry of Finance dated 14<sup>th</sup> January 2008.

### **Concentrate on procurement of education sector**

Out of twenty economic sectors divided by the Government of Bangladesh for the purpose of budgetary allocation, education is the third largest recipient of allocation of budget after transportation and water resources sector. During 2006-07, education sector received ADP allocation of BDT 29,297.20 million (USD 427.69 million) which was 13.56% of total ADP allocation. Project and technical assistance from the DP comprises BDT 12,773 million (USD 186.47 million) which was 43.59% of total ADP allocation for the education sector for the same year.

DP contribution to education sector is also significant. Between 1983-84 and 2006-07, total project aid by DP was USD 29,223.60 million of which share of education sector was USD 2495.10 which was about 8.53%.

Apart from that both ADB and the World Bank have significant influence on the policy levels of the Government. It was therefore felt that sector receiving one of the largest ADP allocations and at the same time attracting both IDA and ADB financing could be a good representative sector for research. As such education sector was chosen. Ministry of Primary and Mass Education (MoPME) of the Ministry of the Government of Bangladesh was taken as a representative case for evaluation.

### III. LEGAL ENVIRONMENT TO COMBAT PROCUREMENT CORRUPTION IN BANGLADESH

"Those who perpetrate injustice and those who tolerate the same, Let both burn into ashes, My Lord, in Your ever wrathful flame ..." – Nobel Prize Winner (1913) in literature Poet **Rabindranath Tagore**.

#### General overview

Bangladesh constitution has no direct provision on public procurement nor does any nationally applicable procurement law exist to regulate approximately US\$3 billion per year of government procurement.<sup>28</sup> However, Bangladesh has established set of upstream rules and norms of good behavior (Code of Conduct), a preventive approach (ex-ante) conducive to corruption free society as well as introducing positive laws including procurement and financial management rules. Purpose of procurement legislation, for example, is to maximize competition, accord fair treatment to suppliers and contractors, enhance transparency and objectivity and in so doing promote economy and efficiency and curb abuses.<sup>29</sup> The second aspect consists of anti-corruption laws proper, general and specific legislative enactments, whose purpose is to provide appropriate remedies, including criminal sanctions and penalties, procedural rules, institutional mechanism as needed to combat acts of corruption that have already occurred ( curative approach, dealing with corruption ex-post).<sup>30</sup>

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<sup>28</sup> <http://www.cptu.gov.bd/PPRP.aspx> accessed on 19th April 2009.

<sup>29</sup> *UNCITRAL Model, Guide to Enactment, Paragraph 8.*

### **Public Procurement Regulations 2003**

Bangladesh reformed its legal and institutional framework governing public procurement.

In 2003, the Public Procurement Regulations were passed at the executive level, along with binding implementation procedures. Prior to that Bangladesh followed local procurement approach based on percentage below or above a preset cost estimation by the authority including a process of lottery where many / most vendors bidding same percentage. The new comprehensive procurement regulations were largely inspired by the UNCITRAL Model Law on Procurement of Goods, Construction, and Services. The Public Procurement Regulations 2003 establish a Central Procurement Technical Unit (CPTU), which evaluates and oversees the implementation of the procurement regulations, issues guidance and policies, coordinates training, and keeps a list of debarred suppliers.

Public Procurement Regulations 2003 which introduced Standard Tender Document (for all goods, works and services) as well as setting out financial threshold and timeline, all made mandatory and binding for all procuring agencies at national level; they also extend to some enterprises that spend government or development funds. The Government can decide not to apply rules in the interest of national security and defense. Like the UNCITRAL model law, the Procurement Regulations do not cover issues like the needs assessment or the project implementation, phases that are particularly exposed to corruption. The framework therefore does not provide for particular safeguards against

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*30 W. Paatii Ofosu Amaah, Raj Soopramaniem and Kishor Uprety, Combating Corruption: A comparative Review of Selected Legal Aspects of State Practice and major International Initiatives, a World Bank publication 1999, page 3.*

corruption-induced creation of “needs” or delivery of substandard goods, works, and services.<sup>31</sup>

Actual purchases are conducted in a decentralized manner by each ministry, department, or other authority. For procurement exceeding BDT 250 million (about USD3,800,000), the approval of the Cabinet Committee on Government Purchases is required.

#### **The Public Procurement Act 2006 (PPA 2006)**

The Public Procurement Act 2006 was passed in the Parliament and received Presidential assent on the 6th July 2006 and has been made effective from 31st January 2008.

#### **Public Procurement Rules 2008 (PPR 2008)**

Amendment to Public Procurement Regulations 2003 was necessary to bring that in line with the PPA 2006. As such Public Procurement Rules 2008 was introduced on the 28th January 2008.

#### **Governance Issues addressed in PPA 2006**

Sec 64 of PPA 2006 details professional misconduct / offence applicable for procurer of services and as such directed provisions under Rule 3(b) and Rule 3(d) of the Government Servants (Discipline and Appeal) Rules 1985, provisions of Prevention of Corruption Act 1947 and Penal Codes of 1860 for the purpose of prosecuting persons found guilty under offences under PPA 2006. Rules 127 of the Public Procurement Rules 2008 elaborate each of these offences including legal measures for such offences. Moreover, the participants for the bids if appear to have breached the rules of this Act, they may be barred from current or future procurement activities.

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<sup>31</sup> Curbing Corruption in Public Procurement in Asia and the Pacific, *ADB/OECD Anti-Corruption Initiative for Asia and the Pacific: Thematic Review*, page 34.

**Offences defined in the Public Procurement Rules 2008 (PPR 2008)**

Rules 127(2) of the PPR 2008 deal with the professional misconduct that describe corrupt practices, fraudulent practices, collusive practices and coercive practices. Rule 127 (8) of the PPR 2008 prescribes reference to various penal codes and other applicable laws for various offences e.g., corrupt practice (punishable under S 161 to 171 of Penal Codes of 1860 or relevant section of Prevention of Corruption Act 1947), collusive practices (punishable under S 465 to S 489 of Penal Codes of 1860), fraudulent practice (punishable under S 120A and 120B(2) of Penal Codes of 1860) and coercive practice (punishable under S503 and S506 of the Penal Codes of 1860).

**Prevention of Corruption Act 1947:**

Clause 3 of Section 3 of the Act states that an offence punishable under Sec 161, 162,163,164, 165 or 165A of the Penal Code shall be deemed to be a cognizable offence for the purpose of Code of Criminal Procedure, 1898 notwithstanding anything contained contrary therein.

Sec 4 of the Act states that where in any trial of an offence punishable under Sec 161 or Sec 165 of Penal Code it is proved that the person has accepted or agreed to have accepted or attempted to accept, for himself or for any other person, any gratification (other than his legal remuneration), it shall be presumed unless contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain such gratification.

Generally, in criminal cases accused are presumed to be innocent and the prosecution is required to prove the charge against the accused beyond all reasonable doubt. Sec 4 of the



Prevention of Corruption Act 1947 is an exception to this general rule.<sup>32</sup> Presumption available under Sec 4 is not absolute. It is rebuttable on the proof contrary to what may give rise to such presumption of certain fact or document. This aspect of evidence relating to presumption is dealt with in Sec 4 and in Sec 79-90 of the Evidence Act 1872. Presumption has been classified under “may presume” and “shall presume” in Sec 4 of the Evidence Act 1872 which runs as follows:

“ whenever it is provided by this Act that the Court **may presume a fact, it may** either regard such fact as proved, unless and until it is disproved, or **may** call for proof of it.

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.”

Presumption under Sec 4 of the Prevention of Corruption Act 1947 is of mandatory nature. Sec 5 of the Act provides for criminal misconduct of public servants with provisions of penalty, confiscation as well as heavy imprisonment.

### **Penal Codes of 1860**

Sec 161 of the Penal Codes 1860 deals with public servants dealing with taking gratifications other than legal remunerations. If a public servant is found guilty under Sec 161, he is at the same time guilty of an offence mentioned under Sec 5 (1) of the Prevention of the Corruption Act 1947. S.162 deals with taking gratification, in order, by corrupt or illegal means to influence public servants. S.163 deals with taking gratification

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<sup>32</sup> MLR on Anti Corruption Laws ( Third Edition) of Bangladesh, *The Mainstream Law Reports, 2008* , page 125-137.

for exercise of personal influence with public servant. S.164 deals with punishment for abatement with public servant under S.162 and S.163. Criminal conspiracy and its punishments are dealt with under S. 120A and S. 120B (2) of the Penal Codes of 1860 and these sections are referred to deal with fraudulent practices. S 464 deals with forgery and false documentation and S 465 deals with punishment for forgery. S 466 deals with forgery of court records and the relevant punishment. These sections are referred to deter collusive practices. S 503 and S 506 deals with criminal intimidation and its punishments and these sections are referred to deter coercive practices.<sup>33</sup>

#### **Anti Corruption Act 2004**

S 26 of the Anti Corruption Act 2004 empowers the Anti Corruption Commission to direct any person to declare his/ her assets and punishments for failing in such declaration. S. 27 deals with possession of property disproportionate to known source of income and applicable punishments. S 21 gives the power to the Commission to arrest any person before a FIR is filed if an offence is committed under S 27 of the said Act.

#### **Other rules:**

##### **Supreme Audit Institution:**

The Supreme Audit Institution of Bangladesh was set-up in 1973 headed by the Comptroller and Auditor General (CAG) who is appointed by the President of the Republic as per Article 127(1) of the Constitution. A separate directorate named Directorate of Foreign Aided Projects Audit is established under him to audit all development, investment and technical assisted programme and projects in the public sector funded by foreign aid.

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<sup>33</sup> Rule 127 (8) of the Public Procurement Rules 2008 refers to detailed examples of corrupt practice, collusive practice, fraudulent practice and coercive practice including legal ramifications.

### **Money Laundering Prevention Ordinance of 2007**

Established within the framework of the amended Money Laundering Prevention Ordinance of 2007, the Financial Intelligence Unit is established to operate as part of the central bank's anti-money-laundering department, to combat financial crimes and to retrieve assets and money laundered overseas. The Unit will play a key role in recovering the large sums of money siphoned off through political corruption.

### **Other multilateral rules and guidelines**

Besides, S.3 (2) (d) of the Public Procurement Act 2006 covers procurement of goods, works and services under a loan , credit or grant agreement or under any agreement with a development partner or with a foreign state or an organization. Two extracts of two major multilateral agencies viz., The Asian Development and the World Bank is appended below.

### **Asian Development Bank Guidelines**

Procurement Guidelines of Asian Development Bank (Feb 2007) para 1.14 6 dealing with Fraud and Corruption describes procurement related misconducts which are in line with the provisions of Rule 127 of the PPR 2008. Procurement Guidelines of the Asian Development Bank<sup>34</sup> published February 2007 describes miscprocurement as follows:

### **Misprocurement**

1.12 ..... If procurement is not carried out as agreed, ADB will declare misprocurement, and normally cancel that portion of the financing allocated to the goods and works that have been misprocured. In appropriate cases, ADB may permit rebidding after declaring misprocurement. .... Even if a contract is awarded after obtaining a “no objection” from ADB, ADB reserves the right to declare misprocurement if it

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<sup>34</sup> <http://www.adb.org/documents/guidelines/procurement/Guidelines-Procurement.pdf> accessed on 18th April 2009

concludes that the “no objection” was issued on the basis of incomplete, inaccurate, or misleading information or the terms and conditions of the contract had been substantially modified without ADB’s approval.

Procurement Guidelines of the Asian Development Bank Published February 2007<sup>35</sup> describes fraud and corruption as follows:

### **Fraud and Corruption**

1.14 ....., for the purposes of this provision, the terms set forth below as follows:

(i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

(ii) “fraudulent practice” means any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(iv) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

Actions that may be taken by the Asian Development Bank under para 1.14 of its Procurement Guidelines as follows:

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<sup>35</sup> <http://www.adb.org/documents/guidelines/procurement/Guidelines-Procurement.pdf> accessed on 18th April 2009

(b) **will reject a proposal** for award if it determines that the bidder ...has....engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the contract in question;

(c) **will cancel the portion of the financing allocated** ..if .....representatives of the borrower...engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract...;

(d) **will sanction a party or its successor**, including declaring ineligible, either indefinitely or for a stated period of time, ..... if .....the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed contract; and

(e) **will have the right to require that a provision be included in bidding documents** ....to permit ADB or its representative to inspect their accounts and records and other documents relating to the bid submission....to have them audited by auditors appointed by ADB.

