রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ গেজেট

অতিরিক্ত সংখ্যা
কর্তৃপক্ষ কর্তৃক প্রকাশিত

মঙ্গলবার, জুন ১৮, ২০১৩

Government of the People's Republic of Bangladesh
Ministry of Law, Justice and Parliamentary Affairs
Legislative and Parliamentary Affairs Division

NOTIFICATION

তারিখ, ৫ জ্যৈষ্ঠ ১৪২০ বঙ্গাব্দ/১৯ মে ২০১৩ খ্রিস্টাব্দ

S. R. O. NO 127-Law/2013—In exercise of the powers conferred by section 72 of the Public Procurement Act, 2006, the Government is pleased to publish the following English translation of the Act to be called the Athentic English Text of the Act, and it shall be effective from the date on which the Act comes into force under sub-section (2) of section 1 of the Act :

The Public Procurement Act, 2006

Act No. 24 of 2006

[22 Ashar, 1413/ 6 July, 2006]

An Act to provide for procedures to be followed for ensuring transparency and accountability in the procurement of goods, works or services using public funds and ensuring equitable treatment and free and fair competition among all persons wishing to participate in such procurement including the matters ancillary thereto

Whereas it is expedient and necessary to provide for procedures to be followed for ensuring transparency and accountability in the procurement of goods, works or services using public funds, and ensuring equal treatment and

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free and fair competition among all persons wishing to participate in such procurement including the matters ancillary thereto;

It is hereby enacted as follows:—

CHAPTER ONE

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Public Procurement Act, 2006.

(2) It shall come into force on such date as the Government may, by notification in the official Gazette, determine.*

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(1) **"approving authority"** means the authority which, in accordance with the delegation of financial powers, approves the award of contract for the procurement of goods, works or services;

(2) **"delegation of financial powers"** means the orders regarding the delegation of financial authority, issued by the Government from time to time, relating to the conduct of public procurement or sub-delegation of financial powers under such delegation;

(3) **"applicant"** means a person eager to be enlisted in the Limited Tendering Method under section 32 (a) or to be pre-qualified in response to an invitation for pre-qualification under part-2 of Chapter-Six, or to be short-listed in response to a request for expression of interest under section 54;

(4) **"opening committee"** means a tender opening committee (TOC) or a proposal opening committee (POC) constituted under section 6;

(5) **"quotation"** means the priced offer in writing received from tenderers for the procurement of readily available standardised goods, works or physical services subject to the financial limitation as prescribed by rules;

* January 31, 2008 declared as the effective date of the law vide SRO no. 20-AIN/2008 dated 27 January 2008.

(6) **"works"** means all works associated with the construction, reconstruction, site preparation, demolition, repair, maintenance or renovation of railways, roads, highways or a building, an infrastructure or structure or an installation or any construction work relating to excavation, installation of equipment and materials, decoration, as well as physical services ancillary to works, if the value of those services does not exceed that of the works themselves;

(7) **"procurement"** means the purchasing or hiring of goods, or acquisition of goods through purchasing and hiring, and the execution of works and performance of services by any contractual means;

(8) **"procuring entity"** means a procuring entity having administrative and financial powers to undertake procurement of goods, works or services using public funds;

(9) **"head of the procuring entity"** means the Secretary of a Ministry or a Division, the head of a Government Department or Directorate, [1][or as the case may be, the Divisional Commissioner, the Deputy Commissioner, the District Judge] or the Chief Executive, by whatever designation it may be called, of a local government agency, an autonomous or semi-autonomous body or a corporation, or a corporate body established under the Companies Act;

(10) **"contractor"** means a person under contract with a procuring entity for the execution of any works under this Act;

(11) **"tender" or "proposal"**, means a tender or as the case may be a proposal submitted by a tenderer or a consultant for delivery of the goods, works or services to a procuring entity in response to an invitation for tender or a request for proposal; and for the purposes of this Act, a quotation shall also be included in tender;

(12) **"tender document" or "request for proposal document"**, means the document provided by a procuring entity a tenderer or consultant as a basis for preparation of its tender or proposal;

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[1] Inserted by section 2 of the Public Procurement (Second Amendment) Act, 2009 (Act 65 of 2009)

(13) **"tenderer"** means a person who submits a tender;

(14) **"prescribed"** means prescribed by rules or until such rules are made, prescribed by the Government by special orders in the official Gazette;

(15) **"code of ethics"** means the set of conditions and provisions which a person shall abide by while participating in public procurement;

(16) **"goods"** means raw materials, products and equipment and objects in solid, liquid or gaseous form, electricity, and related services if the value of such services does not exceed that of the goods themselves;

(17) **"consultant"** means a person under contract with a procuring entity for providing intellectual and professional services;

(18) **"public procurement"** means procurement using public funds;

(19) **"administrative authority"** means the concerned procuring entity, head of the procuring entity and Secretary of the Ministry or Division respectively;

(20) **"pre-qualification"** means a procedure for demonstrating qualifications as a pre-condition for being invited to tender;

(21) **"framework contract"** means a contract, effective for a specified period of time, between one or more procuring entities and one or more suppliers, establishing the terms governing the procurement of goods and related services, with regard to price, and the quantity or, as case may be, estimated quantities;

(22) **"advertisement"** means an advertisement published under section 40 in newspapers, website or any other mass media for the purposes of wide publicity;

(23) **"person"** means an individual, body of individuals, sole proprietorship, partnership, company, association, cooperative society who wishes to participate in procurement proceedings;

(24) **"intellectual and professional services"** means intellectual and professional services regarding to be performed by consultants with advisory, design, supervision or transfer of a know-how nature;

(25) **"rules"** means the rules made under this Act;

(26) **"physical services"** means the following services with measurable outputs—

(a) the supply of goods or execution of works relating to operation and maintenance of facilities or plant, surveys, exploratory drilling; or

(b) individual service oriented contracts regarding security services, catering services, geological services or third party services;

(27) **"quality"** means quality of goods, works or services;

(28) **"evaluation committee"** means a tender or a proposal evaluation committee constituted under section 7;

(29) **"responsive''** means qualified for consideration on the basis of evaluation criteria so declared and specified in the tender document or in the request for proposal document;

(30) **"review panel"** means a panel comprised of specialists.

