



**GOVERNMENT OF THE PEOPLE'S REPUBLIC
OF BANGLADESH**

The Public Procurement Regulations 2003



**Central Procurement Technical Unit
Implementation Monitoring and Evaluation Division
Ministry of Planning**

September, 2003



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PREFACE

Standard comprehensive public procurement regulations applicable to all Departments, Autonomous, Semi-Autonomous Bodies and Corporations are long over due. Prior to the introduction of 'The Public Procurement Regulations 2003' public procurement was conducted by several sets of guidelines, procedures and manuals of the Government of Bangladesh and the Development Partners.

2. The revised 1998 Compilation of General Financial Rules lays down broad principles of public procurement. The Manual of Office Procedure (Purchase) which was inherited from the British time and last revised and printed in 1977 lays down with some details the methods to be followed in procuring goods. Similarly the PWD Code which is widely followed by most of the Procuring Entities for works has also descended from the British time and has not been revised in line with modern procurement practices. In order to respond to the urgent needs of procurement the Economic Relations Division issued guidelines in May 1992 on (a) goods and works financed under project aid and (b) employment of consultant by the Government of Bangladesh.

3. None of these procurement guidelines and procedures is in themselves complete enough to meet the procurement requirements of various organizations and departments using public funds. The procurement guidelines, procedures and practices of the World Bank, Asian Development Bank and other Development Partners are also being followed for projects funded by them. The use of multiple procurement guidelines and procedures made it difficult for the procurement officers to process procurement cases timely and efficiently. Introduction of the Regulations by the government is a major reform in the field of public procurement and will add speed and efficiency in discharging procurement functions by the procuring entities.

4. Some minor and innocuous changes in the present version of the Regulations have become necessary to set right a few errors that crept in to the gazette notification issued on 1st October 2003. The changes are:

- Regulation 44(1) : Reference to Regulation 21(2) should read Regulation 21.
- Regulation 47(3d) : The word 'experience' has been duplicated and should read 'qualification and experience'.
- Regulation 47(5) : This should read Regulation 47(4).
- Regulation 53(5) : Reference to Regulation 56 should read Regulation 55(1).
- Regulation 53(6e) : Reference to Regulation 53(4) should read Regulation 53(3c).
- Appendix A : Reference to Regulation 35(2) the sentence "Approval of Contract Award" should read "Contract Award of".
- Appendix A : Reference to Regulation 47(3ci), the limit has been added
- Appendix A : Reference to Regulation 47(3ciii), the limit has been clarified
- Appendix A : Reference to Regulation 49(4) should read Regulation 49(5); and the sentence "Approval of Contract Award" should read "Contract Award of".
- Appendix A : Reference to Regulation 53(2) should read Regulation 53(3c).

5. The Public Procurement Regulations 2003 have been prepared through a process of extensive consultations with all the stakeholders, government Ministries, Divisions, Departments, Statutory Bodies, Development Partners, Applicants, Suppliers, Contractors,

THE PUBLIC PROCUREMENT REGULATIONS

Consultants and their associations, and representatives of Bangladesh Federation of Chambers of Commerce and Industries. The Regulations have passed through the various Working Groups comprising representatives both from private and public sectors, National Workshops, the Steering Committee and a high level Committee constituted by the government.

6. The salient features of the Regulations are that they have been prepared in line with international standard introducing improved modern procurement principles and practices that will promote fairness and competition in the procurement process, ensure equitable treatment to all parties. The Regulations cover almost all aspects of procurement of goods, works and services and are capable of dealing with complex business requirements of modern time. It is not a stand alone document. As a follow up to the Regulations, a series of other supporting documents will be introduced such as User Guides, the Procedures, and Standard Tender Documents for goods and works and Standard Request for Proposals for services and other related documents. It may be noted that the Regulations and its accompanying documents are living documents subject to adjustment from time to time depending on the requirement of time and changing business environment.

7. With the introduction of the Regulations I am sure the long felt need of a transparent, accountable and efficient public procurement system will be established that will facilitate disposal of public procurement functions expeditiously and minimise the scope of corruption. Although the Regulations are non-statutory, these are mandatory for all procuring entities using public funds. The Regulations supersede all other public procurement guidelines, procedures and practices. We are optimistic that the development partners will allow use of the Regulations for project procurement under their funding.

8. I would like to thank all those who were involved with the preparation of the Regulations including the members of the Working Groups, the members of the Steering Committee, the members of the high level Committee constituted by the Government for their valuable contributions in developing the Regulations. The Honourable Minister for Finance and Planning and the Honourable State Minister for Finance and Planning deserve special thanks for according priority to this work, suggesting improvement in the Regulations and always inspiring and guiding the IMED/CPTU. I would also like to express my thanks to the IDA for their financial support, the International Training Centre of the ILO (Turin), [ITC-ILO] team for their technical support and the CPTU officers and staff for supervising and producing the Public Procurement Regulations 2003.

Manik Lal Somaddar
Secretary
IMED

TABLE OF CONTENTS

PREAMBLE	.....	1
CHAPTER I. GENERAL PROVISIONS	.....	1
Regulation 1.	Short title, commencement and purpose of these Regulations	1
Regulation 2.	Definitions	1
Regulation 3.	Scope of application	3
Regulation 4.	International obligations.....	4
CHAPTER II. ORGANISATION OF PUBLIC PROCUREMENT	.....	4
Regulation 5.	Procuring entities.....	4
Regulation 6.	Policy formulation, co-ordination, monitoring and improvement.....	4
Regulation 7.	Consultative committee on public procurement.....	5
CHAPTER III. BASIC PROCUREMENT RULES	.....	5
Regulation 8.	Public accessibility of legal texts	5
Regulation 9.	Records of procurement	6
Regulation 10.	Eligibility and non-discrimination	7
Regulation 11.	Form of communications	7
Regulation 12.	Qualification of tenderer	7
Regulation 13.	Technical specifications.....	8
Regulation 14.	Rejection of all tenders, proposals and quotations.....	8
Regulation 15.	Corrupt Fraudulent Collusive or Coercive Practices.....	9
CHAPTER IV. CHOICE OF PROCUREMENT METHOD	.....	10
Regulation 16.	Open tendering method.....	10
Regulation 17.	Conditions for use of restricted tendering method.....	10
Regulation 18.	Conditions for use of direct procurement method.....	11
Regulation 19.	Conditions for use of two-stage tendering method	11
Regulation 20.	Conditions for use of request for quotations method.....	12
CHAPTER V. NATIONAL OPEN TENDERING METHOD	.....	12
Regulation 21.	Advertisements	12
Regulation 22.	Invitation for prequalification.....	12
Regulation 23.	Pre-Qualification documents	12
Regulation 24.	Invitation for tender.....	13
Regulation 25.	Tender documents.....	14
Regulation 26.	Provision of tender documents	14
Regulation 27.	Modifications to tender documents.....	14
Regulation 28.	Tender validity and tender security.....	15
Regulation 29.	Submission and receipt of tenders	15
Regulation 30.	Opening of tenders	16
Regulation 31.	Examination and evaluation of tenders	16
Regulation 32.	Process to be confidential	18
Regulation 33.	Negotiation and Modification of Tender	18
Regulation 34.	Post-Qualification	18
Regulation 35.	Approval of contract award.....	19
Regulation 36.	Notification of award and signing of contract.....	19
CHAPTER VI. OTHER PROCUREMENT METHODS	.....	19
Regulation 37.	Restricted tendering method	19
Regulation 38.	Direct procurement method	20

Regulation 39.	Two-stage tendering method	20
Regulation 40.	Request for quotations method	21
CHAPTER VII.	USE OF INTERNATIONAL COMPETITION	21
Regulation 41.	Open tendering with international competition	21
Regulation 42.	Other procurement methods with international competition	22
CHAPTER VIII.	REQUEST FOR PROPOSALS (RFP) METHOD	22
Regulation 43.	Conditions for use of RFP method	22
Regulation 44.	Request for expressions of interest (EOI)	22
Regulation 45.	Preparation of short list.....	22
Regulation 46.	Request for proposal	23
Regulation 47.	Sub-methods of selection and conditions for use.....	23
Regulation 48.	Receipt of proposals and proposal evaluation.....	24
Regulation 49.	Negotiation and Contract award for proposals	25
CHAPTER IX.	COMPLAINTS AND APPEALS	26
Regulation 50.	Right to complain.....	26
Regulation 51.	Complaints to the administrative authority.....	26
Regulation 52.	The Review Panel	27
Regulation 53.	Complaint to the Review Panel	28
Regulation 54.	Suspension of procurement proceedings.....	29
Regulation 55.	Assistance provided by CPTU to review panel.....	30
CHAPTER X.	PROCUREMENT POST REVIEW.....	30
Regulation 56.	Independent procurement review	30
CHAPTER XI.	APPROVAL PROCEDURE AND DELEGATION OF FINANCIAL POWERS	30
Regulation 57.	Approval Procedure and Delegation of Financial Powers	30
CHAPTER XII.	REPEALS AND SAVINGS.....	30
Regulation 58.	Repeal and saving.....	30
CHAPTER XIII.	INTERPRETATION AND IMPLEMENTATION	31
Regulation 59.	Interpretation and implementation	31
Appendix A.	Schedule of Times and Values Currently in Force	31

PREAMBLE

WHEREAS the Government of the People's Republic of Bangladesh considers it expedient to regulate procurement of goods, works and services for achieving the objectives of:

- (a) optimising efficiency in procurement;
- (b) promoting competition among tenderers for the procurement of goods, works or services in the public sector;
- (c) providing equitable treatment to tenderers;
- (d) promoting fairness in the procurement process;
- (e) contributing to an improved business climate in the country; and
- (f) introducing transparent regulations of universal application to all procurement in the public sector.