### **World Bank Guidelines**

The World Bank has its own sets of procurement guidelines governing procurement of goods and works under contracts financed by the Bank in its member countries. The relevant excerpts of the current Guidelines for Procurement under IBRD Loans and IDA Credits (May 2004, revised October 2006)<sup>36</sup> follow:

1.12 Misprocurement –the Bank will declare misprocurement if it has not been procured in accordance with the agreed provisions in the Loan Agreement, and the Bank will cancel that portion of the loan allocated to the goods and works that have been

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<sup>36</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT> accessed on 18th April 2009

misprocured.....Even once the contract is awarded...., the Bank may still declare misprocurement if it concludes that the “no objection” was issued on the basis of incomplete, inaccurate, or misleading information furnished by the Borrower.....

#### 1.14 Fraud and Corruption- the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

(v). “obstructive practice” is (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing investigation;

1.15 b) Bank will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract...cancel the portion of the loan ....declare a firm ineligible, either indefinitely or for a period of time, to be awarded a Bank-financed contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices.....”

## **Comparatives with legal frameworks in Canada<sup>37</sup>**

### **Legal framework in Canada**

Criminal Code of Canada includes offence which prohibit bribery (ss 119 , 120), fraud on the government (s 121), fraud or a breach of trust in connection with the duties of an office ( s 122), municipal corruption ( s123), selling or purchasing office ( s 124), influencing and negotiating appointment or dealing in office ( s 125), willfully attempting to obstruct, pervert or defect the court of justice through bribery and other corrupt mean(s 139(3)), fraud (s 380) and secret commission ( s 426). No person convicted of fraud on the government, of selling or purchasing office, or of selling of defective stores to the Government has, after the conviction, the capacity to contract with the Government or to receive any benefit under a contract between the Government and any other person, or to hold government office (s750). Number of Criminal Code provision prohibit efforts to deceive others or induce others to rely on inaccurate books and records (s 321 definition of false documents), s 362 (false pretence or false statement), s 366 (forgery), s

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<sup>37</sup> Juliana Thorpe-Taitt, *Corruption and the Role of Forensic Accountant: A Survey of the Caribbean, Research Paper prepared for Diploma in Investigative and Forensic Accounting Program 2004* (page 22-24.)

380(fraud), s 397 (falsification of books and documents) and s 400(false prospectus). Possession of property obtained by crime (s 354) and laundering of property and proceeds of crime (s 462.31) are criminal offences. Regardless where the offence occurs, proceeds of crime may be seized or restrained and forfeited in Canada if the underlying conduct would constitute one of the listed offences in s 462.3 of the Criminal Code. The Corruption of Foreign Public Officials Act 1999 deals with bribery and corruption committed in abroad.

It is observed that legal frameworks of Bangladesh covers most of the legal issues as highlighted in Canadian legislations except for the provisions of Foreign Public Officials Act 1999 of Canada.



## **IV. PUBLIC PROCUREMENT METHODS IN BANGLADESH**

The Public Procurement Act 2006 of Bangladesh was enacted to provide for procedures to be followed for ensuring transparency and accountability in the procurement of goods, works or services using public funds and ensuring equitable treatment and free and fair competition among all persons wishing to participate in such procurement.<sup>38</sup> The procedures of procurement of goods, works, service and consultants are summarized below:

### **Procurement of Goods and Works**

#### **Domestic procurement**

#### **National Competitive Bidding (NCB) or Domestic Procurement under Open Tendering Method**

Procuring entity shall for procuring goods, services or works use Open Tendering Method as preferred method allowing minimum submission time for bidders and following advertisement rules of the PPA 2006 and awarding contract only to the lowest evaluated responsive bidder.<sup>39</sup> NCB might be a proper method under circumstances unlikely to attract international competition.

#### **Other methods**

Limited Tendering Method, Direct Procuring Method, Two Stage Tendering Method or Request For Quotation Method could be the other methods when considered justified or economical and are approved by the head of the procuring entity. Justification must be recorded and preserved if procuring entity is using any of such methods.

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*38 Preamble of the PPA 2006 of Bangladesh*

*39 S31(1) of PPA 2006 of Bangladesh*

**International procurement**  
**International Competitive Bidding**

Where it is not feasible to undertake any procurement by inviting competitive bidders within the country and if it reasonably appears that effective international competition cannot be ensured, procuring entity shall apply open international procurement method.<sup>40</sup>

**Other procurement methods**

International Limited Tendering Method, International Direct Procuring Method, International Two Stage Tendering Method or Request For Quotation Method could be the other methods when considered justified or economical and are approved by the head of the procuring entity. Justification must be recorded and preserved if procuring entity is using any of such methods.

**Choice of procurement methods**

Open tendering method or the Competitive bidding has been taken as preferred method of procurement. Competitive bidding can be international or limited to national bidders; it can be open or restricted to a limited number of bidders whether on the basis of pre-qualification or otherwise. Whether procuring entity decides to use competitive bidding or some the method of procurement, it is necessary to ensure that the procedures are appropriate and consistently applied with regards to PPA 2006. Any exception to the rule must be justified<sup>41</sup> and must be approved by the higher approving authority.<sup>42</sup> The law

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40 *Ibid.* S 33.

41 *Ibid.* S. 32(2)

42 *Ibid.* S. 32(1)

requires that procuring entity to keep a record of procurement proceedings, giving reasons of decisions pertaining to proceedings<sup>43</sup>.

The Government may, in order to meet an urgent national need or catastrophic event, procure for the public interest, following direct procuring method or any other method, for carrying out a procurement activity according to the recommendation of the Cabinet Committee on Economic Affairs constituted by it.<sup>44</sup>

Government may enter into concession contract with a person for the provision and operation of public utilities and services through a Build Own Operate, Build Operate Transfer, Build Own Operate Transfer agreement with joint public and private financing or with entirely private financing.<sup>45</sup>

## **Procurement of intellectual and professional services**

### **Domestic Procurement**

#### **Quality and Cost Based Selection (QCBS)**

Qualified shortlisted consultants compete first and foremost on a quality basis and secondly on cost basis. The Quality and Cost Based Selection (QCBS) selection method elects quality as the major component of evaluation and selection.

QCBS is a competitive process where quality is the principal selection criteria, which is ensured through short- listing of eligible consultants. Cost is also an element of selection but consideration is given to grade this probable cost judiciously.

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*43 Ibid. S. 32(2)*

*44 Ibid. S. 68.*

*45 Ibid. S 66.*

Fixed Budget Selection (FBS) method: This method may be used to procure consulting services for simple and specific nature of services as an alternative to QCBS.

**Other selection methods**

Least Cost Selection Method (LCS): Assignment is of standard routine nature and cost is within prescribed limit.

Community Service Organization Method: where overall knowledge of community needs, local issues and community participations are required for implementation of community development projects.

Single Source Selection Method (SSS): Used in emergency for low value small assignments or when only one firm is qualified to execute the assignment. It does not benefit from competition, in terms of cost and quality and lacks transparency. This could be used for on-going or just completed assignments.

Individual Consultant Selection Method (ICS): Used where the qualification and experience of individuals are paramount and a team of professional and outside professional support are not required.

Qualification Based Selection Method (CQS): Assignment is of low volume and burden of preparing and evaluating competitive bidding is not justified.

Design Contest Selection Method: where technical excellence and innovation are of prime considerations in the selection of successful applicant.

Any exception to the rule other than QCBS and Fixed Budget Selection must be justified and must be approved by the higher approving authority. The law requires that procuring entity to keep a record of procurement proceedings, giving reasons of decisions pertaining to proceedings.<sup>46</sup>

### **International Procurement**

Where it reasonably appears that no local consulting firm has necessary expertise and experience to provide intellectual and professional service required, it may take steps to select international consultant on the same selection basis as applicable for domestic consultants.

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<sup>46</sup> *Ibid.* S 38(2)

## Stages for procurement

### Stages for pre-qualification of procurement of goods and works etc:

	Goods and works
	While preparing document for inviting pre-qualification application, use standard documents prescribed by the Government.
	Procuring entity prepares necessary application, tender or proposal document and issue those persons who are interested in submitting application.
	Bidders submit application for pre-qualification for tender.
	Tender opening Committee, formed prior to deadline of submission of tender, opens pre-qualification tender and submits to Evaluation Committee.
	Evaluation Committee is formed who along with sealed pre-qualification evaluation report submit to its approving authority
	Approving authority either approves the recommendation or rejects the pre-qualifications with explanation of reason.

### Stages for processing of tendering for procurement of goods and works etc:

	<b>Goods and works</b>
	Sale of tender document to pre-qualified bidders and hold pre-tender meeting
	Tender Opening Committee shall open the tender in presence of bidders who attend on specified date.
	The specified amount of tender security and the specified rate and the prescribed procedure for submission of performance shall be stated in the tender document. Not mandatory for Limited Tendering Method. Not mandatory for RFQ Method.
	Tender evaluation committee evaluate tender on the basis of lowest price. Otherwise, where other criteria used, evaluations shall be carried out quantifying those criteria in monetary terms.
	Negotiations are not held with lowest evaluated bidder.
	Evaluate post qualification criteria like requisite qualification and financial capability to carry out the contract before contract is awarded.
	Recommendation by Evaluation Committee to the Approving Authority.
	Approving Authority issues notification award to the successful bidder.

**Stages for processing of application in response to Request for Expression of Interest and Proposal for Procurement of Intellectual and Professional Services:**

	Submit application by consultant in response to Request for Expression of Interest.
	Meeting by Proposal Opening Committee for opening application, record details and send it to proposal evaluation committee.
	Proposal Evaluation Committee submits evaluation report to head of procuring entity with a minimum of 4 and maximum of 7 short-listed applications.
	Head of procuring entity approves and procuring entity informs all bidders whether or not they have been short listed.
	Issue Request for Proposal ( RFP) to the short listed applicants
	Proposal Opening Committee opens the technical proposals only and keep financial proposal in safe custody until evaluation of technical proposal is completed.
	Proposal Evaluation Committee shall evaluate the technical capability of all proposals and submit an evaluation report with recommendation to the head of procuring entity for short listing.
	Review details of each financial proposal of QCBS and negotiate with the firm who scored highest in combination of technical and financial proposal.
	For Fixed Budget Selection Method, invite the consultant with highest score for negotiation.
	For Least Cost Selection Method, with qualified technical threshold and lowest cost for negotiation
	Proposal Evaluation Committee submits Evaluation Report with recommendation to the Approving Authority.
	Approving Authority notify to all concerned including the procuring entity
	Procuring following signing of contract, notify all consultants that have been unsuccessful.

For each bid, procuring entity shall allow sufficient time (minimum time) in consistent with the procurement method to respond properly.<sup>1</sup> Contract shall be awarded to the substantially responsive, lowest bidder.<sup>47</sup>

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<sup>47</sup> *Ibid.* S31(1)

## **SECTION 2**

### **I. CASE STUDY: INVESTIGATING FRAUD AND CORRUPTION IN DP FUNDED PROCUREMENTS IN BANGLADESH**

#### **Background of the case study**

Project title : Second Primary Education Development Program (PEDP-II)  
Sponsoring Ministry : Ministry of Primary and Mass Education (MoPME)  
Executing Agency : Directorate of Primary Education (DPE)

#### **Cost summary of the Project:**

The Second Primary Education Development Program (PEDP-II), a sector wide Approach was designed through a joint planning process between Government of Bangladesh and 11 Development Partners (DP) during 2001-03. The initial PEDP-II Program Framework covered a six-year development budget of USD 852 million. Through a series of revisions the revised project is finally agreed at USD 1,101.86 million with life of the project extended upto 2010 to make up for the late start of the project. Overall financing plan by the Government is now agreed at USD 367.254 million or BDT 24,973.263 million which is 33.33% of total project cost and the share of the DPs now stands at USD 734.653 or BDT 49,956.395 million which is 66.67% of total project cost. Because of infrastructure damage by severe cyclone and other fresh need assessment, the revised cost for civil construction was estimated at BDT 40,117.986 or USD 589.97 million from its original estimation of BDT 19,470.99 million or USD 286.33 million. Present ratio of cost of civil construction would now be 53.54% as compared to total cost of the project.