(31) **"in writing"** means communication written by hand or machine duly signed and includes properly authenticated messages by facsimile or electronic mail;

(32) **"government procurement"** means procurement by a procuring entity using public funds under this Act;

(33) **"public funds"** means any fund allocated to a procuring entity under government budget, or loan, grants and credits placed at the disposal of a procuring entity through the government by the development partners or foreign states or organisations;

(34) **"supplier"** means a person under contract with a procuring entity for the supply of goods and related services under this Act;

(35) **"short-list"** means a list of applicants considered suitable to be invited to submit proposals for intellectual and professional services following the evaluation of applications submitted in response to a request for expressions of interest under section 54;

(36) **"related services"** means services relating to contracts of the supply of goods;

(37) **"services"** means related services, physical services or intellectual and professional services.

3. Extent and application.—(1) This Act extends to the whole of Bangladesh.

(2) This Act shall apply to the following areas, namely:-

(a) procurement of goods, works or services by any procuring entity using public funds;

(b) procurement of goods, works or services by any government, semi-government or any statutory body established under any law;

(c) procurement of goods, works or services using public funds by a company registered under the Companies Act, 1994 (Act No. 18 of 1994) [2][;

(d) procurement of goods, works or services under a loan, **credit** or grant agreement or under any other agreement between the Government and any development partner, foreign country or organisation:

Provided that if there is anything otherwise contained in the terms and conditions of such agreement, the provisions of that agreement shall prevail.]

4. Act to override other laws.—Notwithstanding anything contained in any other law, the provisions of this Act shall prevail.

CHAPTER TWO

PREPARATION OF TENDER OR PROPOSAL, COMMITTEE, ETC.

5. Preparation, distribution and evaluation of procurement documents.—(1)The procuring entity shall, for each public procurement, prepare the necessary application, tender or proposal documents for such purpose and issue those documents to persons interested in submitting an application, a tender or a proposal.

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[2] Inserted by section 2 of the Public Procurement (Amendment) Act, 2009 (Act 33 of 2009).

(2) The applicant, a tenderer or a consultant shall submit an application, a tender or a proposal to a procuring entity on the basis of documents issued under sub-section (1).

(3) The procuring entity shall, in accordance with other provisions of this Act, arrange for evaluation of the application, tender or proposal received under sub-section (2).

6. Opening Committee.—(1) The procuring entity shall, prior to the deadline for submission of the tender or proposal, appoint, for the purpose of considering the tenders or proposals submitted under section 5 (2), a tender opening committee or proposal opening committee consisting of the requisite number of members including one member from the evaluation committee.

(2) The tender or proposal opening committee, constituted under sub-section (1), shall perform its responsibilities as prescribed.

7. Evaluation Committee.—(1) A procuring entity shall, prior to the specified date for submission of tender or proposal, constitute a tender evaluation committee or proposal evaluation committee consisting of the officers from within and outside of the office of the procuring entity:

Provided that tenders or proposals for a particular procurement shall not be evaluated by more than one evaluation committee.

(2) The number of members of the evaluation committee, its responsibilities and modus operandi shall be as prescribed by rules.

(3) Each member of the evaluation committee shall, when signing the evaluation report —

(a) individually sign a declaration of impartiality; and

(b) collectively certify that the tenders or proposals have been evaluated following the provisions of this Act and the rules made thereunder.

(4) In the case of dissent by any member of the evaluation committee as to the recommendation for award of contract or the evaluation proceedings, it shall be mentioned in the evaluation report, and the approving authority shall take appropriate decisions after examining the reasons of such dissent as stated in the report.

(5) The evaluation committee shall, having sealed the evaluation report along with recommendations in one envelope, submit the sealed envelope directly to the approving authority.

(6) Where the approving authority under sub-section (5) is the Minister, or the Cabinet Committee on government procurement constituted by the Government, the evaluation report shall be submitted to the aforesaid Minister or to the Committee following the prescribed procedures.

8. Approval of tender or proposal, etc.—The approving authority, as specified in the delegation of financial powers, may approve the recommendations of a tender or proposal evaluation committee, or reject the same explaining the reasons thereof, and direct that the tender or proposal be re-evaluated or reprocessed.

CHAPTER THREE

PRINCIPLES OF PUBLIC PROCUREMENT

Part – 1

General directions

9. Public accessibility to the laws relating to procurement, etc.—The Government shall ensure that this Act, and the rules, orders, directives, guidelines issued under this Act, and such other procurement-related papers or documents as may be required by the general public, are made available to them and properly preserved.

10. Form of communication.—(1) Communications by or with a procuring entity during procurement proceedings under this Act shall be in writing.

(2) Communications under this Act may be in writing or by electronic means or by both.

11. Preparation of procurement plan, etc.—(1) The procuring entity shall, for the purpose of carrying out procurement under a project to be implemented with funds from the development budget of the Government, prepare an annual procurement plan updated on the basis of the overall procurement plan as annexed to the concerned project document approved by the Government.

(2) The procuring entity shall, for the purpose of carrying out procurement under the revenue budget of the Government, prepare an annual procurement plan.

(3) Each annual procurement plan prepared under sub-section (1) and (2) shall require the approval of the head of the procuring entity or an officer authorised by him.

(4) The procuring entity shall arrange to publish the procurement plan prepared under this section, following the direction issued by the Government from time to time, for the information of all concerned.

(5) The procuring entity shall not generally split a single procurement work into more than one package, but in order to facilitate a particular procurement activity, it may split a single procurement work into more than one package, and packages into more than one lot.