NOW THEREFORE, the Government hereby issues the following Regulations, namely:

CHAPTER I. GENERAL PROVISIONS

Regulation 1. Short title, commencement and purpose of these Regulations

- (1) These Regulations may be cited as the Public Procurement Regulations, 2003 and shall supersede all existing orders/instructions/directives on the subject by whatsoever name they may be called.
- (2) These Regulations shall come into force on such date as the Government may by notification in the Official Gazette specify.
- (3) The purpose of these Regulations is to promote value for money in public procurement on behalf of the Government while ensuring that public procurement methods are conducted in a fair, transparent and non-discriminatory manner, thereby promoting economic and social development.

Regulation 2. Definitions

In these Regulations, the following definitions shall apply:

“applicant” means a person who seeks to be pre-qualified in response to an Invitation for Pre-qualification or is an enlisted person in response to an invitation for tender under a restricted tendering method or to be short listed in response to an Expression of Interest.

“concession contract” means contracts with combined public and private financing for provision and operation of public utilities and other public services (e.g. Build Own Operate (BOO), Build Operate Transfer (BOT), Build Own Operate Transfer (BOOT)).

“CPTU” means the Central Procurement Technical Unit in the Implementation Monitoring and Evaluation Division of the Ministry of Planning.

“days” means calendar days unless specified as working days.

“ethics” means the moral principles or rules of conduct which procuring entities have to follow when carrying out any public procurement.

"framework contract" means a contract between one or more procuring entities and one or more suppliers the purpose of which is to establish the terms governing orders for the supply of goods and related services to be placed during a given period, in particular with regard to price, and, where appropriate, the quantity or quantities envisaged.

"goods" means raw materials, products and equipment and commodities in solid, liquid or gaseous form, and electricity, as well as related services such as installation, insurance, transportation, maintenance or similar obligations if the value for such related services does not exceed that of the goods themselves.

"Government" means the Government of the People's Republic of Bangladesh.

"Head of a Procuring Entity" means the Secretary of a Ministry/Division, the Head of a Government Department/Directorate; or the Chief Executive, by what ever designation called, of an autonomous/ semi-autonomous body or corporation.

"in writing" means communication in hand or machine written type duly signed and includes properly authenticated messages by facsimile or electronic mail.

"person" means any physical or juridical individual or body of individuals, a firm or a company, an association or organisation whether incorporated or not.

"pre-qualification" means a procedure by which tenderers are invited to demonstrate their qualifications prior to, and as a pre-condition for, being invited to tender or submit proposals.

"post-qualification" means the verification process undertaken by a procuring entity at the end of the tender evaluation stage with the purpose of ensuring that the successful tenderer meets the qualification criteria stipulated in the tender or pre-qualification documents.

"procedure" means mandatory procurement implementation requirements framed and issued by CPTU for proper compliance with the Regulations.

"procurement" means the purchasing, hiring or obtaining of goods, works and services by any contractual means.

"procuring entity" means ministries, divisions and departments belonging to, or attached to, Government or other unit or subdivision thereof, and to the extent that they use public funds as defined in these Regulations local government agencies and public corporations or other public bodies created by Government.

"proposal" means the submission by the consultant in writing for delivery of the services that is presented to a procuring entity in response to the proposal documents.

"public funds" means any monetary resources appropriated to procuring entities under Government budget, or revenues generated by statutory bodies and corporations or aid grants and credits put at the disposal of procuring entities by the development partners through the Government.

"public procurement" means procurement by procuring entities using public funds.

"quotation" is the means by which a procuring entity obtains priced offers from a selected number of suitable tenderers for the procurement of low-value, off-the-shelf, standardised goods or works or physical services.

"services" in the context of the Regulations has a number of meanings; (a) **"related services"** which are those generally linked to the supply of Goods contracts; (b) **"physical services"** which are those with measurable outputs either (i) linked to the performance of Goods/Works as appropriate (such as operation and maintenance of facilities or plant, surveys, exploratory drilling), or (ii) stand-alone service type contracts (such as security services, catering services, geological services) and (c) **"intellectual and professional services"** being assignments performed by consultants with outputs of advisory, design and transfer of know-how nature.

"supplier" means a person under contract with a procuring entity to supply goods, works or services. The word **"contractor"** and **"consultant"** are synonymous with the word **"supplier"** depending on the object of procurement. The word supplier relates to a Goods Contract; the word contractor relates to a Works Contract and the word consultant relates to an intellectual and professional Services Contract.

"Taka" means the unit of currency of Bangladesh.

"tender" means the submission by the tenderer in writing for delivery of the procurement object that is presented to a procuring entity in response to the tender documents.

"tender document" means the documents provided by a procuring entity to tenderers as a basis for preparation of their tenders.

"tenderer" means a person invited to take part in public procurement or seeking to be so invited or submitting a tender in response to an Invitation for Tender (IFT), submitting a tender in response to a Request for Quotation (RFQ) or submitting a proposal in response to a Request for Proposal (RFP).

"works" means all work associated with the construction, reconstruction, demolition, repair, maintenance or renovation of a building or structure, or any construction works such as railways, roads, highways, site preparation, excavation, installation of equipment and materials, decoration, as well as physical services incidental to works, if the value of those services does not exceed that of the works themselves.

Regulation 3. Scope of application

- (1) These Regulations shall apply to all public procurement except if the Government decides that it is in the interest of national security or national defence to use a different method.
- (2) Insofar as any organisation formed under the Companies Act uses any funds allocated to them from the Government revenue budget or development budget for the purposes of carrying out public procurement then these Regulations shall apply.
- (3) Any person may, if they so wish, adopt these Regulations for use in their own procurement procedures, always providing that they clearly mention in their documentation that these Regulations have been so adopted.
- (4) Unless the Government otherwise decides these Regulations shall not apply to concession contracts aimed at outsourcing essential public utilities and/or public services.

Regulation 4. International obligations

- (1) To the extent that these Regulations conflict with an obligation of the Government under or arising out of an agreement with one or more other countries or with international organisation(s), the provisions of that agreement shall prevail provided that prior concurrence of the Cabinet Division and IMED shall be obtained before entering into any obligation necessitating non-application of the Regulations in whole or in part. In all other respects, public procurement shall be governed by these Regulations.

CHAPTER II. ORGANISATION OF PUBLIC PROCUREMENT

Regulation 5. Procuring entities

- (1) Subject to the Delegation of Financial Powers and subject also to such guidance and instructions regarding the implementation of these Regulations as may be given by the CPTU, the Head of a Procuring Entity, or authorised nominee, is ultimately responsible for decisions and actions taken by a procuring entity under these Regulations. Procurement decisions shall be taken in a manner which promotes transparency of the process.

Regulation 6. Policy formulation, co-ordination, monitoring and improvement

- (1) Under the Government, the central organ for policy formulation, co-ordination, monitoring and improvement of the public procurement process in Bangladesh is the CPTU.
- (2) In the performance of its tasks, the CPTU shall:
 - (a) monitor compliance with these Regulations and propose any amendment to them or any new laws and regulations regarding public procurement which appear necessary in the light of international practices and experience gained in the course of the public procurement process in Bangladesh;
 - (b) issue guidance and instructions regarding the interpretation and implementation of these Regulations and give, on request, advice and assistance to procuring entities without, however, diminishing the responsibility of a procuring entity; the CPTU shall not get involved in, or provide opinion on, any specific procurement or contract award decision;
 - (c) prepare standard documents to be used in connection with public procurement;
 - (d) present an annual report to the Government regarding the overall functioning of the public procurement system, including recommendations on measures to be taken by the Government to revise and improve procurement approval method and other measures to enhance the quality of procurement work;
 - (e) request and receive information/records from procuring entities to the extent appropriate to its information needs;
 - (f) develop a public procurement website with information relating to public procurement in Bangladesh, including information concerning the award of contracts exceeding a certain threshold determined by the CPTU;
 - (g) develop, promote and support training and professional development of officials and other persons engaged in public procurement, including their adherence to the highest ethical standards;

- (h) organise and provide secretarial/logistic support to the Review Panels constituted under Regulation 52;
- (i) provide technical assistance in the field of public procurement through the dissemination of procurement technical guidance notes; and
- (j) maintain and update a list of tenderers and suppliers who, by reason of having seriously neglected their obligations under a public procurement contract, or having provided false information about their qualifications, or having offered inducements of the kind referred to in Regulation 15, have been debarred from participating in public procurement.

Regulation 7. Consultative committee on public procurement

- (1) There shall be a standing Consultative Committee on public procurement to aid and advise the Government in bringing improvement to the public procurement process and to make recommendations to achieve that objective.
- (2) The Consultative Committee shall consist of a Chairperson and such number of other members not exceeding eleven as may be determined and appointed by the Government from time to time.
- (3) Members of the Consultative Committee shall be appointed from both the public and the private sectors from amongst experts and specialists in procurement and shall be appointed for periods not exceeding two years.
- (4) The Consultative Committee shall determine its own method of working.
- (5) The Government may prescribe the honorarium and other allowances of the members for attending the meetings of the Consultative Committee.
- (6) Unless otherwise provided in this behalf by resolution of the Consultative Committee, the meetings shall be convened by its Chairperson at such time and place and to discuss such agenda as may be determined by him/ her.
- (7) The CPTU shall provide necessary logistic support to the Consultative Committee and the Director General of the CPTU shall act as the member secretary of the Consultative Committee.

CHAPTER III. BASIC PROCUREMENT RULES

Regulation 8. Public accessibility of legal texts

- (1) These Regulations and all accompanying procedures and guidance notes shall be made accessible to the public both in paper format (obtainable from CPTU) and on the CPTU website; and shall be systematically maintained by the CPTU.