**Pool Funding:**

Out of 66.67% DP fund, ADB and ADB managed DP share was 55.61%. A total of 62.65% of DP fund would be utilized for construction purpose of which ADB contribution would be 51.57%.

**Fund Disbursement Arrangement**

Three dollar accounts (Two Imprest Accounts for ADB and ADB Administered Grants and 1 DOSA for IDA) and one Common Pool BDT Account for all DPs, except bilateral financiers, are being managed by the Program Director of the PEDPII.

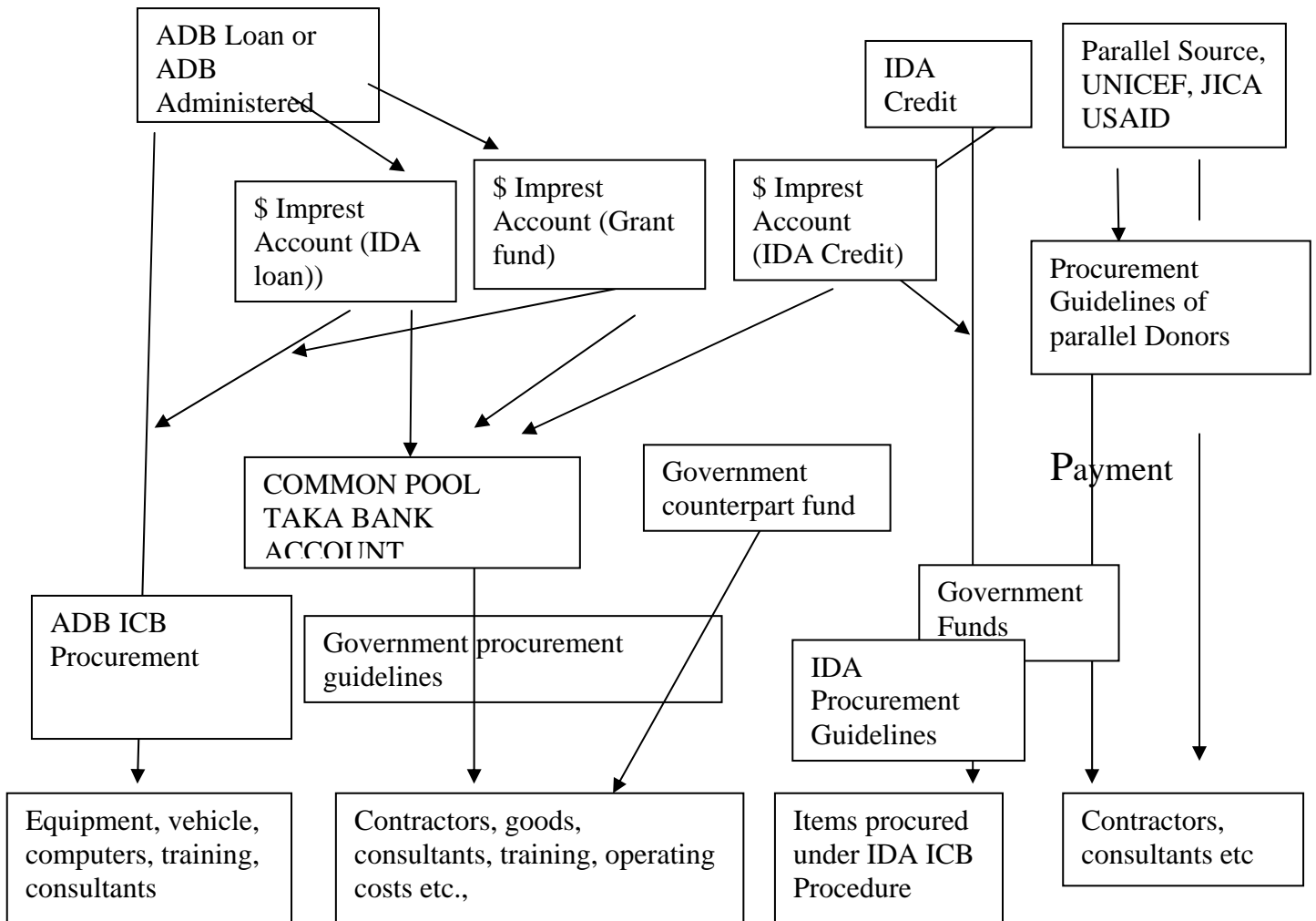
Funding of PEDPII as follows:

- a. Pool funding for local expenditure, it consists of funds of ADB and ADB managed co-financing ( DFID, EU, Netherlands, NORAD, SIDA, CIDA) and IDA
- b. Non-pool fund for ICB procurement – direct payment by ADB or IDA

Dollar account are used for receiving advance from the DPs and for replenishment of fund disbursed from Common Pool BDT Account.

**Flow chart of funding by DPs and the Government:**

## PEDP II – Fund flow



### **Post disbursement review by DPs**

Asian Development Bank (ADB) through its Program Liaison Unit (PLU) hired a local audit firm, to conduct post procurement audit (review) to contracts awarded in FY 2003-2004 and FY2004-2005. On initial review of the audit report, it came to the notice of the Procurement and Finance Working Group (PFWG) of the Development Partners (DP) consortium that there were possible indications of inappropriate / collaborative /collusive bidding practices in several packages in civil works contracts relating to construction of classrooms in primary schools implemented by the Local Government Engineering Department (LGED)<sup>48</sup>. As agreed by the MoPME and Development Partners (DP) during the Joint Annual Review Mission (JARM 2008), the Audit Sub-Group<sup>49</sup> of the Consortium's Procurement and Finance Working Group ( PFWG) met on the 8<sup>th</sup> May 2008 , 8<sup>th</sup> September 2008 and 22 September 2008 to review the documents received from the executing agency in the light of three audit observations contained in the external auditors report who reviewed a sample of 20% of the contracts awarded during the period constituting 772 contracts.

Analysis of the author is based on the observations of the PFWG.

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<sup>48</sup> *Local Government Engineering Department (LGED) is an organ of the Ministry of Local Government of the Government of the Peoples Republic of Bangladesh. In addition to its routine infrastructure development activities, LGED provides technical support for other agencies like the Education Ministry to implement their development plans for fee as the executing agency.*

<sup>49</sup> *the Audit Sub-Group ((representatives from ADB, ADB- PLU, World Bank, DFID and Embassy of the Kingdom of the Netherlands) of the PEDP-II is part of Consortium's Procurement and Finance Working Group ( PFWG).*

## Details of observations are as under:

### Review of 10 construction contracts

Contract Package #	Contract value in BDT	Finally selected Contractors
W1.1387	6,359,850 <sup>50</sup>	M/S Mishu Enterprise
W1.1388	6,359,850	M/S Matin Traders
W1.1903	6,510,669	Mohammad Eunus & Brothers
W1.1906	6,510,669	M/S Rony Construction
W3.355	288,748	M/S Khan Brothers
W3.556	288,748	M/S Sumaiya Enterprise
W3.761	274,439	Monjur Enterprise
W3.762	274,439	Lovely Enterprise
W1.1397	3,266,892	M/S Farzana Enterprise
W1.1398	3,266,892	Md. Zakir Hossain

### Package W 1 1387 and W1.1388 (Field: Laxmipur):

Audit Review / observations	Nature of procurement corruption <sup>51</sup>
<p>LGED official estimated cost of the package at Taka 6,057000. Three tender participants participated in each separate package and the successful bidders in both packages (W1. 1387– Misu Enterprise and W 1.1388- Abdul Motin) quoted same price i.e., 6,359,850.</p>	<p>Limited number of bidders participated in bid, although widely circulated.</p> <p>Although not highlighted by the reviewer, an apparent coercive practice, not allowing competitors to participate in the tender, a process of bid rigging.</p> <p>Same limited number of bidders in each package, a process of bid suppression.</p> <p>Winners in both package, although name–wise different, offered 5% above estimated cost.</p> <p>Official cost estimation was apparently known to the bidders.</p> <p>12.26% increase over estimated cost in both the cases.</p>

<sup>50</sup> Conversion rate: USD 1= BDT 69

<sup>51</sup> The Audit Review / Observations were made by the Audit Sub-Group and the analysis of nature of corruption was carried out by the author himself.

<p>In the Bill of Quotation (BOQ) for each package there were 47 items and unit rate for each item was identical in the tenders submitted by both Misu Enterprise and Motin Enterprise.</p>	<p>Competitors exchanged price information among themselves from “price agreement” to which the contractors formulating their bids.</p> <p>Same bidder may have participated in different name. Company search and background checks were not carried out by respective officers.</p> <p>Certain bidders always bid against each other or conversely certain contractors do not bid against one another.</p>
<p>For package W1 .1387, tender securities of all three tender participants were also from the same bank (Uttara Bank Limited). For W1.1388 again two tender securities were from the same bank, this time used a different bank (NCC Bank Limited).</p>	<p>Same bidder may have participated in different name.</p> <p>Officials assisting in bid evaluation process by accepting certain bidders where no bid security was possibly submitted. An attempt of misrepresentation leading to fraudulent procurement practice.</p> <p>This mechanism was adopted to ensure participation of minimum number of required bidders in order to make the biddings eligible for contract award.</p>
<p>The audit team could not verify the serial number of bid securities because except for one bidder (Misu Enterprise), other three securities were not available and those details were not recorded in the tender opening minutes.</p>	<p>The Project Implementation Unit (PIU) may mistakenly or willfully have avoided verifying the genuineness of the documents, assisting or removing faked documentation and allowing disqualified or under-performing bidders to be awarded contract.</p>

The Audit Sub-Group concluded that quoting same unit rates in 47 items by two different tender participants for these two packages were involved in collusive / collaborative / in appropriate practices.

**Package W 1. 1397 and W1.1398 (Field: Rangamati):**

<b>Audit Review / observations</b>	<b>Nature of procurement corruption</b>
<p>LGED official estimated cost of the package was Taka 3,267,000. Three tender participants participated in each separate package and the successful tender participants in both packages (W1. 1397– Farzana Enterprise and W 1.1398- Zakir Enterprise) quoted same price (even decimal points are similar) i.e., 3,266,892.72.</p>	<p>Limited number of bidders participated in bid, although widely circulated. Although not highlighted by the reviewer, apparently a coercive practice, not allowing competitors to participate in the tender, a process of bid rigging.</p> <p>Same limited number of bidders in each package, a process of bid suppression.</p> <p>Winners in both package, although name-wise different, offered exactly at official estimated cost.</p> <p>Official cost estimation was apparently known to the bidders.</p> <p>12.26% increase over estimated cost in both the cases.</p>
<p>In the Bill of Quotation (BOQ) for each package there were 38 items and unit rate for each item was identical in the tenders submitted by both Farzana Enterprise and Zakir Enterprise. Also all BOQ item rates for both packages are identical to official estimate (except item 11).</p>	<p>Competitors exchanged price information among themselves from “price agreement” to which the contractors formulating their bids.</p> <p>Same bidder may have participated in different name. Company search and background checks were not carried out by respective officers.</p> <p>Certain bidders always bid against each other or conversely certain contractors do not bid against one another.</p>
<p>Zakir Enterprise apparently provided supporting tender in W1.1397 where all its unit rates in BOQ are identical to that of Farzana Enterprise which is quoted a little higher.</p>	<p>Certain bidders always bid against each other or conversely certain contractors do not bid against one another.</p>

The Audit Sub-Group concluded that quoting same unit rates in 38 items by the winning tender participants in two different packages is an indication of collusive / collaborative practices in the tendering process.