(6) If a single procurement work is split into more than one package under sub-section (5), the procurement proposal for each of the packages shall be placed before the authority competent to approve the sum-total of those packages, for the award of contract for any one of those packages.

12. Procurement related documents.—(1) The procuring entity shall, while preparing documents for inviting pre-qualification applications, tenders, quotations or proposals for the purpose of carrying out procurement, use the standard documents prescribed by the Government from time to time taking into account the essential elements of the procurement.

(2) The standard document under sub-section (1) shall be used after being adapted only in the places as specified in the document.

13. Competition in procurement.—(1) The procuring entity shall, to ensure competition in procurement on the basis of impartial and objective terms, provide all necessary information to all prospective applicants, tenderers or consultants required for the preparation of the application, tender, quotation or proposal.

(2) The criteria for qualifications assessment and evaluation shall be clearly stated in the tender or proposal document and it shall be ensured that the applicant, tenderer or consultant is allowed at least the minimum time, in consistent with the procurement method to respond properly.

14. Determination of tender validities, submission of security deposit, etc.- In the tender or proposal document —

(a) the tender or proposal validity period shall be determined in a way sufficient to complete the evaluation of tenders or proposals, and a comparative assessment, and to obtain all necessary approvals so that the notification of award of contract can be issued within such validity period:

Provided that for the first extension of validity period, the approval of the head of the procuring entity and for the second extension of validity, the approval of the next higher level of authority shall be obtained;

(b) in the case of procurement of goods and works, the specified amount of tender security and, the specified rate and the prescribed procedure for submission of performance security shall be stated; But the submission of tender security shall not be mandatory for tenderers in the case of Limited Tendering Method or Request for Quotation Method;

(c) in the case of goods and works contracts, the manner in which any retention security, where applicable, will be deducted and reimbursed letter on, shall be specified;

(d) in the case of contracts relating to service procurement, no person shall be required to submit a proposal security or a performance security, but the type of any indemnities or any insurance, or both indemnities and insurances are to be provided by the consultant shall be specified.

15.—Preparation of specifications and terms of reference.—(1) The procuring entity shall, for the purpose of creating impartial and open competition among tenderers, in preparing technical specifications and descriptions of the goods and related services, or works and physical services specified to be procured, provide a correct and complete description of their expected performance levels, the characteristics and required quality ensuring that goods, works, services are procured accordingly; but it shall be ensured that such description are not restrictive.

(2) A procuring entity shall, for the purpose of creating conditions for impartial and open competition among consultants, in preparing the terms of reference of the consultants, provide a correct and complete description of the intellectual and professional services to be procured; but no such condition shall be imposed that may restrict the competition.

16. Social issues.—No procuring entity shall include any condition inconsistent with provisions relating to standard wages of workers and pertaining to social benefits, occupational health and safety, and prohibition of child labour **in the procurement related document .**

17. Translation and publication of documents.—No one shall, without the prior approval of the Government, be permitted to publish or translate rules, orders, directives or procurement-related documents issued under this Act.

18. Maintaining confidentiality of procurement process.—(1) A procuring entity shall, except where the evaluation committee seeks clarification from a person, maintain the confidentiality of the process from tender opening or proposal opening leading up to an award of contract.

(2) Any effort by a person to influence the procurement process shall result in the rejection of that person's pre-qualification, tender, proposal or quotation.

19. Rejection of tenders, proposals or quotations.—(1) The procuring entity may, subject to the specification in the tender or proposal document, reject all tenders, proposals or quotations at any time prior to the issue of the notification of award of contract, following the prescribed procedures.

[3][(1A) Notwithstanding anything contained in sub-section (1), in case of **domestic procurement of** works of taka not exceeding 2 (two) crore within the Limited Tendering Method, the official estimate of the work shall require to be mentioned:

Provided that such tender shall be deemed to have been rejected if any tenderer quotes in the tender a rate 5% (five percent) less or more than the official estimate.]

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[3] Inserted by section 2 of the Public Procurement (Amendment) Act, 2010 (Act 36 of 2010).

(2) The actions to be taken following rejection of tenders, proposals or quotations may be prescribed by rules.

(3) If any tender, proposal or quotation is rejected under sub-section (1), no liability of procuring entity shall be imposed upon any person.

20. Procurement approval process and notification of award of contract.—A procuring entity shall, during the procurement approval process and issuance of the notification of award of contract,—

(a) follow the prescribed procedures and time limit from the opening of tenders, proposals or quotations, to the issue of the notification of award of contract;

(b) follow the instructions laid down in the delegation of financial powers issued by the Government for the purpose of approval of a tender, proposal or quotation;

(c) prior to the expiry of the validity period of a tender or a proposal, issue the notification of award of contract to the successful tenderer or consultant.

21. Publication of notification of award of contract and intimation.—(1) The procuring entity shall publish the notification of award of contract in the prescribed format on its notice board and on its own website, if any, and for contracts above a prescribed price limit, shall send a copy of the notification of award of contract to the authority as designated by the Government for publication on their website.

(2) Following the signing of a contract with the successful tenderer or consultant, any other tenderer or consultant shall have the right to get information from the procuring entity about its own tender or proposal and in the event of such tenderer or consultant intending to know the grounds for non-acceptance of its tender or proposal, the procuring entity shall inform that tenderer or consultant about its relative ranking and the deficiencies of its tender or proposal.

22. Administration and management of contract.—The procuring entity shall, for effective administration and management of a contract, follow the guidelines issued by the Government from time to time.

23. Maintaining records of procurement.—The procuring entity shall duly maintain all procurement related records in the manner as prescribed by rules.

24. Post procurement review.—(1) The procuring entity shall, within nine months of the end of each fiscal year, arrange for impartial post procurement review, on sample basis, of its total procurement activities during the preceding year.

(2) The authority empowered by the Government in this behalf may review post procurement activities carried out by a procuring entity.

(3) The review under sub-section (1) and (2) shall follow the random sample method and the outline of such method may be prescribed by rules.