Regulation 9. Records of procurement

- (1) Procuring entities must maintain records and documents regarding their public procurement for a minimum period of five years, or for longer periods as required in special cases, from the date of discharging contractual obligations of any

procurement proceeding, which for each proceeding shall contain:

- (a) a brief description of the goods, works or physical services and intellectual/professional services to be procured and the justification for using a method other than open tendering, if applicable;
 - (b) a copy of the invitation to submit tenders, proposals or quotations as well as the published advertisement, if any;
 - (c) the names and addresses of tenderers that submitted tenders, proposals or quotations, and the name and address of the tenderer to whom the contract was awarded as well as the contract price;
 - (d) copy of any pre-qualification, tender or other solicitation documents;
 - (e) minutes of tender opening;
 - (f) all correspondence with tenderers;
 - (g) the evaluation criteria stipulated and applied, and a report of the evaluation and comparison of tenders, proposals or quotations received;
 - (h) record of approval of tender evaluation report and the contract document;
 - (i) information on any decision to suspend or cancel proceedings after having been initiated;
 - (j) documentation with respect to any appeal or complaint of the procurement proceedings in question;
 - (k) goods delivery/acceptance report and completion report for works and services; and
 - (l) all records of the payment process.
- (2) The record concerning any proceeding shall on request, and once the proceedings have resulted in a contract or have otherwise been terminated, be made available to any concerned person. However, except when ordered to do so by a competent court and subject to the conditions of such an order, a procuring entity shall not disclose information:
- (a) if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition; or
 - (b) relating to the examination and evaluation of tenders, proposals or quotations and the actual content of tenders, proposals or quotations, other than a summary of the evaluation of tenders, proposals and quotations received.
- (3) The CPTU shall issue a guidance note to procuring entities for the purpose of ensuring that information about contract awards is being disseminated to the general public in an appropriate manner.

Regulation 10. Eligibility and non-discrimination

- (1) Unless the Government otherwise decides, tenderers shall not be excluded from participation in public procurement on the basis of nationality, race or any other criterion not having to do with their qualifications or decisions taken against any tenderer under Regulation 15.

Regulation 11. Form of communications

- (1) Communications between tenderers and procuring entities shall be in writing.

Regulation 12. Qualification of tenderer

- (1) In order to participate in public procurement, tenderers must qualify by meeting the following criteria and such other criteria as a procuring entity considers appropriate under the circumstances that they:
 - (a) possess the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, including after-sales service where appropriate, managerial capability, experience in the procurement object, reputation, and the personnel, to perform the contract;
 - (b) have the legal capacity to enter into the contract;
 - (c) are not insolvent, in receivership, bankrupt or being wound up, their business activities have not been suspended, and they are not the subject of legal proceedings for any of the foregoing; and
 - (d) have fulfilled their obligations to pay taxes and social security contributions under the relevant national regulations. Documentary evidence to be provided by a foreign tenderer to demonstrate that it meets the criterion in this paragraph may consist of a written declaration to that effect by the tenderer.
- (2) A procuring entity may require tenderers to provide such appropriate documentary evidence or other information as it may deem useful to satisfy itself that the tenderers are qualified in accordance with the criteria referred to in Regulation 12(1).
- (3) Any requirement established pursuant to this Regulation shall be set forth in the pre-qualification documents, if a pre-qualification procedure is chosen, and otherwise in the tender documents or other documents for solicitation of proposals, and shall apply equally to all tenderers.
- (4) A procuring entity shall evaluate the qualifications of tenderers in accordance with the criteria and method set forth in the documents referred to in Regulation 12(3).
- (5) A procuring entity shall disqualify a tenderer who submits a document containing false information for purposes of qualification. In addition, a procuring entity, at its discretion, may declare such a tenderer ineligible, either indefinitely or for a stated period of time, from participation in procurement proceedings.
- (6) A procuring entity may disqualify a tenderer if it finds at any time that the information submitted concerning the qualifications of the tenderer was materially inaccurate or materially incomplete.
- (7) Procuring entities may maintain list (s) of enlisted/qualified potential tenderers for procurement of goods and procurement of works whose qualifications shall be reassessed on annual basis in accordance with the provisions of Regulation 12(1), such list(s) of enlisted/qualified potential tenderers can only be used for the purposes of procurement using the restricted tendering method.
- (8) A procuring entity may allow joint venture consortiums or associations (JVCA) of two or more firms to participate in a tender under condition that all partners shall be jointly and severally liable for the execution of the contract. It may also allow sub-

contracting with prior approval of procuring entity, but shall not allow assignment of the contract.

Regulation 13. Technical specifications

- (1) For the purpose of creating conditions of fair and open competition amongst all tenderers, technical specifications and descriptions laying down the characteristics of the goods, works or services to be procured shall be prepared to give a correct and complete description of the object of procurement, and shall not be restrictive.
- (2) The technical specifications shall clearly describe a procuring entity's requirements with respect to quality, performance, safety and dimensions, symbols, terminology, packaging, marking and labelling or the processes and methods for production and requirements relating to conformity assessment tests.
- (3) Technical specifications prescribed by procuring entities shall, where appropriate, be:
 - (a) in terms of performance rather than design or descriptive characteristics; and
 - (b) based on international standards, where such exist, or otherwise recognised national standards or codes.
- (4) There shall be no requirement or reference in the technical specifications to a particular trademark or name, patent, design or type, specific country of origin, producer or service supplier, unless there is no sufficiently precise or intelligible way of describing the procurement requirements and provided that words such as "or equivalent" are included in the specifications.
- (5) Procuring entities may standardize specifications for common use goods repetitively purchased in consultation with manufacturers and publish them in their own and the CPTU website.

Regulation 14. Rejection of all tenders, proposals and quotations

- (1) If so specified in the tender documents or in a request for proposals or a request for quotation a procuring entity, after obtaining the approval of the Head of a Procuring Entity, may reject all tenders, proposals or quotations at any time prior to their acceptance.
- (2) Such grounds for rejection are justified when the tenders, proposals or quotations submitted are not substantially responsive, or where there is evidence of lack of competition, or where all tender, proposal or quotation prices substantially exceed the official estimate.
- (3) A procuring entity shall upon request communicate to any tenderer the grounds for its rejection but is not required to justify those grounds.
- (4) A procuring entity shall incur no liability towards tenderers solely by virtue of its invoking Regulation 14(1).
- (5) Notice of the rejection shall be given promptly to all participating tenderers.

- (6) If a procuring entity decides to annul the procurement proceedings before the tender submission deadline, tenders received shall be returned unopened to the tenderers submitting them.

Regulation 15. Corrupt Fraudulent Collusive or Coercive Practices

- (1) It is the government's policy to require that procuring entities as well as tenderers/suppliers observe the highest standards of ethics during the implementation of procurement proceedings and the execution of contracts.
- (2) No tenderer/supplier shall engage in:
- (a) a corrupt practice, which shall mean giving or promising to give, directly or indirectly, to any officer or employee of a procuring entity or other governmental/private authority or individual a gratuity in any form, an employment or any other thing or service of value, as an inducement with respect to an act or decision of, or method followed by, a procuring entity in connection with the procurement proceedings or contract execution;
 - (b) a fraudulent practice which shall mean a misrepresentation or omission of facts in order to influence the procurement proceedings or the execution of the contract;
 - (c) a collusive practice, which shall mean a scheme or arrangement between two or more tenderers, with or without the knowledge of the procuring entity, designed to rig tender prices thereby denying a procuring entity from the benefits of genuine competition; or
 - (d) a coercive practice, which shall mean harming or threatening to harm, directly or indirectly, persons or their property to influence the procurement proceedings, or affect the execution of a contract.
- (3) Should any corrupt, fraudulent, collusive or coercive practice of any kind referred to in Regulation 15(2) come to the knowledge of the procuring entity, the entity shall, in the first place, allow the tenderer/supplier to provide an explanation. Unless a satisfactory explanation is given, which is accepted by the Head of a Procuring Entity, the procuring entity shall exclude the tenderer/supplier from further participation in the procurement proceedings or execution of contract. With the prior agreement of the Head of a Procuring Entity, the procuring entity may also declare the tenderer/supplier ineligible, either indefinitely or for a stated period of time, from participation in procurement proceedings. Such exclusion and the reasons therefore, shall be recorded in the record of the procurement proceedings and promptly communicated to the tenderer/supplier concerned.
- (4) Any action pursuant to Regulation 15(3) shall immediately be reported by a procuring entity to the CPTU.

CHAPTER IV. CHOICE OF PROCUREMENT METHOD

Regulation 16. Open tendering method

- (1) Except as otherwise provided in these Regulations, a procuring entity shall use open tendering as the preferred method of procurement for goods and related services, works and physical services.

- (2) A procuring entity may use a method other than open tendering only pursuant to Regulations 17-20. Exceptionally, and only when justified on sound technical and/or economic grounds the Head of a Procuring Entity may also authorise procurement other than open tendering pursuant to Regulations 17 to 20.
- (3) Whenever threshold values for the use of any method other than open tendering are mentioned in Regulations 17, 18 and 20, such values shall correspond to the estimated total value of the object of procurement during the current fiscal year, or, in the case of any framework contract, the estimated total value of orders to be placed under that framework contract.
- (4) A procuring entity shall prepare a procurement plan for the entire project period for development projects and shall update the plan on an annual basis and in a rational manner. In all other cases an annual procurement plan shall be prepared. The annual procurement plan shall contain relevant data and in a format to be provided by the CPTU. The procurement plan so prepared shall also be incorporated in the Project Proforma of a development project/programme.
- (5) Procurement packages for a given quantity of goods, works or services shall not be split up with the intention of avoiding (a) a procurement method stated in these regulations, and or (b) necessity for obtaining the sanction of the higher authority.
- (6) If procurement of goods or works consists of multiple packages and one or more of the packages fall under the approval authority of the Cabinet Committee on Government Purchases (CCGP), the procuring entity shall furnish to the CCGP information/status of all the other packages of the multiple packages of procurement under consideration.