**Package W3. 555 and W3.556 (Field: Motlob North):**

<b>Audit Review / observations</b>	<b>Nature of procurement corruption</b>
<p>LGED official estimated cost of the package was Taka 275,007. Same three tender participants participated (Khan Bros, Sumaiya Enterprise and Happy) and successful tender participants in both packages Khan Bros (W 3.555) and Sumaiya Enterprise (W 3.556) quoted the same price i.e., Taka 288,748.</p>	<p>Limited number of bidders participated in bid, although widely circulated.</p> <p>Although not highlighted by the reviewer, an apparent coercive practice, not allowing competitors to participate in the tender, a process of bid rigging.</p> <p>Same limited number of bidders in each package, a process of bid suppression.</p> <p>Winners in both package, although name-wise different, offered 5% over official estimated cost.</p> <p>Official cost estimation was apparently known to the bidders.</p> <p>12.26% increase over estimated cost in both the cases.</p>
<p>In the Bill of Quotation (BOQ) unit rate for each item was identical in the quoted price although they participated in two packages.</p>	<p>Competitors exchanged price information among themselves from “price agreement” to which the contractors formulate their bids.</p> <p>Same bidder may have participated in different name. Company search and background checks were not carried out by respective officers.</p>

The Audit Sub-Group concluded that quoting same unit rates in all items of the BOQ by two different tender participants in two separate packages is abnormal and is a strong indicator of collusive practice between the successful tender participants (Khan Bros and Sumaiya Enterprise) for the above mentioned packages.

**Package W3.761 and W3.762 (Field: Chandina):**

<b>Audit Review / observations</b>	<b>Nature of procurement corruption</b>
<p>LGED official estimated cost of the package was Taka 275,000. For package W3.761, two tender participants participated (Monjur Enterprise and Cosmos) and Monjur won the tender with identical price of Taka 274,439.20.</p>	<p>Limited number of bidders participated in bid, although widely circulated.</p> <p>Although not highlighted by the reviewer, an apparent coercive practice, not allowing competitors to participate in the tender, a process of bid rigging.<sup>52</sup></p> <p>Same limited number of bidders in each package, a process of bid suppression.</p> <p>Winners in both package, although name-wise different, offered 0.20% below official estimated cost.</p> <p>Official cost estimation was apparently known to the bidders.</p> <p>12.26% increase over estimated cost in both the cases.</p>
<p>For package W3.762 there was a single tender from Lovely Enterprise and won the tender with same price as that of Monjur Enterprise i.,e Taka 274,439.20. Also both the winning tenders in these two packages (Monjur Enterprise and Lovely Enterprise) quoted same unit price for all items in the BOQ.</p>	<p>Possible coercion or restricted bidding access.</p>
<p>W3.761, two tender participants participated (Monjur and Cosmos) and Monjur won the tender with identical price of Taka 274,439.20. For package W3.762 there was a single tender from Lovely Enterprise and won the tender with same price as that of Monjur i.,e., Taka 274,439.20. Also both the winning tenders in these two packages (Monjur and Lovely) quoted same unit price for all items in the BOQ.</p>	<p>Competitors exchanged price information among themselves from a “price agreement” to which the contractors refer in formulating their bids.</p> <p>Same bidder may have participated in different name. Company search and background checks were not carried out by respective officers.</p>

<sup>52</sup> It is to be noted that while these indicators may arouse suspicion of collusion they cannot be considered as proof of collusion. (US Antitrust Division, <http://www.jftc.com>, <http://www.tca.ie>, <http://www.usdoj.gov>).



Audit Sub-Group concluded that quoting same unit rates in all the items of the BOQ by two different successful tender participants in two separate packages at the same place is unusual and it seems that the successful tender participants for two different packages have submitted their tenders in collaboration with each other and thereby indulged in collusive practices.

**Package W1.1903 and W1.1906 (Field: Banskali):**

<b>Audit Review / observations</b>	<b>Nature of procurement corruption</b>
<p>LGED official estimated cost of the package was Taka 6,057,000. For each package there was single tender (Package W1.1903) – Eunus &amp; Bros and W1.1906- Rony Construction) and each of them won the contract with same price of Taka 6,510,669.30 ( even same digit after decimals) meaning that the total quoted rates are same ( although unit rates are different). As such, indication of collusive practice was evident.</p>	<p>Single bidder participated in bid, although widely circulated.</p> <p>Although not highlighted by the reviewer, an apparent coercive practice, not allowing competitors to participate in the tender, a process of bid rigging and bid suppression.</p> <p>Winners in both package, although name-wise different, offered 7.5% above official estimated cost.</p> <p>Official cost estimation was apparently known to the bidders.</p> <p>12.26% increase over estimated cost in both the cases</p>

From the review of the documents for observation, the Audit Sub-Group concludes that the successful bidders for the above mentioned ten different packages in the concerned 5 different construction areas collaborated with each other in the tendering process and appears to have engaged in collusive practices with other bidders to win the contract.

**Review on five construction contracts:**

<b>Contract packages</b>	<b>Value</b>	<b>Contracts awarded</b>
W1.1875	6,480,900	Sabbir Enterprise
W1.1876	6,480,900	M Hossain & Sons
W1.1877	6,480,900	Techno International
W1.1878	6,480,900	Techno International
W1.1879	6,480,900	M Hossain & Sons

**5 construction contracts-W1.1875, W1.1876, W1.1877, W1.1878 and W1.1879)**

<b>Audit Review / observations</b>	<b>Nature of procurement corruption</b>
<p>It involved 5 packages which were advertised for classroom construction. Estimated cost for 4 packages (W1. 1875, W1.1876, W1.1877, W1.1878) was Taka 6,057,000 and for W1.1879 was Taka 4,038,000. Quoted price by the successful 4 bidders for first 4 packages was exactly 7% higher of the estimated cost and for package W1.1879 was also 7% higher than the estimated cost.</p>	<p>Winners in all 5package, although name-wise different, offered 7% over official estimated cost.</p> <p>Official cost estimation was apparently known to the bidders.</p> <p>12.26% increase over estimated cost in both the cases.</p>
<p>For all packages, three tenders were submitted in each package. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> lowest bidders for all the five different packages quoted exactly 7%, 15% and 20% above the estimated price which is unusual in a competitive tendering process.</p>	<p>Limited number of bidders participated in bid, although widely circulated. Although not highlighted by the reviewer, apparently a coercive practice, not allowing competitors to participate in the tender, a process of bid rigging.</p> <p>Same limited number of bidders in each package, a process of bid suppression.</p>
<p>The review of the packages also revealed that the participants for these packages supported the successful bidders for each of the packages by becoming non-responsive by not providing tender security, the submission of which is mandatory with the tender document. For example, M. Hossain, the successful bidder of package W1.1876 did not submit the bid security in other two packages W1.1877, W1.1878. In both cases M. Hossain was not the lowest bidder. Therefore, it is evident that the non-submission is not out of ignorance rather intentional and submitted as supporting tenders.</p>	<p>Co-conspirators submit “loosing bids” that are intentionally higher or deliberately fail to meet all the requirements of the tender to win. It was designed to give the appearance of real competition in a public tender. An apparent case of complimentary bidding took place.</p>

From review of the documents, it appeared to the Sub-group that all the bidders for each of the 5 packages have collaborated with each other in the tendering process through engaging in collusive practices.

## Review on 2 Construction contract

Contract packages	Contract Value	Contracts awarded
W 3.552	219,895	M/S Nila Enterprise
W1.1342	3,412,026	M/S J & H Trading Corporation

Audit Review / observations	Nature of procurement corruption
For package W3.3552, three authorization letters in favour of the same person withdrawing bid security were found. It is evident from the authorization letters that same person was nominated for withdrawal of bid security by all three participating bidders.	Same bidder may have participated in different name.  Officials possibly assisting in this process to ensure participation of minimum number of required bidders in order to make the biddings eligible for contract award.
It was noted that LGED formally warned the concerned LGED Engineer for the incidence and stated that departmental punitive measures would be taken against him if there was recurrence of the same in future.	Apparent breach of code of conduct by the government official as evident from the action.
On package W1.1342, although there was no irregularities in the tendering process, collection of the tender security of the participating bidder by the same person indicates collaborative practices among the bidder. Working Group demanded that LGED needs to provide assurance that such practice does not occur in the future.	Officials possibly assisting in this process to ensure participation of minimum number of required bidders in order to make the biddings eligible for contract award.

## II. ANALYSIS OF FRAUDULENT AND CORRUPT PRACTICES INVOLVED IN CASE STUDY<sup>53</sup>

Collusion between government employees and bidders, contractor's fraud against the government organization in the form of inferior delivery of works and collusion among the vendors within the bidding group to engineer bids higher than necessary could be observed in the analysis of sample contracts.

Most of the procurement fraud as observed in the review is noticed at the Bidding and Selection stage. It is interesting that no such observation was raised at the Requirement Definition or at the Contract Performance and Evaluation stage.

### **Common areas of procurement corruption**

Common areas of procurement corruption that was observed in the Case Study analyzed above are as follows:

**Release of confidential information to bidders:** Apparent release of confidential information of official cost estimate for each of the packages in advance to certain selective contractors.

Under the program, the prototype plan, design and estimate for school construction were officially shared by LGED with various stakeholders i.e., School Management Committees, District Primary Education Officers, Sub-district Education Officers, Sub-

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<sup>53</sup> *The analysis is done based on the outcomes of the completed Detailed Implementation Review (DIR) carried out by the Institutional Integrity of the World Bank on its funded projects in other countries.*

districts Engineers and Sub-assistant Engineers after approval of the lists of the schools by the Ministry of Primary and Mass Education (MoPME). Apparently, because of this wide sharing of office estimate, the contractors became aware of the estimates for the work prior to tendering. This indicates that there is systemic flaw in maintaining the confidentiality of official estimate by implementing agency which is inconsistent with the provision of Public Procurement Regulations 2003 (PPR). Disclosure of the estimated cost of the tender is considered to encourage and facilitate collaboration amongst bidders.

**Fraudulent documentation and dummy bids:**

In almost all cases, only one bidder has put forward a complete bid that meets the specifications and requirements in the tender documents while the others have simply thrown together corporate material only unarguably deviant to the contract tendered. Officials assisting in bid evaluation process by accepting certain bidders where no bid security was possibly submitted. Those bidders were possibly phony bidders who should have been disqualified. This scheme is carried out to ensure participation of minimum number of required bidders in order to make the biddings eligible for contract award. The Project Implementation Unit (PIU) may mistakenly or willfully have avoided to verifying the genuineness of the documents and allowing disqualified or under-performing bidders to be awarded contract.

**Industry price list:** It is observed that competitors exchanged price information among themselves from “price agreement” to which the contractors referred in formulating their bids. Alternatively, the bidders were in fact same, however used different identity.

**Complimentary bidding:** Co-conspirators submitted “loosing bids” that were intentionally higher or deliberately failed to meet all the requirements of the tender to win. It was designed to give the appearance of real competition in the open tender. In some instances participating bidders submitted unnecessary high token bids. Those bids were not intended to win but to create the appearance of competitiveness, possible by the collusion.

**Contract rotation:** Co-conspirators submit bids, but by agreements they take turns being the low bidders on a series of related contract. A group of local contractors had pre-arranged to rotate the contract awards amongst them. Given the rural location of the work, the contractors were well known to each other, and because of low volume of contract, national contractors were not interested in competing for the contracts. The remote locations facilitated the rotation of the bids among the competitor firms.

**Contract splitting:** By splitting the works into various sub-packages, the requirement and choice of prior review threshold may have been eliminated. With the smaller package, the competent bidder may not be interested to participate in many smaller biddings thereby eliminating competition from nationally qualified bidders.

**Bid Rigging:** Bid rigging occurs when a competitive public tender, which has as its purpose of creating open competitive bidding process, is manipulated in such manner that only pre-selected bidder wins the tender.<sup>54</sup> Except in couple of cases of single bid,

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<sup>54</sup> Edited by J. Edgardo Campos and Sanjay Pradhan, “*The Many Faces of Corruption*” *The World Bank publication (2007) page 300.*

generally the tendering was widely circulated with reasonable number of bidder participation. Though the price quoted by the bidders show apparent competition, associated documents substantiates that the bidder participating in the procurement appear to have collaborated among themselves in the implementation of procurement proceedings and it undermines the transparency and integrity of the procurement process. The audit sub-group recommends and seeks assurance that there is complete adherence and compliance with the procurement procedures.