Part-2

Participation in procurement process

25. Non-discrimination.—The procuring entity shall not, unless the Government otherwise decides, restrain a person from participation in public procurement on the basis of colour, nationality or race, or any criterion not related to the qualifications as specified in the procurement-related document or any decision taken against a person under this Act.

26. Qualifications of persons.—(1) The procuring entity shall, in the procurement document, specifically mention what, in his opinion, are the criteria for the required minimum qualification or what qualifications are to be required in other cases by the person concerned, in order to participate in procurement activities:

[4][Provided that in case of domestic procurement of works of taka not exceeding 2 (two) crore within the Limited Tendering Method, the list of contractors shall be maintained in such manner as may be prescribed by rules, and the previous experience of procurement activities shall not be necessary in determining the qualification of persons.]

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[4] The first and the second provisos of sub-section (1) were substituted by section 3 of the Public Procurement (Amendment) Act, 2010 (Act 36 of 2010).

(2) The criteria mentioned in sub-section (1) shall relate to the person's past contract performance, production capacity and financial capability to execute a particular procurement activity.

27. Joint venture.—(1) Any person may, individually or in joint venture along with another person or persons, national or foreign, submit an application, an expression of interest, a proposal or a tender.

(2) In the prequalification, expression of interest or tender or proposal document under this section, no such condition shall be imposed making it mandatory to submit an application, an expression of interest, a proposal or a tender under joint venture.

(3) In the case of a joint venture among persons, all such persons shall be jointly and individually liable to the procuring entity.

28. Conflict of interest.—(1) A person or an organisation and any of its affiliates shall, if previously engaged by a procuring entity to provide intellectual and professional services for preparation or implementation of a project, be ineligible to supply goods, execute works or provide services directly arising or resulting from that project.

(2) Notwithstanding anything contained in sub-section (1), the provision of this section shall not apply to a person if it is involved in the execution of a turnkey or design and construction contract as a contractor.

Part-3

Complaints and appeals

29. Right to complain.—(1) If a person suffers or is likely to suffer loss or damage due to failure of a procuring entity to fulfil its obligations under this Act, he may complain against that procuring entity to the authority as specified in section 30.

(2) No complaint under sub-section (1) shall be made on the basis of the following cases, namely:—

(a) choice of procurement method for goods, works or services; or

(b) a refusal to short-list an applicant; or

(c) where the following decisions have been made —

(i) a decision to reject applications for pre-qualifications, tenders, quotations or proposals; or

(ii) a decision to award a contract following approval by the Cabinet Committee on government procurement.

30. Lodging complaint to the administrative authority, appeal, etc.—(1) A complaint to be lodged under section 29 shall be submitted to the administrative authority of the relevant procuring entity and any complaint so lodged, shall be considered and disposed of by that authority within the prescribed time limit.

(2) In the event that a person is not satisfied with the decision of the administrative authority or that authority fails to give a decision in due time, the aggrieved person may appeal to the review panel through the Government or any authority designated by the Government.

(3) The Government may, for the purpose of reviewing an appeal and give decisions under section 30(2) constitute one or more review panel(s) consisting of well-reputed specialists in legal, management, and procurement matters and well-reputed specialists having technical knowledge in the procurement of relevant goods, works or intellectual and professional services:

Provided that no one in the service of the Republic shall be included in the review panel.

(4) The procedures for submission of an appeal and its disposal under this section shall be prescribed by rules.

CHAPTER FOUR

Methods of procurement for goods, works, etc. and their use

Part-1

Domestic procurement

31. Application of Open Tendering Method for procurement of goods, works, etc.- (1) The procuring entity shall, for procurement of goods, related services, works or physical services, use the Open Tendering Method as the preferred method, subject to fulfilment of the following conditions, namely:—

(a) determining prequalification, if applicable;

(b) providing opportunity to tenderers for competition under equal and non-discriminatory terms;

(c) inviting tenders through advertisement following the provisions of section 40;

(d) allowing the prescribed minimum time for submission of tenders and supply of goods or of works;

(e) signing a contract with the lowest evaluated responsive tenderer.

(2) The implementation procedures of the method mentioned in sub-section (1) may be prescribed by rules.

32. Application of other procurement methods for procurement of goods, works, etc.- (1) The procuring entity may, for procurement of goods, related services, works or physical services, use any one of the following methods, other than the one mentioned in section 31, with the approval of the head of the procuring entity, or an officer authorised by him, when considered to be justified on technical or economic grounds, namely:—

(a) Limited Tendering Method, which may be applied in the following cases, namely:—

(i) the goods, related services, works or physical services which, by reason of their specialised nature, are available only from a limited number of suppliers or contractors;

(ii) in order to reduce stock requirements of spare parts and maintenance costs, if there is an established government policy regarding standardisation of a brand;

(iii) the time and cost required to receive and evaluate a large number of tenders would be disproportionate when compared to the value of the contract :

Provided that for clauses (i) and (ii), no price limit shall apply and all suppliers or contractors shall be invited to tender, and clause (iii) shall apply subject to use of enlisted suppliers or contractors and a threshold value as prescribed.

(b) Direct Procurement Method, which may, for avoiding possible competition among tenderers, or without following any means which would create discrimination among them, be applied in the following cases, namely:—

(i) when for technical reasons, only a sole tenderer is available for the supply or provision of the goods, related services, works and physical services;

(ii) when the project document with the objectives of poverty alleviation provides for direct contract with the local community;

(iii) subject to the prescribed conditions, when additional supply of goods is made by the original supplier or additional work is done by the original contractor or extended services are procured through the original supplier or contractor;

(iv) when goods are procured under exceptionally advantageous conditions, if those products are of the latest production, unused and covered by manufacturer's warranty, or perishable commodities are procured on market terms, or essential goods are procured in the price rate which the Government may determine;

(v) unless the Government otherwise decides, when goods are procured in special cases from a government-owned industry or factory using the Government's own funds;

(vi) when procurement of goods, works, services of very urgent or essential nature is made within the amount as prescribed;

(c) Two-Stage Tendering Method, which may be applied in the following cases, namely:—

(i) for large and complex projects, when at the outset of the procurement process it is not feasible on the part of the procuring entity to prepare complete technical specifications of the object to be procured; or

(ii) when alternative technical solutions are available in a rapidly evolving industry;

[5][(cc) Single Stage [6][Two Envelop Tendering Method], which may be applied where Two Stage Tendering Method mentioned in clause (c) is not applicable.]