Regulation 17. Conditions for use of restricted tendering method

- (1) A procuring entity may engage in procurement by means of restricted tendering in accordance with Regulation 37, when:
 - (a) Goods, works or physical services by reason of their specialised nature are available only from a limited number of suppliers, or an approved list of suppliers, or when;
 - (b) The time and cost required to receive, examine and evaluate a large number of tenders would be disproportionate to the value of the goods, works or physical services to be procured.
- (2) The condition referred to in Regulation 17(1b) shall in any case be considered to be fulfilled when the estimated value of the contract, in the case of goods, works and physical services, is less than the amount specified in Appendix A;

Regulation 18. Conditions for use of direct procurement method

- (1) A procuring entity may use direct procurement in accordance with Regulation 38 if this method is not resorted to with a view to avoiding possible competition or in a manner which would constitute a means of discrimination among tenderers:
 - (a) when for technical reasons the goods, works or services can be supplied or provided only by one tenderer and/ or for projects with poverty alleviation objectives where direct contracting with the community is prescribed in the project document;

- (b) for additional deliveries of goods by the original supplier which are intended either as parts replacement for existing supplies, services, or installations, or as the extension of existing supplies, services, or installations where a change of supplier would compel a procuring entity to procure equipment or services not meeting requirements of interchange ability with already existing equipment or services, so long as the value of the additional deliveries does not exceed the amount specified in Appendix A;
 - (c) when additional works, which were not included in the initial contract have, through unforeseeable circumstances, become necessary since the separation of the additional works from the initial contract would be difficult for technical or economic reasons, so long as the value of the additional works does not exceed the amount specified in Appendix A;
 - (d) for new works consisting of the repetition of similar works for which an initial contract was awarded on the basis of open or restricted tendering, so long as the value of the new works does not exceed the amount specified in Appendix A;
 - (e) for continuation of services, where the original contract has been satisfactorily performed and the continuation is likely to lead to gains in economy and efficiency, so long as the value of the continuation services does not exceed the amount specified in Appendix A;
 - (f) for occasional purchases of perishable commodities such as fresh fruit, vegetables or other similar items which are purchased on market terms;
 - (g) for purchases of goods made under exceptionally advantageous conditions which only arise in the very short term, and is intended to cover unusual disposals by firms which are not normally suppliers. It is not intended to cover routine purchases from regular suppliers;
 - (h) owing to a catastrophic event as so decided by the government, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods; and
 - (i) for purchases of food grain, jute and other supplies or goods of an essential nature in which the Government determines the purchase price rate.
- (2) A procuring entity may also use direct procurement for the purchase of readily available standard low value goods and unforeseen urgent services when the contract price does not exceed the amount specified in Appendix A.

Regulation 19. Conditions for use of two-stage tendering method

- (1) A procuring entity may engage in procurement by two-stage tendering in accordance with Regulation 39 in the case of large or complex contracts, such as turnkey contracts for process plants or procurement of major computer and communications systems, for which it may be impractical to prepare complete technical specifications in advance and where alternative technical approaches may be available to meet a procuring entity's needs.

Regulation 20. Conditions for use of request for quotations method

- (1) A procuring entity may engage in procurement by means of request for quotations in accordance with Regulation 40 for the purchase of readily available, standard goods and services, so long as the estimated value of the contract does not exceed the amount specified in Appendix A.
- (2) A Bangladesh High Commission/Embassy/Mission overseas may engage in procurement by means of request for quotations in accordance with Regulation 40 for the purchase of readily available, standard goods and services, so long as the estimated value of the contract does not exceed the amount specified in Appendix A.

CHAPTER V. NATIONAL OPEN TENDERING METHOD

Regulation 21. Advertisements

- (1) A procuring entity shall be responsible for advertising directly all invitations to pre-qualify or invitations to tender for goods, works and services.
- (2) Invitations to pre-qualify and Invitations to tender shall be advertised in at least one Bengali-language newspaper and in one English-language newspaper, both of wide daily circulation in the country, and on the CPTU website for procurement exceeding the value specified in Appendix A.

Regulation 22. Invitation for prequalification

- (1) A procuring entity may engage in prequalification proceedings with a view towards identifying, prior to the submission of tenders and/or proposals for physical services in procurement proceedings, the applicants that are qualified to deliver the object of the procurement.
- (2) The invitation for prequalification shall contain, as a minimum;
 - a) the name and address of a procuring entity;
 - b) a brief description of the object of the procurement, including desired time for delivery or completion;
 - c) the means and conditions for obtaining the prequalification document and the place from which it may be obtained;
 - d) a summary of the required qualification criteria;
 - e) the place and deadline for submission of the applications for prequalification, and
 - f) the date of availability of the prequalification documents, if already known
- (3) The time allowed for applicants to prepare their pre-qualification applications shall not be less than 28 days, provided the prequalification documents are ready for sale by the date of the advertisement referred to in Regulation 21(1).

Regulation 23. Pre-Qualification documents

- (1) The prequalification documents shall include, as a minimum:
 - (a) a description of the object of the procurement along with a summary of the principal terms and conditions of the contract that will be entered into as a result of this procurement;
 - (b) instructions for preparing and submitting prequalification applications;
 - (c) any evidence or other supplementary information in conformity with these Regulations that must be submitted by applicants to demonstrate their qualifications; and
 - (d) the manner and place for submission of applications to prequalify and the deadline for submission, established in accordance with Regulation 22(2).
- (2) Prequalification documents shall be made available to applicants at a price not exceeding the cost of reproduction and delivery to applicants in the manner specified in the invitation for prequalification.

- (3) A procuring entity shall respond to any request by an applicant for clarification of the prequalification documents that is received by a procuring entity within a reasonable time prior to the deadline for the submission of applications to prequalify. The response by a procuring entity shall be timely given so as to enable the applicant to make its submission of the application to prequalify within the declared deadline or an extension thereof if so granted to all applicants by a procuring entity. The response to any request that might reasonably be expected to be of interest to other applicants shall, without identifying the source of the request, be communicated to all applicants to which a procuring entity provided the prequalification documents.
- (4) A procuring entity shall promptly notify each applicant submitting an application to prequalify whether or not it has been prequalified and shall make available to any member of the general public, upon request, the names of all applicants that have been prequalified. Only applicants that have been prequalified are entitled to participate further in the procurement proceedings.
- (5) A procuring entity shall upon request communicate to applicants that have not been prequalified, the grounds thereof, but a procuring entity is not required to specify the evidence or give the reasons for its finding that those grounds were present.
- (6) A procuring entity may require an applicant that has been prequalified to demonstrate again its qualifications when submitting its tender in accordance with the same criteria used to prequalify such applicant. A procuring entity shall disqualify any applicant that fails to demonstrate again its qualifications when requested to do so for post-qualification purposes.
- (7) The CPTU shall issue detailed procedures on the pre-qualification process.

Regulation 24. Invitation for tender

- (1) The invitation for tender shall contain, as a minimum:
 - (a) the name and address of a procuring entity;
 - (b) a brief description of the goods, works or services to be obtained, including desired time limit for delivery or completion;
 - (c) the means and conditions for obtaining the tender documents and the place from which they may be obtained;
 - (d) the place and deadline for the submission of tenders;
 - (e) the place and time for opening of tenders, along with an announcement that tenderers' representatives are allowed to attend the opening of tenders; and
 - (f) the amount of tender security.
- (2) The time allowed for tenderers to prepare their tenders shall not be less than 28 days for open tendering for goods, works and physical services and for restricted tendering 14 days for goods and 21 days for works and physical services, provided the tender documents are ready for sale by the date of the advertisement referred to in Regulation 21(1).

Regulation 25. Tender documents

- (1) The tender documents shall follow the format of the standard tender document (STD's) produced by the CPTU and shall in any case contain sufficient information to enable competition among the tenderers to take place on the basis of complete,

neutral and objective terms. In particular, tender documents must include:

- (a) instructions for the preparation and submission of tenders;
- (b) information on the final date for receipt of tenders, the date, hour and place of opening, as well as an announcement that tenderers' representatives are allowed to attend the opening;
- (c) forms of tender and, where applicable, tender and performance securities and manufacturers' authorisation to be provided by the tenderers;
- (d) the number of copies to be submitted with the original tender;
- (e) conditions of contract, general and special;
- (f) specification of requirements, including time limit for delivery or completion, as appropriate;
- (g) evidence to be provided by the tenderer to demonstrate its qualifications for purposes of post-qualification verifications conducted by a procuring entity;
- (h) the period during which the tender must remain valid;
- (i) the criteria for evaluation of tenders and award of the contract;
- (j) a requirement that a tenderer must, in the form specified in the tender documents, pledge not to provide any inducement of the kind referred to in Regulation 15;
- (k) a reservation to the effect that a procuring entity may reject all tenders at any time prior to the acceptance of a tender;
- (l) a provision for holding a pre-tender meeting with potential tenderers, where deemed appropriate by a procuring entity, in order to provide clarifications on the stipulations of the tender documents; and
- (m) a notification in the Tender Data Sheet as to whom the tenderer shall address any complaint arising under Regulations 50 and 51.