**Bid Suppression:** One or more competitors agree not to bid or coerced by another bidder, or in some case, by a public official into not bidding or withdrawing a previously submitted bid, so that a designated bidder will win. Evidence suggest that, in some instances, a very few competitors participate in the bid and subsequently one but all bidders were found non-responsive. Evidence of participating to be disqualified from bid, even if it is genuinely done, may have been done in return for what is locally known as “negotiation money”.

**Same bidder in different names:** Competing bidders have different identities i.e., same bidder may have participated in different name. Company search and background checks were not carried out by procuring entity officers.

**Bidding pattern:** Certain bidders always bid against each other or conversely certain contractors do not bid against one another. Unit prices of competing bidders are identical. Bid securities are acquired by competing bidders from same financial institutions. In

some instances, bid securities of all unsuccessful bidders were collected by the same authorized person. Collusion, misrepresentation and coercion practice is apparent which is possibly done in association with corrupt procuring officials.

**Low- balling:** The designated company submits the lowest bid with the understanding of public official responsible for awarding the contract that, once awarded, the contract will subsequently be amended and contract price increased to enable the winning bidder to complete the contract and inflate the profit margin. This part was not examined by the reviewer. It is however observed that increase was allowed @ 12.26% over official estimated cost throughout the contract packages.

**Complaints:** Virtually no complaints were noticed, an indication of coercive environment where free tender participation may have been impaired.

**Comparison of bid package details:** Identical bid amounts are specified for certain contract line items by two or more contracts. Identical spelling and calculation mistakes appear in two or more competing bids. It appeared that the review was carried out without significant investigation in the Requirement Definition Stage or Post Contract Evaluation and Contract Performance Stage.<sup>55</sup>

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<sup>55</sup> Requirement Definition Stage is not investigated by the Review Team. It is possibly because of the reason that the procurement plan is now centrally managed, separate from the tendering entities. Collusion between the planning and procuring entity in the form of narrow bid specification, unnecessary purchase, restrictive bid competition still cannot be ruled out and needed to be examined. No review is done on the delivery like product / quality substitution..Contract extension, cost overrun, testing certificates, verification of contract performance etc needed to be examined as well.



## **Issues identified in the case study**

Following issues are identified while evaluating the case study:

### **Bidding:**

- Very few participants in each of the tender process
- Submission of deliberate failed bidding document

### **Bid evaluation and contract award:**

- Same bidder repeatedly participating in different name taking different identities
- Same bidder winning in different identities
- Very narrow variance between the estimate and the bid amount received.
- Bid bonds are received by the competing bidders from the same financial institution.
- Bid bonds have same or similar date having sequential serial number issued by different bidders.
- Subsequent collection of bid document by same authorized person of different bidding entities,
- Clustering of bids around official estimate
- Exactly same percentage of bidding higher than the official estimate
- Unit price in competing bids are identical
- Bidders propose identical items
- Forged documentations,
- Sub-packages for each locality won by same or similar or faked entity.

### **Post bidding:**

No complaint about the bid process and evaluation process received from the losing bidder.

## **Nature of corruptions in the case study**

Nature of corruptions in this case study could be grouped into the following categories:

### **Collusion with officials**

Bid documents were allowed to be withdrawn

Bid documents were declared qualified without putting up bid bond security

Disclosure of official estimations resulting in very narrow variance between the estimate and the bid amount received.

No due diligence on the validity and authenticity of the bidders.

### **Collusion amongst bidders**

Pricing irregularities and collusive pricing by the participants

Submission of deliberate failed bidding document

### **Fraudulence with the procurer**

Same bidder repeatedly participating in different name taking different identities

Bid bonds are received by the competing bidders from the same financial institution.

Bid bonds have same or similar date having sequential serial number issued by different bidders.

### **Coercion practices**

Not allowing participants to bid freely either by the bidders or on advice or instruction from the procuring entity officials.

### **III. MANAGING THE OUTCOME OF POST DISBURSEMENT REVIEW BY THE DPS**

#### **Misprocurements**

Procurement Guidelines of Asian Development Bank (Feb 2007) para 1.14 6 dealing with Fraud and Corruption describes procurement related misconducts which are in line with the provisions of Rule 127 of the PPR 2008. Procurement Guidelines of the Asian Development Bank Published February 2007<sup>56</sup> describes misprocurement in para 1.12 as follows:

1.12 ADB finances expenditures for goods and works that are procured in accordance with the provisions of the financing agreement and these Guidelines. If procurement is not carried out as agreed, ADB will declare misprocurement, and normally cancel that portion of the financing allocated to the goods and works that have been misprocured. In appropriate cases, ADB may permit rebidding after declaring misprocurement. ADB may, in addition, exercise other remedies provided for under the financing agreement. Even if a contract is awarded after obtaining a “no objection” from ADB, ADB reserves the right to declare misprocurement if it concludes that the “no objection” was issued on the basis of incomplete, inaccurate, or misleading information or the terms and conditions of the contract had been substantially modified without ADB’s approval.

Misprocurement may be declared in cases of procurements made through “corrupt practice”, “fraudulent practice”, “coercive practice” and “collusive practice” as defined in

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<sup>56</sup> <http://www.adb.org/documents/guidelines/procurement/Guidelines-Procurement.pdf> accessed on 18th April 2009

para 1.14. Following declaration of misprocurement, funds utilized for the contracts must be reimbursed to the ADB.

Almost identical provisions are incorporated in the World Bank Procurement Guidelines.<sup>57</sup>

### **Cancellations and suspension of funds**

The proposal may be rejected, cancel the portion of the financing allocated to a contract if it determines at any time that representatives of the borrower or of a beneficiary of ADB-financing engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution of that contract, without the borrower having taken timely and appropriate action satisfactory to ADB to remedy the situation. Sanctions including declaring ineligible, either indefinitely or for a stated period of time, to participate in ADB-financed activities if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for, or in executing, an ADB-financed contract.

Almost identical provisions are incorporated in the World Bank Procurement Guidelines.<sup>58</sup>

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<sup>57</sup> <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/PROCUREMENT> accessed on 18th April 2009

<sup>58</sup> *In an instance of action against bid rigging, the World Bank cancelled Taka 68 million (US\$1.01mn) from three projects in Bangladesh after investigations found evidence of collusive bidding practices. The three projects are: Municipal Services Project; Health and Population Programme Project and National Nutrition Programme. The World Bank asked the Government to refund the cancelled amount and to take appropriate action against the responsible officials (World Bank, 2004). Source: Brief paper captioned The Basics of Bid Rigging published by CUTS & Centre for Competition, Investment and Economic Regulation No 10/2008, web: [www.cuts-ccier.org](http://www.cuts-ccier.org).*

## Reference back to case study

### Declaration of misprocurements

Total amount for 17 packages reviewed by the sub-group is BDT 67,277,741.93. The sub-group concludes that the engagement of the bidder in collaborative, inappropriate tendering and collusive practices were apparent packages amounting to BDT 63,645,819.44 under first two sets of audit observations containing 15 construction contracts.

Under the last set of audit observations on two construction contract, for contract package W3.552 (BDT 219,895.90), LGED apparently initiated actions against the concerned engineers while contract package W1.1342 (BDT 3,412,026.59) has been repackaged and retendered.

Based on these findings and taking into account the need for improved fiduciary compliance, the sub-group recommended the following:

Since apparent collusive / collaborative practice / malpractice has taken place in the bidding process, the 15 contract packages under audit observations, a total amount of BDT 63,645,819.44 be declared ineligible funding / misprocurement and equivalent amount be cancelled from the credit / grant with adjustment from DPs contribution proportionately from the total amount of BDT 63,645,819.44) ( GOB fund included).<sup>59</sup>

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*59 The PPR was effective from October 2003 and the Standard Tender Document (STD) was first introduced and implemented under PEDP-II in Bangladesh. Contract packages under review were the initial packages prepared based on PPR 2003 and STDs. It has been observed that during the initial phase of implementation of PPR, more difficulties were encountered both by the procuring entities and the bidding communities apparently due to lack of adequate training and familiarity with the new regulations. The sub-group's view was regardless of the phase of project or procurement stage complete adherence to regulation is mandatory. With the introduction of the Public Procurement Act 2006 and the Public*

**Debarring the non-performing contractors**

LGED has been requested, after the review dated 8<sup>th</sup> September 2008, to take action against the contractors engaged in collusive practices in those 15 contract packages including debarring them as per PPA / PPR and inform the DPs of such action. Debarring non-performance contractors for specific and indefinite periods and publishing those in the website of Central Procurement Technical Unit (CPTU) <sup>60</sup> has already been done. The ADB website does not publish such debarment in its own website.

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*Procurement Rules 2008 it has become more important that the implementing agencies adhere all the rules and regulations more stringently in order to avoid any possible future misprocurements.*

<sup>60</sup> <http://www.cptu.gov.bd/DebarmentList.aspx> accessed on 28<sup>th</sup> April 2009.

## **IV. WAYS TO COMBAT CORRUPTIONS SEEN IN THE CASE STUDY**

Instead of covering the whole procurement cycle from planning to implementation control, PPA 2006 and subsequent PPR 2008 is limited to specific phases of the process, such as selection and do not cover the full project cycle, i.e., from procurement planning to implementation and delivery. Definition of “needs”, procurement planning and approval of delivery of the procured goods and services are particularly prone to corruption. These procurement phases also often escape the scrutiny of auditors and the general public. If the process is not controlled and properly regulated, a “need” or requirement can be created arbitrarily, and substandard products or services can be delivered, thus providing margins for kickbacks. Most of the findings in our case study deals with bidding stage and selection stage corruption.

Following suggestions could be made as a way forward to stop recurrence to the types of corruptions seen in the case study:

### **To encourage more successful bidders:**

Having a high number of bidders not only increases the chances of receiving responsive bids but also diminishes the risk of collusion and bidding cartels, and reduces opportunities for favoritism and nepotism. Moreover, strong participation typically reinforces scrutiny of the procurement, as more competitors have an interest in the proceedings. To attract the greatest possible number of bidders, Bangladesh requires the publication of tender opportunities in the press as well as in the cptu web sites. Bid

openings are published on central web sites in Bangladesh. It is noticed in the case study that sufficient time and coverage was allowed for the bidders to participate in the tendering process. To improve competitiveness, it may be recommended to take steps in other areas as follows:

- Rejection of bidding must be informed with reasons of deficiencies of bid document.
- Pre-bid clarification meeting must be held well in advance. The implementing agencies (in our case study the LGED) would ensure mandatory convening of pre-tender meeting in all procurement.
- Clarifications sought must be answered in writing and must be circulated to all bidders.
- Delay between deadline for submitting bids and opening them must be reduced. It should be specified in some form of administrative pronouncement.

### **To encourage more competitive pricing**

It is observed that in all cases only a small number of bidder participate in the tender. Dedicated procurement unit through its website: <http://www.cptu.gov.bd/CPTU.ASPX> now allows this process to complete. Efforts to further enhance the use of the internet continue to file procurement bidding including transferring file through the internet system. The process of coercion in submitting the bids as well as splitting the contract into smaller package discourages the national bidder in participating in the bidding process. Political influence in the procurement planning to split the contract so that the local contractors can participate and influence the bidding process is another reason. It is



recommended to discourage splitting of similar packages unless there is specific need that such splitting is necessary for fair participation and competitive reasons.

Following steps may be recommended:

- Encourage electronic filing of bidding documents
- Non-splitting of contract where possible
- Encourage nation-wide competitive process, where possible.
- Contract cost estimation must not be communicated. Efforts should be made so that strict confidentiality is maintained in all respect.