(d) Request for Quotation Method, which may be applied, subject to the prescribed price limit, in the following cases, namely:—

(i) in the case of procurement of standard off-the-shelf low value goods or physical services readily available in the market;

(ii) in the case of procurement of goods urgently required for maintenance or emergency repairs in a public sector utility's' own operations and maintenance workshop;

(iii) in the case of procurement of goods required for processing and production plants in state-owned industries.

(2) In the case of procurement using any method under sub-section (1), a procuring entity shall properly record in a file the reasons for use of that method and preserve such records.

(3) The outline and implementation procedures of the methods mentioned in sub-section (1), shall be prescribed by rules.

Part-2

International procurement

33. Application of Open Tendering Method in international competition for procurement of goods, works, etc.- Where it is not feasible to undertake any procurement by inviting competitive tenders within the country and it reasonably appears to it that effective international competition cannot be ensured unless special efforts are made, the procuring entity shall apply the open international procurement method in accordance with the provisions of chapters three and six, and, where applicable, after determining the prequalification of the tenderers by fulfilling the following terms and conditions, namely:—

(a) the invitation for tender notice shall be published in English and advertised in accordance with section 40 of this Act;

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[5] Inserted by section 5 of the Public Procurement (Second Amendment) Act, 2009 (Act 65 of 2009).

[6] Substituted by section 4 of the Public Procurement (Amendment) Act, 2010 (Act 36 of 2010).

(b) tender documents shall be prepared in English;

(c) in preparing the tender document the procuring entity shall consider the following matters, namely:—

(i) the specified minimum time is provided for submission of tenders;

(ii) technical specifications, to the extent compatible with national requirements, are determined on the basis of international standards or standards widely used in international trade;

(iii) tenderers are permitted to express their tender security and performance security, in a currency or currencies widely used in international trade;

(iv) tenderers are instructed to express their tenders only in taka for local inputs;

(v) provision for payment of the contract price is made in the currency or currencies as mentioned in the contract;

(vi) general and particular conditions of contract similar to those used in international trade are set;

[7][(vii) providing for domestic preference, in tender documents, at the rate prescribed by rules, in the case of goods, of the quoted price for supply at destination, excluding customs duties and taxes, and, in the case of works, of the price of works including of all customs duties and taxes :

Provided that the provision of domestic preference shall not be applied compulsorily, and for relaxation of such preference, the recommendation of the Cabinet Committee on **Economic Affairs** shall be accepted;

[7] Sub-clauses (vii) and (viia) were substituted for original sub-clause (vii) by section 6 of the Public Procurement (Second Amendment) Act, 2009 (Act No. 65 of 2009).

[8][(viia) compliance of prescribed conditions for giving preference under clause (vii)—

(1) in case of supply of concerned goods, by the tender; and

(2) in case of works, by the tenderer;]]

(viii) joint ventures with local partnerships are encouraged, but shall not be imposed as a mandatory condition;

(ix) alternative methods for dispute resolution are incorporated for the supply and installation in the case of large or complex contracts:

Provided that International Arbitration provisions shall be made applicable for final resolution of disputes as provided for in the tender documents.

34. Application of Two Stage Tendering Method, Quotation Method and other methods in international competition for procurement of goods, works, etc.- (1) The Two Stage Tendering Method may be applied in the procurement of goods, related services, works or physical services if the following circumstances arise, namely:—

(a) the grounds for which the method is applicable under the provisions of section 32 (1) (c);

(b) if it reasonably appears to the procuring entity that it cannot be procured by means of inviting competitive tender within the country;

(c) if it reasonably appears to the procuring entity that effective international competition cannot be ensured unless special efforts are made.

[8] Replaced vide section 5 of Public Procurement (Amendment) Act, 2010 (Act 36 of 2010)

(2) If it is necessary to procure divisible commodities in bulk from the international market, considering the supply and demand at a particular point in time, procurement of such commodities may be under taken by means of the quotation method, under the following process, namely:—

(a) in order to take advantage of favourable market conditions, arrange to procure through award of more than one contract the total requirement for those commodities to be obtained over a given period of time, splitting such requirements into appropriate packages;

(b) listing qualified tenderers for a given period of time to be specified by the procuring entity, inviting them at specified intervals in line with demand to quote prices for the relevant goods consistent with the prevailing international market price at a particular point in time just prior to shipment;

(c) inviting tenderers to compete on handling or transportation charges of commodities and other terms and conditions specified by the procuring entity;

(d) inviting quotations for submission of tenders specifying a short period of time and its validity periods.

(3) Notwithstanding anything contained in sub-section (1) and (2), a procuring entity may, in cases where a commodity is being funded under a loan, credit or grant agreement by a foreign government or an agency, invite tenderers to compete on handling and transportation charges, specifying a short period of time and its validity periods of tenders.

(4) International Limited Tendering Method may be used when goods, related services, works or physical services by reason of their specialised nature are available only from a limited number of suppliers or contractors.

(5) International Direct Procurement Method may be used when for technical reasons a sole tenderer is available for the supply or provision of the goods, works or services or for additional procurement of goods, works or services through the original supplier or contractor under conditions as prescribed.

(6) The outline and implementation procedures of the methods mentioned in sub-sections (1), (2), (4) and (5) may be prescribed by rules.

Part - 3

Framework contract, etc.