Regulation 26. Provision of tender documents

- (1) Tender documents shall be made available to tenderers at the same time as the advertisement is issued in the press, and at a price not exceeding the cost of reproduction and delivery to tenderers in the manner specified in the invitation for tender.

Regulation 27. Modifications to tender documents

- (1) At any time prior to the deadline for submission of tenders, a procuring entity may, on its own initiative or in response to an inquiry by a tenderer having purchased the tender documents, modify the tender documents by issuing an addendum, which becomes an integral part of the tender documents. Any addendum shall be communicated promptly to all tenderers having purchased the tender documents.
- (2) If a procuring entity considers it necessary to amend the tender documents, and if that amendment is made when less than one-third of the time allowed for preparation of tenders remains until the tender submission deadline, a procuring entity shall postpone this deadline by a number of days, depending on the procurement object, which is sufficient to enable the tenderers to take the addendum into account in preparing their tenders.

Regulation 28. Tender validity and tender security

- (1) Tenderers shall be required to submit tenders valid for a period specified in the tender documents which shall be sufficient to enable a procuring entity to complete

the evaluation and comparison of tenders, and obtain all necessary approvals so that a contract can be awarded within that period.

- (2) A procuring entity shall complete evaluation of tenders and award of contract within the initial period of tender validity so that extension is not necessary. An extension of tender validity, if justified by exceptional circumstances, shall be required in writing from all tenderers before the expiration date. Tenderers consenting to extend their tender validity periods shall also correspondingly extend the validity of their tender securities in accordance with Regulation 28(4). A tenderer not agreeing to extend its tender's validity period may do so without forfeiting its tender security and in this case its tender will no longer be considered in the evaluation proceedings.
- (3) Extension of tender validity shall not be requested without prior concurrence of the Head of the procuring entity in the first instance, any subsequent extension, if exceptionally justified under the circumstances, shall be obtained from the next higher level.
- (4) A procuring entity may include in the tender documents a condition that tenders must be accompanied by security in the form of a bank draft, pay order or irrevocable bank guarantee. The amount of such security shall be sufficient to discourage irresponsible tenders and shall be expressed as a fixed amount not exceeding 3 per cent of the estimated contract value. The tender security shall remain valid for 28 days beyond the tender validity period.
- (5) The tender security will be forfeited if a tenderer withdraws its tender within the validity period thereof or, in the case of a successful tenderer, if the tenderer repudiates the contract or fails to furnish performance security, if so required, or if the tenderer does not accept the correction of the tender amount pursuant to Regulation 31(6).

Regulation 29. Submission and receipt of tenders

- (1) Tenders shall be in writing, signed and submitted in a sealed envelope, to the place(s) and before the deadline stated in the Invitation for Tender. Tenders shall be properly marked by the tenderers in order not to be confused with other types of correspondence and may be hand-delivered, posted by mail or sent by a courier service. A procuring entity shall, on request, provide the tenderer with a receipt showing the date and time when its tender was received.
- (2) Tenders received after the deadline for submission shall be returned unopened to the tenderer.

Regulation 30. Opening of tenders

- (1) At the time stipulated in the tender documents for opening of tenders, which should follow immediately after the deadline for submission of tenders, a procuring entity shall open in public and at one physical location all tenders received on or before the deadline.
- (2) Tenders shall be opened in the presence of the members of the Tender Evaluation Committee (TEC). Tenderers, or their authorised representatives, shall be allowed to attend the opening of tenders.

- (3) The name of the tenderer, tender modifications, discounts or withdrawals, presence of tender security, if so required, and the total amount of each tender and any alternatives, if so permitted, shall be read out aloud and recorded, and a copy of the record shall be made available to any tenderer on request.
- (4) Tenders not opened in public shall not be considered and shall be returned unopened.

Regulation 31. Examination and evaluation of tenders

- (1) A procuring entity shall appoint only one Tender Evaluation Committee (TEC) at the appropriate level to examine, evaluate and prepare a report with recommendations for award for submission directly to the approving authority, following the guidelines provided below.
- (2) The Tender Evaluation Committee (TEC) shall consist of at least five members, of whom two shall be experienced in procurement and from outside of the procuring entity. The Head of the procuring entity shall select these two members at his discretion. Once appointed, the composition of the Tender Evaluation Committee should not be changed without valid grounds.
- (3) The members of the Tender Evaluation Committee shall:
 - (a) certify in the tender evaluation report that “the evaluation has followed the requirements of the Regulations, Procedures and Tender Documents, that all facts and information have been correctly reflected in the Evaluation Report and that no substantial or important information has been omitted”; and
 - (b) after the opening of the tenders sign a declaration of impartiality confirming that they have no business or other links to any of the competing tenderers.
- (4) A procuring entity shall:
 - (a) before finalisation of the tender document, assess the cost of the object of procurement and prepare an official estimate, have the same approved by the competent authority and ensure it is kept under sealed cover, only to be opened by the tender evaluation committee during the evaluation process; and
 - (b) not automatically exclude tenders which are above or below the official estimate.
- (5) A procuring entity may ask tenderers for clarification in writing of their tenders in order to facilitate the examination and evaluation of tenders. No change in the substance of the tender, including changes in price, shall be sought, offered or permitted.
- (6) Notwithstanding Regulation 31(5), a procuring entity shall correct purely arithmetical errors that are discovered during the examination of tenders. The entity shall give prompt notice of any such correction to the tenderer that submitted the tender.
- (7) Subject to Regulation 31(8), a procuring entity may regard a tender as responsive only if it conforms to all requirements set forth in the tender documents. There shall be no requirement as to the minimum number of responsive tenders.
- (8) A procuring entity may regard a tender as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms,

conditions and other requirement set forth in tender documents or if it contains errors or oversights that are capable of being corrected without touching on the substance of the tender. Any such deviations shall be quantified, to the extent possible, and appropriately taken account of in the evaluation and comparison of tenders.

- (9) A procuring entity shall not accept a tender when:
- (a) the tenderer has failed to demonstrate, in the manner foreseen in Regulation 25(1g), that it is qualified; or
 - (b) the tenderer does not accept a correction of an arithmetical error made pursuant to Regulation 31(6) of this Regulation; or
 - (c) the tender is substantially not responsive.
- (10) A procuring entity shall evaluate and compare the tenders that have been held responsive in order to ascertain the successful tenderer, as defined in Regulation 31(13). The basis of the comparison shall be the delivered price inclusive of all taxes and customs duties and otherwise in accordance with the method and criteria set forth in the tender documents. No criterion shall be used that has not been set forth in the tender document.
- (11) A procuring entity may process a single tender; if only one is submitted on the due time and date. If the tender is found to be responsive the procuring entity shall evaluate the tender in accordance with Regulation 31(13). If the tender is found to be fully compliant with the tender document, the price is within the official estimate and/or comparable with the prevailing market price, then the tender may be submitted to the approving authority with a recommendation for award of contract.
- (12) If after evaluation a procuring entity finds that there is only one compliant tender remaining, and the price is within the official estimate and/or comparable with the prevailing market price, then the tender may be submitted to the approving authority with a recommendation for award of contract.
- (13) The successful tenderer shall be the tenderer with the lowest evaluated tender cost ascertained on the basis of factors affecting the economic value of the tender which have been specified in the tender documents, which factors shall, to the extent practicable, be objective and quantifiable, and shall be given a relative weight in the evaluation method or be expressed in monetary terms wherever practicable.
- (14) If there is a tie for the lowest price, the tenderer with the superior past performance shall be selected. If there is a tie for the lowest price, and none of the tenderers has a previous past performance with that procuring entity, then the tenderer who has demonstrated, in the documentation provided, the superior past performance to other procuring entities shall be selected.
- (15) The successful tenderer shall not be selected through lottery.
- (16) If after evaluation it is found that the lowest evaluated tender is significantly higher than the available budget, but within prevailing market price levels, then the tender evaluation committee may recommend to the approving authority to accept the tender or reduce the scope of the requirements for this procurement and correspondingly award the contract to the successful tenderer.
- (17) If after evaluation it is found that the lowest evaluated tender is significantly higher than the prevailing market price levels, then the tender evaluation committee may

recommend to the approving authority, either to reduce the scope of the requirements or to reject all tenders in accordance with Regulation 14.

Regulation 32. Process to be confidential

- (1) After the opening of tenders, information relating to the examination, clarification, and evaluation of tenders and recommendations for award must not be disclosed to tenderers or other persons not officially concerned with this process until the award of the contract is announced.
- (2) Following opening of the tenders, and until the contract is signed, no tenderer shall make any unsolicited communication to a procuring entity or try in any way to influence the entity's examination and evaluation of the tenders.
- (3) Any effort by a tenderer to influence a procuring entity in its decisions on tender evaluation or contract award may result in the rejection of that tenderer's tender.

Regulation 33. Negotiation and Modification of Tender

- (1) No negotiations shall be held with the lowest or any other tenderer.
- (2) A tenderer shall not be required, as a condition for award, to undertake responsibilities not stipulated in the tender documents, to change its price or otherwise to modify its tender.

Regulation 34. Post-Qualification

- (1) Prior to recommending contract award, the tender evaluation committee shall determine whether the tenderer whose tender has been determined to offer the lowest evaluated cost has the capability and resources to effectively carry out the contract as offered in the tender.
- (2) The criteria to be met for post qualification shall be set out in the tender document, and if the tenderer does not meet them, the tender shall be rejected.
- (3) In such an event the tender evaluation committee shall make a similar determination for the tenderer offering the next lowest evaluated Tender, and so on from the remaining responsive tenders, subject to the right of the procuring entity to reject all remaining tenders in accordance with Regulation 14.