### **Tightening of discretion while departing from open tendering or splitting contract packages**

Bangladesh does not require open tendering if the value of the procured goods or services is below a certain threshold. In addition, Bangladesh allows change of methods for unspecified reasons, thereby creating a particularly high risk that the default method of open tendering will be circumvented. Recommendations:

- To protect against abuse, adequate thresholds must be set and the arbitrary splitting of the purchase into smaller contracts must be prohibited. Furthermore, measures must be taken to prevent repeated orders following an initial lower contract assigned to a certain bidder.
- For technical or other reasons if restricted tendering is applied, justifications for the assumption must be fully clarified in all cases.
- Bangladesh by introducing the legal structure has gone a step forward in its efforts in ensuring thorough and uniform implementation of procurement regulations. As a way for improved contracts administration

and supervision, procurement staff has to be trained in the rules and in professional conduct to give the reforms full effect.

- LGED (implementing agency) has been providing training to all field level engineers about the PPR and STDs including contract management, particularly for 2006 and 2007. Recent review of the post procurement audit reports for 2005-2006 by the review auditors shows no evidence of capacity building of the implementing agency in relation to in-house review of procurement performance. This also highlights another worrying part of procurement corruption. It is noted that significant training programs are being carried out in improving capacity of the PIU as well as for the procuring entities.

For all contract packages, without exceptions the School Management Committee (SMCs) provided acceptable quality certification on completion of the works. It is recommended that:

- Dissemination of Public Procurement Regulations 2003, Public Procurement Act 2006 (PPA 2006) and its associated Public Procurement Rules 2008 (PPR 2008) upto the smaller administrative units (sub-district level). To that end, LGED should conduct regular training program of field level engineers on PPR 2008, PPA 2006 and contract management.
- Quality certification provided by SMCs needed to be independently verified in all cases by independent review team. Executing agencies

should take departmental disciplinary actions against its staff for poor quality works and misconduct.

**To upgrading financial management: Implementation of Risk Management Strategy (RMS)**

It has been observed in the Case Study that taking cognizance of the procurement, financial management, and government issues, MoPME approved a RMS in December 2006 and advised all procuring entities in PEDP II to implement the RMS. The RMS has set measurable procurement performance indicators, developed by the Directorate of Primary Education with the assistance of the DPs. As a follow up, it was agreed that within 31<sup>st</sup> July 2008, executing agencies would submit the first quarterly report on RMS covering the period of Apr – June 2008: which was yet to be received by the PLU.<sup>61</sup>

It is recommended that:

- As part of the financial management, the executing agencies must submit the Risk management Strategy on quarterly basis indicating the achieved performance indicators against the target indicators.

**Accommodating grievances, post bidding remedies including complaints**

Legislation in Bangladesh does not explicitly require the announcement of the tendering results to the unsuccessful bidders. Notification of awards is intimated only to the winning bidders. As a local contractors, most of the time unsuccessful bidder would not complain in fear of further actions from the officials in future bids as well as from muscle

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*61 Information valid upto 30th April 2009.*

power of the influential local contractors. Even if the national bidding is carried out, sub-contracts are traditionally awarded to the local influential contractors.

Regarding the elimination of bidders in individual bidder, Bangladesh procurement laws allow or oblige the procuring entities to disqualify bidders for violating rules or providing false information.<sup>62</sup> Clear criteria are stated in the Regulation which will attract conditions for fraudulent conduct and provision of false information foreseeing the possibility of disqualifying a bidder for violation of rules, corruption, or improper conduct. While disqualification is certainly an adequate means to eliminate bidders who violate the rules, disqualification procedures can also be abused to favor a candidate.

Recommendations:

- While there are social and political issues that cannot be overcome immediately, the DPs need to continue to pressurize the government by way of declaring misprocurements, so that the Government is forced to ensure that genuine bidders are not eliminated.

### **Review and audit mechanisms**

Complaint mechanisms are not effective if no complaints are lodged; they fail, for instance, in cases of collusion where all the parties are corrupt. Bangladesh has provisions for accepting complaints and appeal under certain conditions. However, explicit requirement to record acts and decisions in the procurement process is not regulated in Bangladesh procurement Act.

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<sup>62</sup> *Clause 127(2) (b) and Clause 127 (4) of Public Procurement Rules 2008 of Bangladesh.*

To detect corruption review by an independent audit or supervisory body or the public is an indispensable complement to complaint mechanisms. The review body can intervene during the project cycle or after the project has been fully implemented.

Bangladesh requires regular yearly or half-yearly audits of procuring agencies. A post procurement review has been made mandatory.<sup>63</sup> In Bangladesh, review has to be done by external consultants and must encompass at least 20 percent of the procurement projects and 30 percent of the value of public procurement in a given period. A Directorate (Foreign Aided Projects Audit Directorate) is separately created under the Office of the Comptroller and Auditors General to carry out annual audit of all foreign aided projects that includes public procurement.

Recommendations:

- Given the long duration of procurement for large projects, especially public infrastructure, and the difficulties involved in detecting fraud and corruption, these documents must be retained long enough.
- Complaints must be discretely investigated by a department separate from the procuring entity. An Integrity and Intelligence Unit may be set up to deal with all types of internal and external complaints.
- It is understandable that being a part of the Government, the Directorate may not like to embarrass the Government to the DP. Steps must be taken to improve the capacity and independence of the Foreign Aided Projects

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*63 Sec 24 of the Public Procurement Act 2006 of Bangladesh.*

Audit Directorate who does not have the record of finding procurement failures resulting in misprocurement declaration.<sup>64</sup>

- The Project Implementation Unit (PIU) of the procuring entity itself can carry out a Detailed Implementation Review (DIR)<sup>65</sup> as part of day to day monitoring activities.
- The result of the Detailed Implementation Review (DIR) may be used by the FAPAD for their further investigation and for determination of audit scope.<sup>66</sup>

### **Sanctions and legal actions**

Sanctions are usually provided in penal or administrative law. Corruption in public procurement is penalized under general criminal law in Bangladesh. In addition,

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*64 : World Bank ex-Country Director in Bangladesh, Christine I. Wallich, in a statement dated February 14, 2006: ".....Making the Comptroller and Auditor General (CAG) a truly independent body. Good practice internationally is that CAG should not rely on the government for its budgetary allocations and should not have government influence on its administrative decisions. Parliament rather than the government should decide on CAG's annual budget allocation, and the CAG should be able to decide its own organisational structure and staffing, independent of the Establishment Ministry. This avoids any conflict of interest that may arise between those that are audited and those that conduct the audit....."*

*65 The Detailed Implementation Review (DIR) is a proactive diagnostic tool developed by INT in 2001 to evaluate World Bank-financed projects for indicators of fraud and corruption and the robustness of the Bank Group's control mechanisms to prevent, detect, and respond to them. For details: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNITS/EXTDOII/0,,contentMDK:20546855~menuPK:588938~pagePK> .*

*66 By using forensic accounting and fraud investigation techniques, a DIR examines a project's procurement and implementation processes for indicators of fraud and corruption. It seeks to determine how, and to what extent, fraud and corruption may be present and thereby adversely affect the procurement of the project's essential goods, works, and services and the successful completion of project implementation. A DIR assesses the likelihood of fraud, corruption and mismanagement in World Bank financed projects. Refer: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/ORGUNITS/EXTDOII/0,,contentMDK:20546855~menuPK:588938~pagePK> .*

Bangladesh procurement law includes penal sanctions for any form of manipulations of the procurement process. A contract won through corrupt practices may be terminated in Bangladesh. In addition, civil liability for damages can serve as economic sanctions against dishonest acts of bidders.

Many of corrupt practices as observed in the case study went unpunished except for debarring some of the bidders. Although significant legislative provisions are enacted against the corrupt officials, a very soft legal approach was taken against the officials until this case study when six LGED field level engineers are suspended for corruption charge which is the result of repeated pressure from the ADB.

To improve deterring effect it is recommended that:

- Enhance administrative and judicial review systems to tackle supply side of corruption in public procurement.
- In the absence of provision of prosecuting criminally of legal persons, economic sanctions in the form of civil liability for damages and debarment have been introduced to press companies to battle corrupt practices in procurement. It is recommended that legal provisions should be framed so that the legal persons may be prosecuted criminally.
- Government should take harder stance on probable corruption allegations and legal enforcement should be instituted against the corrupt officials under S 4 of the Prevention of Corruption Act 1947.<sup>67</sup>

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<sup>67</sup> Sec 4 of the **Prevention of Corruption Act 1947** states that where in any trial of an offence punishable under Sec 161 or Sec 165 of Penal Code it is proved that the person has accepted or agreed to have accepted or attempted to accept, for himself or for any other person, any gratification (other than his

## **Debarring entities**

In Bangladesh, the legislation is worded in the form of optional<sup>68</sup> when dealing with debarment. The debarment periods are often—but not always—defined: an indefinite period, for example, in Bangladesh. The participating entities are being debarred. The entities itself may be phony and debarring in itself does not really deter the wrong doers as they can then take different identities in continue to participate in other government agencies specially where there is no DP fund is related or linked.

It is recommended that:

- A thorough due diligence exercise be carried out to identify the person or the true institution involved behind the bidding process and those should be banned for any future bid participation.

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*legal remuneration), it shall be presumed unless contrary is proved that he accepted or obtained or agreed to accept or attempted to obtain such gratification..*

<sup>68</sup> *Sec 64(5) of the Public Procurement Act 2006 of Bangladesh.*



## **SECTION 3**

### **REVIEW OF ADEQUACY AND EFFECTIVENESS OF PUBLIC PROCUREMENT LEGISLATION / REREGULATIONS OF BANGLADESH IN CURBING CORRUPTION**

Bangladesh by introducing the legal structure has gone a step forward in its efforts in ensuring thorough and uniform implementation of procurement regulations. Substantially overhauling of rules have been made in regulatory frameworks between 2000 and 2008 in order to establish stable and operational regulations which constitute the basis for all efforts to protect public procurement systems against corruption risks.

Significant progress has also been made in the standardization of procurement processes. Standardization makes processes more transparent, reduces room for discretion and malicious altering of procedures, and greatly facilitates external review. Bangladesh established centralized body named Central Procurement Technical Unit (cptu) that define and harmonize the development of procurement policies, standard documents, and manuals, and oversee the uniform implementation of these policies and staff training on behalf of the Government of Bangladesh through the Implementation Monitoring and Evaluation Division of the Ministry of Planning.

As another measure to standardize procurement processes, is use of website by cptu in the procurement procedures. The cptu website publishes / disseminates information about procurement opportunities that allows wide access to information at low cost. Efforts to further enhance the use of the Internet continue to file procurement bidding including transferring file through the internet system is being considered under the PPA 2006.<sup>69</sup>

Bangladesh has made progress in ensuring that regulations are followed strictly and uniformly. Model documentation is being developed and procurement related staff being trained at home and in abroad in the rules and in professional conduct to give the reforms full effect.

Despite the legal reforms, challenges in curbing the risks of corruption inherent in government purchases still lie ahead. Most of these challenges concern the existence, scope, and thoroughness of regulation of procurement frameworks.

Unfortunately, procurement frameworks of Bangladesh remain somewhat incomplete in the procurement phases they regulate. Instead of covering the whole procurement cycle from planning to implementation control,<sup>70</sup> PPA 2006 and subsequent PPR 2008 is limited to specific phases of the process, such as bidding and selection. Definition of “needs” and the delivery of the purchased goods or services are particularly prone to corruption: these procurement phases also often escape the scrutiny of auditors and the

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<sup>69</sup> *Ibid.*S.6f.

<sup>70</sup> *Ibid.* S.11

DPs. Hence, the fight against corruption in procurement would benefit amply from regulatory efforts in these areas.

Particular challenges also remain in the regulation of sanctions for corruption, a popular mechanism to deter corruption. Bangladesh procurement legislation now details various kinds of public procurement corruption and identifies penal measures on both government employees as well as measures to debar the bidder / participants in the form of sanctions. It is hoped this will create trust of honest suppliers in the procurement process as the lack of trust could in turn lead to their abstention.