35. Procurement for embassies and in special cases for national carriers.—(1) Bangladesh Embassy, High Commission, or Mission abroad may procure low priced easily available standard goods and unforeseen urgent physical services by means of the Request for Quotation Method under section 32 (1) (d), subject to prescribed price limit.

(2) The procurement of fuel or spare parts or urgent repairs by any carrier bearing national flag outside the territory of Bangladesh, which cannot be planned in advance or where there is an urgency to bring the carrier back into service without delay, may be undertaken using the Direct Procurement Method mentioned in section 32 (1) (b).

36. Framework contract.—(1) The procuring entity may, in cases where it requires to procure commonly used goods on a periodic basis in substantial quantities or recurrent physical services apply either the Open Tendering Method or the Limited Tendering Method in order to conclude a framework contract with one or more suppliers or tenderers.

(2) If the procuring entity requires to procure goods and related services identical to those for which another procuring entity has already concluded a framework contract, such procurement may be undertaken under the contract already concluded.

(3) The procuring entity shall, for procurement of goods and related services under a framework contract, use standard tender documents adapted as required, and follow the guidelines issued by the Government from time to time.

CHAPTER FIVE

METHODS OF PROCUREMENT FOR INTELLECTUAL & PROFESSIONAL SERVICES AND THEIR APPLICATION

Part -1
Domestic procurement

37. Methods to be followed in procurement of intellectual and professional services.—The procuring entity shall, for procurement of intellectual and professional services, use one of the following preferred methods, preceded by short-listing of applicants interested in providing intellectual and professional services, namely:—

(a) in the case of quality and cost based selection, the selection of consultant through a competitive process among short-listed consultants considering the quality and the probable cost of the services judiciously; or

(b) in the cases of fixed budget selection, selection of consultant for simple and specific nature of service considering the budget allocation as stated in the request for proposal document.

38. Use of other methods for procurement of intellectual and professional services.- (1) Any of the following methods, other than the method mentioned in section 37, may be applied with the approval of the head of the procuring entity or an officer authorised by him, for procurement of intellectual and professional services, namely:—

(a) Least Cost Selection Method, in cases where the services is of standard or routine nature, and where the cost of the services is within the threshold value as prescribed;

(b) Community Service Organisation Selection, in cases where overall knowledge of community needs, local issues and community participation are paramount in the preparation, implementation and operation of community development projects;

(c) Single Source Selection Method, in the following cases—

(i) if necessary in continuation of on-going or just completed assignments;

(ii) low value small assignments;

(iii) a speedy selection required in an emergency situation;

(iv) where only a single firm has the required qualification or rare experience required for the assignment;

(v) if an urgent need of the services is required, in the case of catastrophic event;

(d) Individual Consultant Selection Method, in cases where the qualification and experience of individuals are paramount and a team of personnel and outside professional support are not required;

(e) Qualifications Based Selection Method of consultants, in cases where the assignment is of low value and within the threshold value as prescribed and for which preparation and evaluation of competitive proposals is not justified;

(f) Design Contest Selection Method, in cases where technical excellence and innovation are of prime considerations in the selection of the successful applicant.

(2) In the case of procurement using any method under sub-section (1), a procuring entity shall properly record in the file the reasons for use of that method and preserve such records.

(3) The outline and implementation procedures for the use of the methods mentioned in sub-section (1) may be prescribed by rules.

Part -2

International procurement

39. Selection of international consultants for procurement of intellectual and professional services.—(1) Where it reasonably appears to any procuring entity that no local consulting firm has the necessary experience and expertise to provide the intellectual and professional services required, it may take steps to select an international consultant in accordance with the provisions of Chapters Three and Six and using any one of the methods mentioned in sections 37 and 38 subject to the following conditions, namely:—

(a) the request for expressions of interest notice shall be prepared in English and to make arrangement for advertisement in accordance with section 40 of this Act;

(b) the request for proposals document shall be prepared in English; and

(c) considering the following aspects the request for proposal document shall be prepared —

(i) a minimum time, as may be prescribed for submission of proposals, shall be allowed;

(ii) terms of reference of the consultant shall be based upon international standards or standards widely used in the engagement of international consultants in consistent with national requirements;

(iii) consultants shall be permitted to submit their proposals in a currency or currencies widely used internationally;

(iv) consultants shall be instructed to express their proposals only in taka for local inputs;

(v) all payments shall be made in the currency or currencies as stated in the proposal;

(vi) general and particular conditions of contract shall be similar to those used in the document of international intellectual and professional services;

(vii) alternative provisions for dispute resolution shall be provided. In this case **International Arbitration** provisions shall also be provided for in the document of international and professional services.

(2) Joint ventures with local partnerships may be encouraged for procurement of services under this section but shall not be imposed as a mandatory condition.

CHAPTER SIX

PROCESSING OF PROCUREMENT

Part – I
Advertisement

40. Advertisement.—(1) A procuring entity shall prepare advertisements for prequalification, tenders and requests for expressions of interest in the standard format as may be prescribed.

(2) A procuring entity shall directly arrange to publish the advertisement under sub-section (1), at least in one Bangla and one English daily newspaper of wide circulation in the country.

(3) In the event that more than one edition of the newspaper is published on the date of publication of the advertisement under sub-section (2), the same advertisement shall be published in each copy of every such edition.

(4) In addition to the provisions of sub-section (2)—

(a) the procuring entity shall publish such advertisement on its own website, if any;

(b) advertisement for procurement above a prescribed price limit shall be published in the website of the authority designated by the Government, from time to time.

(5) Where procurement opportunities for goods, works or services are open to international applicants, tenderers or consultants, arrangements shall be made for publication of the relevant advertisement in an English newspaper or publication of wide international circulation or, as the case may be, in a United Nations publication, or in foreign trade missions of Bangladesh at home or abroad.

Part – 2

Determination of prequalification for procurement of goods, works, etc.