Regulation 35. Approval of contract award

- (1) The tender evaluation committee shall submit the tender evaluation report with its recommendations for award of contract, to the approving authority as determined in the Approval Procedure and Delegation of Financial Powers (Chapter XI), in an expeditious manner, so that the award can be notified before expiry of the validity of tenders, without having to seek extension.
- (2) All contract awards above the value specified in Appendix A shall be notified to CPTU for publication on their website.

Regulation 36. Notification of award and signing of contract

- (1) Prior to the expiry of the period of tender validity, a procuring entity shall notify the successful tenderer that its tender has been accepted. The notification of award shall state the value of the proposed contract, the amount of the performance security, the time within which, the performance security shall be submitted and the time within which the contract shall be signed.
- (2) The amount of the performance security shall be sufficient to ensure proper performance of the contract and shall be of an amount as specified in Appendix A.
- (3) The notification of award shall constitute the formation of a contract between the parties. The existence of a contract shall be confirmed through the signature of a contract document incorporating all agreements between the parties.
- (4) If the successful tenderer fails to sign the contract pursuant to Regulation 36(3), or fails to provide any required performance security pursuant to Regulation 36(2), the procuring entity shall select a successful tender from among the remaining responsive tenders, by order of ranking, subject to the right of the procuring entity to reject all tenders in accordance with Regulation 14.

CHAPTER VI. OTHER PROCUREMENT METHODS

Regulation 37. Restricted tendering method

- (1) For goods, works or physical services required under Regulation 17(1a):
 - (a) procuring entities maintaining updated lists of qualified suppliers may select tenderers to be invited to tender from among those listed. The selection should be made in a non-discriminatory manner, and the number of tenderers invited shall be sufficient to ensure effective competition. Any selection shall allow for equitable opportunities for the suppliers on the list; if no such list is maintained the procuring entity shall opt for the open tendering method, with or without pre-qualification, as per Regulation 24;
 - (b) the time allowed for preparation of tenders shall be not less than the number of days stated in Regulation 24(2); and
 - (c) a procuring entity may decide, depending on the circumstances, if a tender security is required or not.
- (2) For goods, works or physical services required under Regulation 17(1b) the procuring entity shall invite tenders from those limited number of qualified suppliers from whom the goods and related services or works and physical services are known to be available. In this respect reference is made to Regulation 12(1) and 12(7).

Regulation 38. Direct procurement method

- (1) When a procuring entity engages in direct procurement according to Regulation 18(1), it shall prepare a description of its needs and any special requirements as to quality, quantity, terms and time of delivery, and shall be free to negotiate with the sole tenderer. Negotiation is not permitted for direct procurement under Regulation 18(1i).

- (2) Any agreement for a procurement concluded according to Regulation 18(1) shall be confirmed by a contract signed by both parties. Direct procurement according to Regulation 18(2) requires no signed contract.

Regulation 39. Two-stage tendering method

- (1) When a procuring entity engages in two-stage tendering, it shall, in the first stage, invite unpriced technical proposals on the basis of a tender document outlining a conceptual design and/ or a stipulated performance specification. In addition to indicating the contractual terms and conditions of supply, the tender document shall establish the criteria for determination of tender responsiveness which shall include:
- (a) the relative managerial and technical competence of the tenderer; and
 - (b) the effectiveness and future adaptability of the proposal submitted by the tenderer in meeting the procurement needs of a procuring entity.
- (2) In response to the invitation, tenderers shall submit proposals describing the technical performance, quality or other characteristics of the goods, works or services that they consider best suited to meet a procuring entity's procurement needs in addition to commenting on the contractual terms and conditions of supply. A procuring entity shall, at this stage, review all the tenders with the assistance of the Tender Evaluation Committee and retain only the responsive tenders and engage in individual confidential discussions with each of the responsive tenderers concerning any aspect of their proposals excluding price. At the end of these discussions a procuring entity shall issue a 'Minute of Tender Adjustments' to each individual responsive tenderer that will outline the changes required in its tender's specification and/ or design as agreed with a procuring entity for incorporation in the second stage tender. A procuring entity shall treat all first stage tenders, including the discussions with individual tenderers, in such a manner so as to avoid disclosure of their contents to any other competing tenderer.
- (3) In the second stage, a procuring entity shall revise the tender document and stipulate the detailed evaluation criteria for the second stage tenders which shall include cost of ownership during the useful lifetime of the object of the procurement, where applicable, and invite all responsive tenderers from the first stage to submit their priced "best and final" tenders in accordance with the requirements of the second stage tender documents and the individual "Minutes of Tender Adjustments" issued to each tenderer.
- (4) Notwithstanding Regulation 39(1), 39(2) and 39(3) all other steps in processing such competitions including the award of a contract based on tenders submitted in the second stage shall follow the provisions of Chapter V.

Regulation 40. Request for quotations method

- (1) A procuring entity shall request quotations from as many tenderers as practicable, but from at least three. A High Commissioner/Ambassador/Head of Bangladesh Mission overseas is permitted, at his discretion, to single source through a request for quotation method.
- (2) The request shall contain a clear statement of the requirements of a procuring entity as to quality, quantity, terms and time of delivery as well as other special requirements.

- (3) Tenderers shall be given adequate time to prepare their quotations.
- (4) A purchase order shall be placed with the tenderer who meets the requirements of a procuring entity stipulated in Regulation 40(2) and who quotes a price with the lowest evaluated cost.
- (5) The tenderer shall confirm the purchase order in writing.

CHAPTER VII. USE OF INTERNATIONAL COMPETITION

Regulation 41. Open tendering with international competition

- (1) When, in the absence of domestic capacity, effective competition cannot be obtained unless special efforts are made to attract international competition, procurement shall be in accordance with the provisions of Chapter V, in appropriate cases preceded by prequalification of tenderers, and complemented with the following provisions:
 - (a) the tender documents shall be in the English language;
 - (b) the invitation to tender shall be in the English language and shall be placed in a newspaper of sufficient circulation to attract foreign competition. In addition, a procuring entity may transmit such invitations to embassies and trade representatives of potential supplier countries;
 - (c) the time allowed for submission of tenders shall be sufficient for the invitation to reach tenderers and for enabling them to prepare and submit tenders, but in no case less than 42 days;
 - (d) technical specifications shall, to the extent compatible with national requirements, be based on international standards or standards widely used in international trade;
 - (e) tenderers shall be permitted to express their tenders, as well as any tender and performance security documents to be presented by them, in their respective home currencies, or in a currency widely used in international trade and stated in the tender documents;
 - (f) general and special conditions of contract shall be of a kind generally used in international trade; and
 - (g) the tender documents may provide for a domestic preference of 15% of the delivered price in the case of goods and 7.5% in the case of works provided that the tenders and /or tenderers meet the requirements for application of such a preference as prescribed in the detailed procedures issued by the CPTU.

Regulation 42. Other procurement methods with international competition

- (1) The provisions of Regulation 41 shall apply, to the extent practicable, also in the case of two-stage tendering and request for proposals method, whenever effective international competition is sought.

CHAPTER VIII. REQUEST FOR PROPOSALS (RFP) METHOD

Regulation 43. Conditions for use of RFP method

- (1) Requests for proposals method shall be used for procurement of intellectual and professional services.

Regulation 44. Request for expressions of interest (EOI)

- (1) An Expression of Interest notice shall be advertised in the manner set forth in Regulation 21 giving applicants at least 14 days in which to submit their written interest in submitting a proposal.
- (2) The EOI notice shall contain at least the following information:
 - (a) the name and address of a procuring entity;
 - (b) a brief description of the assignment detailing the scope of the intellectual and professional services required;
 - (c) the experience and/or delivery capacity required from potential applicants in order to prove their suitability for the assignment; and
 - (d) the place and deadline for submission of their written expression of interest.

Regulation 45. Preparation of short list

- (1) Upon receipt of the EOI submitted by the applicants, a procuring entity shall select a short list composed of not less than four and not more than seven applicants that are deemed best suited to perform the assignment.
- (2) All applicants participating in the EOI shall be informed whether or not they are retained in the shortlist by a procuring entity. The names of the short listed applicants shall be communicated to any interested individual or firm.

Regulation 46. Request for proposal

- (1) A procuring entity shall prepare an RFP using the applicable standard RFP document issued by the CPTU.
- (2) The RFP document shall include as a minimum:
 - (a) the name and address of a procuring entity;
 - (b) a description of the assignment required, normally by means of terms of reference;
 - (c) the sub-method for selection of the successful consultant and a requirement that consultants' proposals be submitted according to a two-envelope system whereby the first envelope shall contain the Technical Proposal, without any reference to price, and the second envelope shall contain the Financial proposal;
 - (d) where a consultant's assignment may involve a potential conflict of interest, a reminder that consultants for such assignments must exclude themselves from procurement of goods and works which may follow as a result of, or in relation to, the consultancy agreement;

- (e) where an consultant has carried out a preceding related assignment, whereby a potential conflict of interest may be perceived, then that consultant shall also exclude itself from participation in this subsequent assignment;
 - (f) the criteria for evaluating the proposals, the relative weight to be given to price and technical merit parameters, and the manner in which they will be applied in the evaluation of proposals;
 - (g) place and deadline for the submission of proposals; and
 - (h) the contract format defining the obligations of the consultant and the procuring entity.
- (3) Consultants shall be given adequate time in which to prepare their proposals which shall not be less than 28 days.