Effectiveness of public procurement legislation / regulations of Bangladesh can be evaluated on the following areas<sup>71</sup>:

- Curbing corruption through comprehensive regulation
- Curbing corruption through transparency and fairness
- Curbing corruption by promoting integrity of individuals in procurement process
- Curbing corruption through verification mechanism

## **1. Curbing corruption through comprehensive regulations**

In the absence of clear, comprehensive, sound and regulatory framework for the conduct of public procurement together with meaningful review and control mechanisms any

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<sup>71</sup> *These areas were recommended in the Thematic Review by ADB/OECD Anti-Corruption Initiative for Asia and the Pacific conducted over 25 countries as of May 2006 including Bangladesh.*

form of manipulation and corruption may occur and remedies for such practices may be difficult to implement. Regulatory analysis can be as under:

**a. Existence of procurement rules and legislation**

Bangladesh have passed comprehensive and widely applicable public procurement laws and regulations in the form of PPA 2006 and PPR 2008 which have been strongly inspired by the model law on public procurement of the UN Commission on International Trade Law (UNCITRAL). Prior to the Act, Bangladesh had passed substantial elements of their procurement regulations or even the entire framework at the level of executive orders or decrees in the form of PPR 2003. Bangladesh managed to achieve a harmonization / balance with the PPA 2006 by revision of PPA 2003 by way of introducing PPR 2008. Introduction of other legislation dealing with curbing corruption including Money Laundering Prevention Ordinance of 2007, Anti Corruption Act 2004 etc have bolstered government's preventive initiatives.

**b Scope of the procurement rules**

In Bangladesh procurement frameworks, inspired by the UNCITRAL model law, focus mainly on the mechanism for selecting the supplier. It does not cover the full project cycle, i.e., from procurement planning to implementation and delivery. Needs assessment and definition of technical specifications—and the delivery phase are particularly exposed to corruption. If the process is not controlled and properly regulated, a “need” or requirement can be created arbitrarily, and substandard products or services can be delivered, thus providing margins for kickbacks. The remaining issues, such as

procurement planning and approval of delivery of the procured goods and services etc are to some extent covered by the country budget and general contract laws.

Further limitations on the applicability of the regulatory framework concern certain goods and services. The Public Procurement Act 2006 allows exclusion of competing procurements to meet national need or catastrophic event where procurements are carried out under direct procurement method or any other method.<sup>72</sup> Bangladesh has passed special regulations for goods and services procured for national defense and security. Bangladesh procurement legislation covers all procurements using public funds including procurement of goods, works and services under a loan, credit or grant or any other agreement with a development partner or with a foreign state or an organization.<sup>73</sup>

### **c. Harmonization of procurement rules and policies**

Consistency of procurement rules and policies throughout a given country is widely considered desirable. To foster the development of uniform procurement practice and policies Bangladesh has established a central procurement authority (cptu). Such authorities do not undertake procurement themselves but rather supervise the individual procuring entities, monitor compliance with the regulatory framework, set and harmonize policies, and recommend reforms. A detailed website maintained by cptu helps wide access and dissemination of procurement related information including the Annual Procurement Plans (APP).

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<sup>72</sup> *Ibid.*S.68.

<sup>73</sup> *Ibid.*S.3(2)(d).

## **2. Curbing corruption through transparency and fairness**

In order to have bidders trust in the fairness of the tender process, the perception of transparency is crucial. Large number of bidders with increased competition protects against bribery, favoritism, and collusion—forms of corruption that become difficult to sustain when many actors have stakes in the process. A transparent and fair procurement process requires legislative and administrative measures in transparency of the proceedings, protection against corruption-induced manipulation of the procurement method, fair prequalification procedures, and transparent and fair selection of the winning bidder.

### **a. Transparent proceedings**

Transparency requires conditions of participation, eligibility of suppliers, timelines, technical specifications for the procured goods or services, criteria for the rejection of a bid or the disqualification of a supplier, criteria for the evaluation of offers, contract terms etc to be clearly stated. Strict procedures as laid out in the PPA 2006 as well as standard bidding documentation satisfy most of these requirements. Transparency requires easy access by potential bidders to information explaining the procurement procedures, which must be comprehensive. Dedicated procurement unit through its website <http://www.cptu.gov.bd/CPTU.ASPX> now allows this process to complete.

The use of comprehensive standard contract documents also helps avoid negotiations at the time the contract is awarded.<sup>74</sup> Unlike negotiations that may be required in the implementation of the procurement contract, any other negotiations during the awarding of the contract must be avoided as these provide opportunities for corruption.

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<sup>74</sup> *Ibid.*S 49.

Legislation in Bangladesh, however, does not explicitly require the announcement of the tendering results to the unsuccessful bidders.<sup>75</sup> Notification of awards is intimated only to the winning bidders.<sup>76</sup>

#### **b. Selection of the procurement method**

In Bangladesh, procurement by open tendering<sup>77</sup> is the default method of procurement and accounts for the largest share of the value of procured goods and services. But it is not the only method practiced. Procurement frameworks also provide for other methods, such as Limited Tendering Method, Direct Procurement Method, Two Stage Tendering Method and Request for Quotation Method.<sup>78</sup> However, some of these methods, employed to speed up procurement or achieve other advantages, entail specific risks of abuse and corruption.

Bangladesh does not require open tendering if the value of the procured goods or services is below a certain threshold and therefore does not warrant a long and complex process like open tendering. To protect against abuse, adequate thresholds must be set and the arbitrary splitting of the purchase into smaller contracts must be prohibited. Furthermore, measures must be taken to prevent repeated orders following an initial lower contract assigned to a certain bidder. When there are not enough potential suppliers for technical or other reasons, restricted tendering is applied in Bangladesh but the

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<sup>75</sup> *Ibid.*S.21(2)

<sup>76</sup> *Ibid.*.S. 52(1)

<sup>77</sup> *Ibid.* S. 31

<sup>78</sup> *Ibid.* S 32

justifications for the assumption are not fully clarified in all cases thereby creating a particularly high risk that the default method of open tendering will be circumvented.

In a recent move on 7<sup>th</sup> April 2009, Executive Committee of National Economic Council (ECNEC) has formed a committee to make recommendations for bringing in changes to relax the conditions of pre-qualifications and experience and work order authority of the Public Procurement Act 2008, which was just made effective on 24<sup>th</sup> January 2008 after a long five years of consultation amongst all parties including the development partners. The Resident Chief of the World Bank in Dhaka Mr. Xian Ju has written to the Government of Bangladesh on the 25<sup>th</sup> May 2009 expressing his deep concern over such decision. It is apprehended that the move, if successful, would facilitate government agencies to procure goods and services internally within a threshold without going through external agencies like the development partners which is believed to be intended to give special favours to political affiliates.<sup>79</sup>

Corrupt procurement personnel can easily stage a failure of tender by setting various kind of inadequate bidding conditions. To protect public procurement against such risks of abuse, tender failure should be avoided. Two measures will help reduce instances of tender failure. One way is to set severe conditions in the procurement regulations for declaring a failed tender. Having a high number of bidders not only increases the chances of receiving responsive bids but also diminishes the risk of collusion and bidding cartels, and reduces opportunities for favoritism and nepotism. Moreover, strong participation typically reinforces scrutiny of the procurement, as more competitors have an interest in

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<sup>79</sup> BDT 305,000 Million (USD 4452 million) is allocated for Annual Development Programme for fiscal year 2009-2010, 80% of which shall be spent under public procurement.



the proceedings. Bangladesh requires re-tendering for failure of the tender. If a tender fails, negotiation is the automatic recourse. Authority may either repeat the tender or enter into negotiations.

Setting clear conditions for deviating from the standard procurement method is necessary. Verification and oversight of this important decision are essential because manipulations at this early stage are difficult to detect. Except for maintaining records, Bangladesh does not require the procuring entity to justify the deviation from the standard procurement method and, in addition, exempt this decision from administrative and judicial review.

### **c. Eligibility and certification**

Certification procedures generally determine who is eligible to bid. The PPA 2006 ensures that all applicants are qualified as a matter of principle, that qualification lists are updated regularly, and that any exemptions or disqualifications are made on transparent and nondiscriminatory grounds.<sup>80</sup>

### **d. Selection of the winning offer**

In procurement through tendering, the evaluation and selection of the winning offer can also be manipulated for corrupt ends. Bangladesh applies two types of criteria to the selection process: positive criteria are used to select the most advantageous bid among responsive bids submitted by eligible bidders, while negative criteria concern the eligibility of the bidders. Positive selection criteria sometimes referred to as the best price, also referred to as the “lowest evaluated price” or as “value for money which is

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<sup>80</sup> *Ibid.* S 15 (1), 15(2), S 25 and S 26.

followed by Bangladesh.<sup>81</sup> Regarding the elimination of bidders in individual bidder, Bangladesh procurement laws allow or oblige the procuring entities to disqualify bidders for violating rules or providing false information.<sup>82</sup> Clear criteria are stated in the Regulation which will attract conditions for fraudulent conduct and provision of false information foreseeing the possibility of disqualifying a bidder for violation of rules, corruption, or improper conduct. While disqualification is certainly an adequate means to eliminate bidders who violate the rules, disqualification procedures can also be abused.

### **3. Curbing corruption by promoting integrity of individuals involved in the procurement process**

Ensure proper conduct of buyers and suppliers in an effort to curb corruption in public procurement.

#### **a. Ensuring proper conduct through institutional mechanisms**

Corruption can be further contained through institutional design and measures aimed at developing high ethical standards among the individuals involved in the procurement process. Side by side, at the institutional level, control and oversight mechanisms are among the most common means of curbing corruption. Bangladesh entrusts procurement decisions to groups rather than individuals.<sup>83</sup> In Bangladesh, deviation from the standard procurement method in cases of emergency must be reported to a superior authority.

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<sup>81</sup> *Ibid.* S 31 (1) (e)

<sup>82</sup> *Clause 127(2) (b) and Clause 127 (4) of Public Procurement Rules 2008 of Bangladesh.*

<sup>83</sup> *Ibid.* Sec 6 and Sec 7

The preventive measures for procurement agency staff entail the setting up, dissemination, and thorough implementation of clear codes of conduct. To ensure the integrity of procurement agency personnel Bangladesh have passed extensive codes of conduct for public officials, including staff of procuring entities.<sup>84</sup> Transparency requires the disclosure of conflicting interests which require public officials involved in procurement to avoid conflicts of interest and to disclose them when they occur.

Bangladesh now supports the adoption of high behavioral standards with systematic training that addresses corruption risks. Bangladesh has begun to train procurement personnel in procurement and technical audit.<sup>85</sup>

In addition to ensuring the integrity of procuring entities, measures targeting corporate integrity are needed to reduce the risk of corrupt practice in public procurement. Conflict of interest by a bidder is now addressed in the PPA 2006.<sup>86</sup>

In addition to that, Public Procurement Regulations 2008 now incorporate detailed rules on professional misconducts in relation to procurement process.<sup>87</sup> In Bangladesh, bidders now have to declare that they will abstain from unduly influencing the procurement process or outcome; this declaration also binds subcontractors and other third parties.

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<sup>84</sup> *Ibid.* S 64

<sup>85</sup> <http://www.cptu.gov.bd/CourseDetail.aspx?CourseId=1&Content=Programme> accessed 17th April 2009.

<sup>86</sup> *Sec 28 of the Public Procurement Act 2006 of Bangladesh*

<sup>87</sup> *Regulation 127 of the Public Procurement Rules 2008 of Bangladesh*

## **b. Ensuring integrity through legal sanctions**

Effective sanctions constitute strong incentives for both bidders and public servants to maintain their integrity in the procurement process. Such sanctions are usually provided in penal or administrative law. In addition, civil liability for damages can serve as economic sanctions against dishonest acts of bidders.

Corruption in public procurement is penalized under general criminal law in Bangladesh. In addition, Bangladesh procurement law includes penal sanctions for any form of manipulations of the procurement process. Those includes actions permitted under the Public Procurement Act 2006,<sup>88</sup> Prevention of Corruption Act 1947 or / and criminal actions under relevant sections of Penal Code 1860.<sup>89</sup> Administrative action may be brought against a procuring person Government Servants (Discipline and Appeal Rule) 1985.<sup>90</sup> Actions under the Anti Corruption Act 2004 shall also be instituted against a person or a procuring officer committing an offence under Sec 64 of the PPA 2006. A contract won through corrupt practices may be terminated in Bangladesh.