41. Distribution and submission of prequalification document.—In the case of determination of prequalification by the procuring entity for the purposes of selecting a supplier or a contractor for procurement of goods and related services, works and physical services, a person shall, if interested in applying in response to an advertisement under section 40 and having obtained the prequalification document from the procuring entity at a price fixed by it, duly complete such document and submit it by such date, time and at such place as may be specified therein.

42. Opening of applications for prequalification.—(1) The procuring entity shall, immediately after the deadline for submission of applications for prequalification under section 41, convene a meeting of the tender opening committee for the purpose of opening applications and recording details of *information provided therein.*

(2) The tender opening committee shall, upon the completion of opening, send the record of opening and all the prequalification applications submitted, to the tender evaluation committee for evaluation.

43. Evaluation of prequalification applications and making decisions thereon.—(1) The tender evaluation committee shall, by applying the qualification criteria as specified in the prequalification document, evaluate the applications received on qualified or disqualified basis and submit the prequalification evaluation report to the head of the procuring entity stating which of the applicants may be selected as being pre-qualified.

(2) After submission of the evaluation report under sub-section (1), the head of the procuring entity shall, unless he or she has sub-delegated authority for approval pursuant to the **delegation of financial powers,** consider the evaluation report and take a decision regarding the acceptance or rejection of prequalification application of any applicant and shall notify that decision to all concerned including the applicants.

Part 3

Processing of tenders for procurement of goods, works, etc.

44. Sale of tender document and pre-tender meeting, etc.—(1) A procuring entity shall, immediately after advertisement for the procurement of goods, related services, works or physical services under section 40, arrange for sale of the tender document at a price fixed by it to all interested tenderers.

(2) The price of a tender document, under sub-section (1), shall be fixed in such a manner so that it may not exceed the cost of printing of the document and its distribution.

(3) All prequalified applicants shall be invited to purchase the tender documents in pursuance of the provisions of sections 41, 42 and 43.

(4) A procuring entity may, in order to explain the purpose and other conditions pertaining to a particular procurement and obtaining information from tenderers, hold a pre-tender meeting at such time, date and place as specified in the tender document.

(5) All tenderers who have purchased or who intend to purchase the tender document shall be permitted to attend the pre-tender meeting, but the proceedings of the meeting shall be provided only to tenderers who have purchased the tender document.

45. Amendment of tender documents.—(1) A procuring entity may, at any time prior to the deadline for submission of tenders either at its own discretion or in response to a query from a tenderer who has purchased a tender document or as a result of the pre-tender meeting, **modify** or amend a tender document and when any such **modification** or amendment is made, it shall become an integral part of the tender document.

(2) If any modification or amendment under sub-section (1) is made within less than one-third of the time allowed for preparation of tenders by the procuring entity, the deadline for submission of tenders shall be extended in such a way that the tenderers may get enough time for considering the modification or amendment.

46. Preparation and submission of tender.—(1) A tenderer shall, in preparing its tender, ensure the following matters, namely:—

(a) whether it is duly signed by an authorised person;

(b) whether it is submitted in a sealed envelope;

(c) whether it is properly marked as stipulated in the tender document ; and

(d) whether it is submitted prior to the deadline at the specified place.

(2) The tenderer himself shall bear the expense and risk of tender preparation and submission.

(3) A tender received after the deadline for submission of tenders as specified by the procuring entity shall be returned unopened to the tenderer.

(4) A tenderer may, after he has submitted the tender and at any time prior to the deadline for the submission of tenders as specified by the procuring entity, amend, substitute or withdraw it in accordance with the procedures laid down in the tender document.

(5) In the case of invitation for tenders above the prescribed price limit, arrangements for submission of tenders at more than one location may be made, if necessary.

47. Opening of tenders.—(1) A tender opening committee shall, immediately after the deadline for submission of tenders and at the place stated in the tender document, open tenders in the presence of interested tenderers or their authorised representatives[9][:

Provided that after submission of tender within [10][Single Stage Two Envelop Tendering] Method under clause (cc) of sub-section (1) of section 32, the tender opening committee shall open the technical proposals and shall, until the evaluation of the technical proposals is completed and the report of such evaluation is approved by the head of the office of the procuring entity or the person authorised by him, preserve the financial proposals in a secured place.]

(2) A tender not opened in accordance with sub-section (1) shall not be considered and shall be returned unopened to the tenderer.

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[9] Inserted by section 7 of the Public Procurement (Second Amendment) Act, 2009 (Act 65 of 2009).

[10] Substituted by section 6 of the Public Procurement (Amendment) Act, 2010 (Act 36 of 2010)

48. Evaluation of tenders, etc.—(1) The tender evaluation committee shall, in strict compliance with the pre-disclosed evaluation criteria as specified in the tender document, examine and evaluate the tenders and prepare a tender evaluation report.

(2) For determining the lowest evaluated price—

(a) applicable tax and value added tax in the case of domestic procurement of goods and related services, works and physical services shall be included; and

(b) applicable customs duties, taxes and value added tax in the case of imported goods under international procurement shall be excluded, but in the case of locally manufactured goods only value added tax shall be excluded; and

(c) applicable customs duties, taxes and value added tax for the execution of works shall be included under international procurement.

(3) For the purpose of evaluating tenders, if any evaluation criteria, other than the criteria for determining the lowest price are mentioned, the evaluation shall be completed quantifying those criteria in monetary terms as far as practicable.

49. Not to make any negotiation or amendment to tender as a precondition.— (1) The tender evaluation committee shall, during the evaluation of tenders, under section 48, ensure that—

(a) no tenderer is selected by lottery[11][:

Provided that where, in the case of domestic procurement of works [12][not exceeding taka 2 (two) crore within Limited Tendering Method], there is a tie in the lowest evaluated rates, then the application of lottery may be resorted to, as a special case, for determining the lowest evaluated tenderer;] and

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[11] Inserted by section 8 of the Public Procurement (Second Amendment) Act, 2009 (Act 65 of 2009).