Regulation 47. Sub-methods of selection and conditions for use

- (1) The prime consideration in the selection of the successful consultant in the procurement of intellectual and professional services shall be given to technical quality criteria. Considerations related to the price of the services shall be used judiciously.
- (2) The two sub-methods preferred for selection shall be:
- (a) Quality and cost based selection (QCBS): This sub-method uses a competitive process among short listed consultants that takes into account the quality of the proposal and the cost of the services in the selection of the successful consultant, and is the option that shall be used in most cases; or
 - (b) Selection under fixed budget (FB): This sub-method shall be used when the assignment is simple and can be precisely defined, and when the budget is fixed.
- (3) The following sub-methods shall only be used with the prior approval of the Head of the Procuring Entity:
- (a) Least cost selection (LCS): This sub-method is appropriate for assignments of a standard or routine nature (financial audits, architectural and engineering design for non-complex works, etc.) where well- established practices and standards exist, and in which the contract amount is small (below the threshold specified in Appendix A); or
 - (b) Selection amongst community service organizations (CSO): This sub-method may be used where involvement and knowledge of community needs, local issues, and community participation are paramount in the preparation, implementation and operation of community development projects; or
 - (c) Single source selection (SS): This sub-method shall be used only in exceptional cases. This sub-method may be used (i) for tasks as continuation of previous completed assignment, (as specified in Appendix A), (ii) where a rapid selection is essential (as in emergency), (iii) for very small assignments (below the threshold specified in Appendix A), (iv) when only one consultant is qualified or has experience of exceptional worth for assignment or (v) owing to a catastrophic event there is an emergent need of the services; or

- (d) Selection of individual consultants (IC): This sub-method shall be used when (i) the qualification and experience of the individual are the paramount requirement, (ii) teams of personnel are not required, and (iii) no outside professional support is required.
- (4) The steps for execution of the sub-methods for selection of consultants shall be detailed in the procedures issued by CPTU.

Regulation 48. Receipt of proposals and proposal evaluation

- (1) A procuring entity shall appoint only one Proposal Evaluation Committee (PEC) at the appropriate level to examine, evaluate and prepare a report with recommendations for award for submission directly to the approving authority, following the guidelines provided below.
- (2) The Proposal Evaluation Committee (PEC) shall consist of at least five members, of whom two shall be experienced in procurement and from outside of the procuring entity. The Head of the procuring entity shall select these two members at his discretion. Once appointed, the composition of the Proposal Evaluation Committee should not be changed without valid grounds.
- (3) The members of the Proposal Evaluation Committee shall:
 - (a) certify in the proposal evaluation report that “the evaluation has followed the requirements of the Regulations, Procedures and Proposal Documents, that all facts and information have been correctly reflected in the Evaluation Report and that no substantial or important information has been omitted”; and
 - (b) after the opening of the proposals sign a declaration of impartiality confirming that they have no business or other links to any of the participating consultants.
- (4) Proposals received by the deadline specified in the RFP shall be passed to the PEC which shall open only the technical envelope of the received proposals and safeguard the financial envelopes until the technical evaluation proceedings are completed. Late proposals shall be returned unopened to the respective consultant(s).
- (5) A procuring entity may accept a single proposal if only one is submitted on the due time and date. If the proposal is found to be technically compliant with the request for proposal document the procuring entity shall evaluate the proposal in accordance with Regulation 48(6).
- (6) Evaluation shall be conducted for the technical proposals in the first stage and only those proposals that achieve a pre-disclosed technical quality threshold shall be considered in the second stage of combined technical and financial evaluation. If after evaluation it is found that only one proposal has achieved the pre-disclosed technical quality threshold, and then with the approval of the Head of the procuring entity, the proposal may be considered in the second stage of combined technical and financial evaluation.
- (7) Upon completion of the technical evaluation, the consultant(s) who have submitted a proposal exceeding the quality threshold specified in the RFP shall be invited to a public opening session of their respective financial proposals. In this session the

evaluation committee shall disclose the technical score of each consultant's proposal and its respective price. A minute of this opening session shall be prepared by a procuring entity for distribution to all consultants attending the opening session.

- (8) The successful consultant shall be the consultant whose technical and financial proposal is the most advantageous, determined in accordance with the evaluation criteria and selection sub-method stipulated in the RFP.

Regulation 49. Negotiation and Contract award for proposals

- (1) A procuring entity may negotiate with the successful consultant with respect to the proposal methodology, work plan and training inputs but shall not seek or permit changes in the rates quoted for staff remuneration proposed by the consultant.
- (2) The proposal evaluation committee shall submit the proposal evaluation report with its recommendations for award of contract, to the approving authority as determined in the Approval Procedure and Delegation of Financial Powers (Regulation 57 of Chapter XI), in an expeditious manner, so that the award of contract can be notified before expiry of the validity of proposals, without having to seek extension. The procuring entity shall notify the successful consultant that its proposal has been accepted.
- (3) The consultant shall not be required to submit any performance security but shall be required to provide indemnification to the Client in accordance with the relevant Clause in the Contract Agreement.
- (4) If the successful consultant fails to sign a contract pursuant to Regulation 49 (2), the procuring entity shall negotiate with the remaining responsive consultants, in order of their relative ranking, subject to the right of the procuring entity to reject all proposals in accordance with Regulation 14.
- (5) All contract awards above the value specified in Appendix A shall be notified to CPTU for publication on their website.

CHAPTER IX. COMPLAINTS AND APPEALS

Regulation 50. Right to complain

- (1) Subject to Regulation 50(2), 50(3) and 50(4) any tenderer who claims to have suffered, or who may suffer, loss or damage due to a breach of a duty imposed on a procuring entity by these Regulations may complain in accordance with Regulation 51 and 53.
- (2) The following shall not be the basis for a complaint provided for in Regulation 50(1):
 - (a) the choice of procurement method pursuant to Chapter IV;
 - (b) the choice of a procurement sub-method pursuant to Chapter VIII;
 - (c) a refusal by a procuring entity to short list an applicant in response to an Expression of Interest under Regulation 44;
 - (d) a decision by a procuring entity to reject all tenders, proposals or quotations under Regulation 14; or

- (e) if a decision for procurement award has been made by the Cabinet Committee on Government Purchase.
- (3) If a procurement contract has not already entered into force the tenderer shall submit its complaint in the following manner:
 - (a) a tenderer shall submit its complaint for consideration through the three stages of the administrative authority as described under Regulation 51; or
 - (b) where the tenderer is still dissatisfied with the outcome of the complaint considered under Regulation 51, or fails to receive a response within the time limit mentioned under Regulation 51, the tenderer may then submit the complaint to a Review Panel under Regulation 53.
- (4) However, if a procurement contract has already entered into force the tenderer shall submit its complaint directly to the Review Panel under Regulations 53.

Regulation 51. Complaints to the administrative authority

- (1) A tenderer shall submit its complaint in writing within 7 calendar days of when it became aware of the circumstances giving rise to the complaint or when it should have become aware of those circumstances, whichever is earlier.
- (2) In the first instance, the tenderer shall submit its complaint to the procuring entity that has issued the tender document. The procuring entity shall consider the subject matter of the complaint and decide whether to reject the complaint or to implement any corrective action to bring the procurement proceedings in conformity with the Regulations. Within 5 working days of receipt of the complaint the procuring entity shall issue a written decision to the tenderer stating the reasons for the rejection of the complaint or advising on the corrective action that has been taken.
- (3) If the tenderer is not satisfied with the written decision of the procuring entity and wishes to pursue its complaint, it must within 3 working days proceed in accordance with Regulation 51(4).
- (4) The tenderer shall submit the complaint in writing to the Head of a Procuring Entity who shall:
 - (a) not consider the complaint if he/she is a member or chairperson of the tender evaluation committee. In such instances the Head of a Procuring Entity shall forward, within 3 working days, the complaint to the Secretary of the concerned Ministry/Division, advising the tenderer that he/she has so forwarded the complaint; or
 - (b) if he/she is in a position to accept the complaint then consider the subject matter of the complaint and decide whether to reject the complaint or to implement any corrective action to bring the procurement proceedings in conformity with the Regulations. Within 5 working days of receipt of the complaint the Head of a Procuring Entity shall issue a written decision to the tenderer stating the reasons for the rejection of the complaint or advising on the corrective action that has been taken.
- (5) If the tenderer is not satisfied with the written decision of the Head of a Procuring Entity and wishes to pursue its complaint, it must within 3 working days proceed in accordance with Regulation 51(6).

- (6) The tenderer shall now submit the complaint in writing to the Secretary of the concerned Ministry/Division who shall consider the subject matter of the complaint and decide whether to reject the complaint or to implement any corrective action to bring the procurement proceedings in conformity with the Regulations. Within 7 working days of receipt of the complaint the Secretary of the concerned Ministry/Division shall issue a written decision to the tenderer stating the reasons for the rejection of the complaint or advising on the corrective action that has been taken, copying the decision to the procuring entity and the CPTU.
- (7) If the tenderer is not satisfied with the written decision of the Secretary of the concerned Ministry/Division it may wish to consider pursuing its complaint through the Review Panel under Regulation 53.
- (8) If the tenderer fails to receive the written decision within the time period stated at each stage, then the tenderer has the right to directly approach the next higher level under which the complaint shall proceed.

Regulation 52. The Review Panel

- (1) The Government shall establish a List of Specialists for the purpose of reviewing a tenderer's complaint and recommending corrective action to a procuring entity, with respect to any breach of its obligations under these Regulations. The Specialists shall be appointed on such terms and conditions as the Government may from time to time decide.
- (2) The List of Specialists shall be formed from a number, as specified in Annex A of (a) persons who have been legal professionals; (b) persons who have been senior officers in the service of the Government with experience in the procurement area, and (c) persons from a list of specialists with experience in the procurement area, provided by the Federation of Bangladesh Chamber of Commerce and Industry (FBCCI).
- (3) The Specialists shall be grouped into a number of Review Panels, as specified in Appendix A, each with a nominated Chairperson, both as approved by the Government. Each panel shall have a minimum of 3 members, one from each of the groups listed in Regulation 52(2) and up to 2 co-opted members on a case-by-case basis dependant upon the nature of the complaint. The CPTU shall maintain the List of Specialists and the List of Review Panels and it shall be made available to any interested person.