The effect of the debarment provisions depends on various factors, such as whether debarment is mandatory or optional, whether it is automatic or it requires a distinct decision, whether disqualification affects contracts with only one procuring agency or with all public procurement agencies nationwide, what would be re-registration process

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<sup>88</sup> *Sec 64(3) and Sec 64(4) of the Public Procurement Act 2006 of Bangladesh*

<sup>89</sup> *Rule 161 to 171, Rule 465 to 489, Rule 503 to 506 and Rule 120(a) / 120B(2) of Penal Code 1860.*

<sup>90</sup> *Rule 3(b) and 3(d) of Government Servants (Discipline and Appeal Rule) 1985.*

etc. In Bangladesh, the legislation is worded in the form of optional.<sup>91</sup> The possibility of debarring companies found guilty of corruption or collusion from tendering for public contracts has been integrated into legal framework of Bangladesh. The debarment period is not defined and it is indefinite period in Bangladesh.

#### **4. Curbing corruption through verification mechanisms**

Bangladesh has provisions for accepting compliant and appeal under certain conditions. However, explicit requirement to record acts and decisions in the procurement process is not regulated in Bangladesh procurement Act.

##### **a. Complaint mechanisms**

Effective and swift review of major procurement decisions in response to complaints from aggrieved bidders is important in a procurement system. There are provisions for the administrative review of procurement decisions in Bangladesh procurement laws which provide for subsequent appeal to a higher level in the public administration. Bangladesh has set up independent review bodies to handle bid challenges.<sup>92</sup> In Bangladesh, the review body is not authorized to review decisions made by the Cabinet Committee on Government Purchase, the country's highest-ranking procurement body.<sup>93</sup>

The period allowed for filing an appeal or a request for review is usually short to speed up the procedure. Bangladesh allows only three days for an appeal to be submitted. PPA

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<sup>91</sup> *Sec 64(5) of the Public Procurement Act 2006 of Bangladesh.*

<sup>92</sup> *Ibid.* S 21(2),S 29 and S 30.

<sup>93</sup> *Ibid.* S 29(2)© (ii).

2006 does not explicitly permit judicial review in addition to administrative review or as an alternative.

#### **b. Review and audit mechanisms**

Complaint mechanisms are not effective if no complaints are lodged. Such mechanisms are not likely to curb corruption in the early phases of procurement (procurement planning or the selection of the procurement method) or in the delivery phase, when there are no potential complainants.

To detect various forms of corruption review by an independent audit or supervisory body or the public is an indispensable complement to complaint mechanisms. The review body can intervene during the project cycle or after the project has been fully implemented.

Bangladesh requires regular yearly or half-yearly audits of procuring agencies. A post procurement review has been made mandatory.<sup>94</sup> In Bangladesh, internal audits have to be done by external consultants and must encompass at least 20 percent of the procurement projects and 30 percent of the value of public procurement in a given period. In addition, Foreign Aided Projects Audit Directorate (FAPAD) is separately created under the Office of the Comptroller and Auditors General (CGA) to carry out annual audit of all foreign aided projects that includes public procurement.

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<sup>94</sup> *Ibid.* S 24.

There has been no use of forensic accountants in cases of fraud, bribery or corruption cases as seen in recent cases (2007-2008) filed by the Anti Corruption Commission of Bangladesh (unrelated to the case study). The departmental enquiry and investigation carried out by the Anti Corruption Commission suffered tremendously at the court of law and most of the cases were thrown out because of procedural lapses, insufficient and lack of evidence or insufficient proof to justify the offenses. It appears that the ACC could have used proper forensic resources to establish the merit of the cases before formally filing charges. It is observed that the skills and use of forensic accountants has not been recognized by the governmental agencies to investigate the fraud and corruption charges. Need for use of forensic accountants have not been felt or identified by the ACC or any other governmental agency, apparently because of lack of knowledge or existence of such skill or services. It is expected that investigative and prosecutorial tolls of the enforcing and prosecuting agencies could be strengthened by enhancing expertise in areas such as forensic accounting. The DP agencies could bring about stringent conditions in this regards which will bolster curative measures of corruptions.

### **c. Scrutiny by civil society actors**

Civil society organizations can complement institutional oversight bodies, but they need to be granted access to relevant information throughout the project cycle to be effective in this important role. Formation of Public -Private Oversight Committee should be formed through governmental pronouncement with power of reviewing, monitoring and enforcing the contracts beyond certain threshold. CPTU created such oversight committee few years back in the form of group of advisors, where Transparency

International Bangladesh is a member. Unfortunately not a single meeting was ever held because of lack of interest from the central procuring entity. Organizations like Transparency International Bangladesh is releasing regular research papers on various forms of corruption at various phases of public life inviting dialogue, creating awareness and of course putting up moral pressure on the Government.



## **CONCLUSION:**

Corruption is principally a governance issue, which strengthens amidst institutional failure and lack of capacity to manage social, judicial, political and economic checks and balances. Corruption has been recognized as a major factor inhibiting the effectiveness of international aid to developing countries. As expected, the DPs must continue to exert pressure on the Government by way of declaring misprocurement if absolutely necessary and actions could include freeze disbursement or put programme on hold altogether. Imposing conditionalities by the DPs helped a little to arrest corruption. It is good enough time that the corruptions are not tolerated as Bangladesh has now been at the bottom of TI's Corruption Perception Index for four years in a row.

All parties including DPs must publicize small successes that can demonstrate that the reforms and good intention are still possible. Further, DPs specially the ADB should consider publishing debarment list in its own website. As majority of the population are the victim of corruption by a section of privileged community, the success stories and efforts must be informed to the public at large about positive incremental changes in order to maintain widespread support. Civil society has proved to be able to put pressure on government and that activity should be greatly encouraged.

Since majority of the activities are carried out by the officials themselves it may be a good idea to identify drivers of change within the administration systems and engage within that group. The government must now make a serious attempt to communicate to

the officials about the expectation on the Code of Conduct and its likely legal consequences.

The Anti Corruption Commission and the Comptroller and Auditor General office must function independent of the direction of the Government. Introduction of separate and detailed Code of Conduct applicable for each procuring authority should be drawn in light of provisions of Public Procurement Act 2006 with provision of separate enforceability as recommended by the Transparency International Bangladesh.

Although laws on good governance standards and public procurement legislations are in place, it is important that the enforcements are strictly and exemplarily executed in order to assure the stakeholders of its effectiveness.

Effort of Anti Corruption Commission is found to be seriously challenged in recent moves by the newly elected democratic government. Lack of political support and commitment in itself is seen as impediment towards success of ACC in Bangladesh.

Government should consider use of forensic accountants as a tool for assisting investigating agencies in more professional manner to see through successful prosecutions of alleged corruptions.

As aid dependency is gradually reducing, Bangladesh may be victim of international trade sanctions and loss of international reputation if corruption generally and

procurement corruption in particular continues which will raise voice of the private sector at much greater levels than the DPs. This might affect future of Foreign Direct Investment (FDI) in Bangladesh, one of the most vital ingredients for its efforts to rapid economic growth targets. Civil society, DPs, political fronts, public at large must voice together to continue to pressurize the Government to take sustainable and credible action immediately to manage and activate its social, judicial, political and economic checks and balances.

The level of integrity of elites represent serious obstacle for successful reforms. As both economics and politics are managed and controlled mostly by businessmen cum politicians who in turn controls commercial, judicial and political power simultaneously, it is hoped that corruption can only be meaningfully addressed if level of integrity is demonstrated from the top level politicians.

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## Appendix

### Key economic statistics on Bangladesh

#### Basic Information

Currency : Taka (Tk.)  
GDP at Current Price : Tk. 4674.97 billion (US\$ 68.05 billion)  
Annual per capital GDP : US\$ 482  
GDP growth rate at (1995/96) constant price : 6.51 percent  
Agricultural growth rate at constant price : 2.95 percent  
Industrial/Mfg growth rate (% of GDP) : 11.19 percent  
Large & Medium scale Industry : 11.56 percent  
Small scale Industry : 10.28 percent

#### Trade and economics

Rate of GDP at current price : 12.45 percent  
Inflation rate (12 month average) : 8.65 percent  
Domestic savings rate of GDP: 20.46 percent  
National savings rate of GDP: 29.15 percent  
Investment rate of GDP: 24.33 percent  
Exports (2006-07): US\$ 12177.86 mn  
Imports (2006-07): US\$ 17156.80 mn  
Trade Deficit : US\$ 4978.90 mn  
Foreign Exchange Reserve : US\$ 5514.60 mn  
Remittances : US\$ 3447.32 mn

#### Foreign Investment

Direct : US\$ 263mn  
Portfolio : US\$ 48 mn  
Bank rate : 5.0 per cent  
Broad Money (M2) : 222042.60 crores

#### Total No. of Limited Co.

Public Limited Co : 35,000  
Private Limited Co. : 23,000

#### Principle Industries :

Garments, Pharmaceuticals, Textiles, Paper, Manufacturing, Newsprint, Fertilizer, Leather and Leather goods, Sugar, Cement, Fish processing, Steel & Chemical industries etc.

#### Major export items :

Garments, Tea, Jute, Frozen shrimps, Leather products, Newsprint, paper, Naphtha, Urea, etc.

#### Principle imports :

Fuel, Rice, Wheat, Cotton & Textile, Petroleum products, Fertilizer, Staple fibers, yarn etc.

(Source : Bangladesh Bureau of Statistics, Economic Trends of Bangladesh Bank, Bangladesh Economic Review 2007 & [www.indexmundi.com](http://www.indexmundi.com) and Dhaka Stock Exchange website at <http://www.dsebd.org/ecobd.php>)

## Key geographic and social statistics on Bangladesh

### **The Country: The People's Republic of Bangladesh.**

#### **Geographical location :**

South Asia; between 20° 34' and 26° 38' north latitude and between 88° 01' and 92° 41' east longitude; consists of flat fertile alluvial land.

#### **Boundaries:**

North-India (West Bengal and Meghalaya)  
West-India (West Bengal)  
East-India (Tripura & Assam) & Myanmar  
South-Bay of Bengal.

**Area:** 147,570 square km. (Territorial water—12 nautical miles).

Capital City: Dhaka Metropolitan Area (1528 sq. km.)

Standard time: GMT+ 6 hours.

#### **Climate :** Sub-tropical monsoon

Winter (November- February) temperature average maximum 29° C, average minimum 11° C ; Summer (March-June) temperature : average minimum 32° C, average minimum 21° C ; Monsoon (July-October).

Rainfall: 1194 mm to 3454 mm (average during monsoon, June-August).

Humidity: Highest :99 percent (July), Lowest :36 percent (December and January).

**Population:** 150.45 Million (July'07 est.)

Population Growth Rate : 2.05 percent

Population Density: 1045 Person per sq km

Total fertility rate: 3.09 Children born/woman (2007 est.)

Life expectancy: 62.84 years

Birth rate: 29.36 Per cent

Mortality rate: 8.13 Per cent

Adult literacy rate: 47.5 Per cent (15 years +)

**Language:** 95 percent Bengali and 5 percent other dialect. English is widely spoken.

**Religion:** Muslim (88.3%), Hindu (10.5%), Buddhist (0.6%) Christian (0.3%),& Animists and believers in tribal faiths (0.3%).

**Food:** Rice, Vegetables, pulses, fish and meat.

**Mineral resources:** Natural gas, Limestone, Hard rock, Coal, Lignite, Silica sand, White clay, Radioactive Sand etc. (There is a strong possibility of oil deposit)

**Human resources:** A substantial manpower reserve, trained from 21 Public Government and technical Universities along with 52 Private Universities & a strong electronic and print media.

Skilled: Engineers, Technicians, Physicians, Economists, Accountants, Administrative and Managerial personnel, Abundance of low cost, easily trained and adaptable, hardworking, intelligent and youthful labor force.