Regulation 53. Complaint to the Review Panel

- (1) A tenderer may only complain to a Review Panel under Regulation 53 provided:
 - (a) that the complaint cannot be submitted or entertained under Regulation 51 because of the entry into force of the procurement contract; or
 - (b) that the tenderer has exhausted its complaints to the administrative authority under Regulation 51.
- (2) A tenderer is not permitted to complain to a Review Panel if a decision for procurement award has been made by the Cabinet Committee on Government Purchase.

- (3) The tenderer must submit the complaint to the CPTU, after receiving the decision of the Secretary of the concerned Ministry/Division under Regulation 51(6) or having not received any timely decisions under Regulation 51(8) and shall:
 - (a) enclose the complaint and all supporting documents in a sealed envelope;
 - (b) attach a letter stating its wish to appeal to the Review Panel and the nature of its complaint; and
 - (c) attach the complaint registration fee in the form of a Pay Order in the amount specified in Appendix A.
- (4) Upon receipt of a complaint and the registration fee, the CPTU shall select a Review Panel on a rotational basis to deal with the complaint, and shall pass over the sealed complaint to that Review Panel. At the same time the CPTU shall advise the tenderer and the Secretary of the concerned Ministry/Division of the action it has taken.
- (5) Promptly after appointment the Chairperson of the Review Panel shall determine the working procedures to be followed in accordance with applicable rules of procedure issued by CPTU under Regulation 55(1).
- (6) Unless it dismisses the complaint as being frivolous, in which case the tenderer may lose the registration fee, the Review Panel may:
 - (a) reject the complaint, stating its reasons and suggest that the procuring entity continue with the procurement process;
 - (b) state the rules or principles that govern the subject matter of the complaint and advise both parties to accede accordingly;
 - (c) advise a procuring entity that it has taken action contrary to its obligations under these Regulations;
 - (d) suggest annulment in whole or in part of a non-compliant act or decision of a procuring entity, other than any act or decision bringing the procurement contract into force;
 - (e) if the procuring entity is in breach of its obligations under the Regulations, suggest the payment of compensation by the procuring entity for any reasonable costs incurred by the tenderer, including the return of the complaint registration fee paid under Regulation 53(3c); or
 - (f) recommend that the procurement proceedings be terminated.
- (7) The Review Panel shall within a maximum of 12 working days from receipt of the complaint issue a written decision of its findings to the tenderer, copied to the Secretary of the concerned Ministry/ Division, the CPTU and the procuring entity, stating the reasons for the decision and stating any suggested remedies.
- (8) The decision of the Review Panel shall be final and the procuring entity shall act upon such findings. After the decision has been issued by the Review Panel, the complaint and the decision shall be promptly made available for inspection to the general public, provided, however, that no information shall be disclosed if its disclosure would be contrary to law, would impede law enforcement, would not be in the public interest, would prejudice legitimate commercial interests of the parties or would inhibit fair competition.

Regulation 54. Suspension of procurement proceedings

- (1) The timely submission of a complaint under Regulation 51 shall not suspend the procurement proceedings, except that if a procuring entity knows that a complaint is proceeding under Regulation 51 and during this proceeding it receives approval to issue the Notification of Award, it shall not do so until such time as either:
 - (a) the tenderer accepts the decision of the administrative authority at any stage; or
 - (b) the tenderer does not proceed within 7 days to a Review Panel under Regulation 51(7).
- (2) Upon CPTU receiving from a tenderer the request to process its complaint through a Review Panel, and CPTU having been satisfied that the fee has been properly provided, the CPTU shall advise the procuring entity to continue the suspension of the Notification of Award until such time as the findings of the Review Panel have been announced.
- (3) The suspension provided for by Regulation 54(1) shall not apply if a procuring entity certifies that public interest considerations require the procurement to proceed. The certification, which shall state the grounds for the finding that such considerations exist and which shall be made a part of the record of the procurement proceedings, is conclusive with respect to all levels of complaint except judicial complaint.
- (4) Any decision by a procuring entity under Regulation 51 or by the Review Panel under Regulation 54 and the grounds and circumstances thereof shall be made part of the record of the procurement proceedings.

Regulation 55. Assistance provided by CPTU to review panel

- (1) The CPTU shall issue detailed procedures for the functioning of the Review Panel.
- (2) The CPTU shall not be involved in the resolution of the complaint but shall provide logistic support to the Review Panel in the discharge of its functions.

CHAPTER X. PROCUREMENT POST REVIEW

Regulation 56. Independent procurement review

- (1) At the end of each fiscal year the Head of a Procuring Entity of each procuring entity with a procurement volume more than Taka (as specified in Appendix A) in that year, shall undertake post review of its procurement operations using independent consultants.
- (2) The scope of the Independent Review shall cover compliance with these Regulations in addition to assessment of value for money considerations.
- (3) The review shall cover not less than the minimum number of contracts as specified in Appendix A.

- (4) The CPTU shall issue detailed guidance for the performance of this review.
- (5) The review shall be completed within a 9-month period following the end of the fiscal year.

CHAPTER XI. APPROVAL PROCEDURE AND DELEGATION OF FINANCIAL POWERS

Regulation 57. Approval Procedure and Delegation of Financial Powers

- (1) The government shall notify the Procurement Processing and Approval Procedures leading up to the Notification of Contract Award.
- (2) The government shall notify the Delegation of Financial Powers to Approve Awards of Contract.
- (3) Such Procurement Processing and Approval Procedures and Delegation of Financial Powers shall be periodically reviewed to ensure efficient implementation of public procurement.

CHAPTER XII. REPEALS AND SAVINGS

Regulation 58. Repeal and saving

- (1) Rules, Regulations, orders or any other instruments, by whatever name they may be called, in force for or in connection with public procurement shall, so far as they are inconsistent with these Regulations upon their commencement, stand repealed.
- (2) All proceedings for public procurement commenced immediately before the commencement of these Regulations shall, notwithstanding the repeal under Regulation 58(1), be disposed of in accordance with the provisions of those repealed Regulations as if they have not been repealed.

CHAPTER XIII. INTERPRETATION AND IMPLEMENTATION

Regulation 59. Interpretation and implementation

- (1) In interpreting these Regulations singular also means plural, male also means female or neuter, and vice versa. Words have their normal meaning under the English language unless specifically defined.
- (2) The CPTU will issue detailed procedures to guide procuring entities in the interpretation and implementation of these Regulations for the procurement of goods, works and services.

By order of the President

Appendix A: Schedule of Times and Values Currently in Force

<u>Regulation</u>	<u>Time or Value</u>
17(2)	<u>Conditions for use of restricted tendering method</u> Tk 5 lakh in the case of goods and physical services. Tk 10 lakh in the case of works.
18(1) (b) to (e)	<u>Conditions for use of direct procurement method</u> (b) The value of the additional deliveries of goods shall not exceed 15% of the original contract value or Tk 5 crore, whichever is lower. (c) The value of the additional works, including repetition of similar works shall not exceed 15% of the original contract value or Tk 20 crore, whichever is lower. (d) The value of the new works, which are a repetition of similar works, shall not exceed 15% of the original contract value or Tk 20 crore, whichever is lower. (e) The value of the additional services shall not exceed 15% of the original contract value or Tk 2 crore, whichever is lower. In all such cases the additional procurement shall be limited to a once only occasion.
18(2)	<u>Conditions for use of direct procurement method</u> For goods the amount shall be less than Tk 15,000 For unforeseen urgent services the amount shall be less than Tk 50,000.
20(1)	<u>Conditions for use of request for quotations method</u> The amount shall be Tk 2 lakh for procurement undertaken by procuring entities in Bangladesh.
20(2)	The amount shall be Tk 5 lakh for procurement undertaken overseas by a Bangladesh High Commission, Embassy or Mission.
21(2)	<u>Advertisements</u> The amount shall be Tk 1 crore and above.
35(2)	<u>Contract award of</u> Tk 1 crore and Above.
36(2)	<u>Performance Security</u> The amount shall be 10% for goods Contracts. The amount shall be between 10% and 15% for works contracts.
47(3a)	<u>Sub-methods for Selection of Consultants</u> The amount shall be less than Tk 50 lakh.
47(3ci)	The amount shall not exceed 15% of the original contract value or Tk. 2 crore, whichever is lower.
47(3ciii)	The amount shall be less than Tk 5 lakh.
49(5)	<u>Contract award of</u> Tk 50 lakh and Above.

- 52(2) List of Specialists
There shall be a maximum of 10 practiced legal professionals.
There shall be a maximum of 10 persons who have been senior officers in the service of the government.
There shall be 10 specialists provided by the FBCCI.
- 52(3) Number of Panels
There shall be 3-5 Review Panels established.
- 53(3c) Complaint to Review Panel
For estimated contract value
(a) less than Tk 1 crore, the registration fee shall be Tk 50,000.
(b) between Tk 1 crore and 5 crore, the registration fee shall be Tk 100,000.
(c) between Tk 5 crore and Tk 10 crore, the registration fee shall be Tk 200,000.
(d) above Tk 10 crore the registration fee shall be Tk 500,000.
- 56(1) Independent Procurement Review
The procurement volume shall be more than Tk 10 crore in that year.
- 56(3) Minimum Number of Contracts
The review shall cover not less than 15% of the number of contracts awarded in that year to be selected by the independent consultant in such a manner to cover at least 30% of the corresponding value.