[12] Substituted by section 7 of the Public Procurement (Amendment) Act, 2010 (Act 36 of 2010).

(b) no negotiation is made with the lowest evaluated tenderer or with any other tenderer :

Provided that, in the case of procurement of any divisible commodity in bulk and subject to a provision in the invitation for tender for partial supply of any such commodity, if the lowest responsive tenderer does not submit a tender for the total quantity of such commodity as specified in the tender document, then in the first place, the lowest tenderer may be given an offer to supply the total quantity as specified in the tender document at its quoted price and in case it declines to supply the total quantity in response to that offer, then in order to procure the remaining quantity of the commodity as per the tender document the second, the third and, if deemed appropriate, the next responsive tenderers may be given offers by turns to supply the balance quantity at the price quoted by the lowest tenderer.

(2) Notwithstanding anything contained in sub-section (1) (b), under no circumstances negotiations shall be made in regard to alteration of the lowest responsive price, and according to the provision specified in the proviso to that sub-section, the excess goods of the quantity of total supply for which the tender has been invited shall not be accepted.

(3) The tender evaluation committee shall not, as a condition for award of contract, instruct a tenderer to undertake responsibilities not stipulated in the tender document and change its tendered price or otherwise modify any other condition of its tender.

50. To verify post-qualification of tenderers.—The tender evaluation committee shall, prior to completion of the evaluation report under section 48, verify in accordance with the post-qualification criteria as specified in the tender document whether the responsive tenderer has the requisite qualifications and financial capability to effectively carry out the contract.

51. Approval process.—(1) The tender evaluation committee shall submit the evaluation report with its recommendation as regards the evaluation of tenders to the approving authority in accordance with the provision of section 7(5).

(2) The approving authority shall, having considered the report of the evaluation committee, take a decision with regard to the tender and communicate the decision to all concerned including the procuring entity without delay.

52. Notification of award of contract and signing of contract.—(1) The procuring entity shall, prior to the expiry of the tender validity period, and provided that no complaint is being considered under sections 29 and 30 of this Act, issue a notification of award of contract to the successful tenderer.

(2) The tenderer shall, upon receipt of the notification under sub-section (1), and having submitted the performance security in favour of the procuring entity within the time indicated in the notification of award, sign the contract in the format as specified in the tender document.

53. Completion of the tendering process.—The procuring entity shall, following the signing of the contract with the successful tenderer, notify in writing all the other tenderers that they have been unsuccessful and return their tender security.

Part-4

Processing of applications in response to requests for expressions of interest and proposals for procurement to intellectual and professional services.

54. Submission of application for expressions of interest.—(1) An intending applicant, shall, following the advertisement of a request for expressions of interest under section 40 for procurement of intellectual and professional services, submit an application by the due date, time and to the place as specified in that advertisement.

(2) The application under sub-section (1) shall contain the following statements, namely:—

(a) particulars of professional staff;

(b) financial & technical capability to deliver the relevant services; and

(c) a statement regarding its past experience in providing the relevant services.

55. Opening of applications.—(1) The procuring entity shall, immediately after the expiry of the deadline specified by the procuring entity for submission of applications relating to expressions of interest under section 54, convene a meeting of the proposal opening committee for opening the applications and recording details thereof.

(2) The proposal opening committee shall, upon the completion of the record of opening, send the applications received and the records thereof to the proposal evaluation committee.

56. Evaluation of applications and approval of short list, etc.—(1) The proposal evaluation committee shall, on the basis of the criteria stated in the request for expressions of interest, evaluate the applications received and submit an evaluation report with recommendations to the head of the procuring entity stating which applicants may be considered for inclusion in the short-list.

(2) A minimum of 4 (four) and a maximum of 7 (seven) applicants shall be recommended in the report of the evaluation committee, mentioned in sub-section (1), for inclusion in the short-list.

(3) The head of the procuring entity or an officer authorised by him or her shall, having considered the report mentioned in sub-section (2), approve the short-list.

(4) The procuring entity shall, upon receipt of approval under sub-section (3), inform all applicants who submitted expressions of interest as to whether or not they have been short-listed.

57. Preparation, distribution, etc. of document containing request for proposal.—(1) The procuring entity shall distribute the request for proposal document for procurement of intellectual and professional services to the short-listed applicants.

(2) Each applicant shall, having sealed its technical and financial proposals in two separate envelopes and having placed both in one sealed outer envelope, submit it by the time and to the place as specified in the proposal document.

(3) The applicant himself shall bear all the expenses and risk of preparation and submission of a proposal.

(4) A proposal received after the deadline for submission of proposals shall be returned unopened to the applicant.

58. Opening of proposals.—(1) The proposal opening committee shall, after submission of proposals under section 57, open the technical proposals and until such time as the evaluation of technical proposals has been completed, keep the financial proposals in safe custody.

(2) The proposal opening committee shall submit the technical proposals and the record of opening to the proposal evaluation committee for evaluation in accordance with this Act and the rules made in pursuance of this Act.

59. Evaluation of proposals.—(1) The proposal evaluation committee shall, maintaining confidentiality and in strict compliance with the qualification and criteria for evaluation specified in the request for proposal document, examine and evaluate all technical proposals for ascertaining the technical capability of all applicants and shall submit the evaluation report for approval by the head of the procuring entity or an officer authorised by him.

(2) The proposal evaluation committee shall, consequent upon the approval of the technical evaluation under sub-section (1), invite those persons, determined to be technically qualified following the examination and evaluation of their proposals, hereinafter referred to as consultants in this chapter, at the time of opening of their financial proposals at a place specified by it.

(3) In evaluating the proposals, a proposal evaluation committee shall—

(a) in the case of the Quality and Cost Based Selection Method, review in detail each financial proposal and invite the consultant that attained the highest score in the combined technical and financial evaluation, for negotiation;

(b) in the case of the Fixed Budget Selection Method, invite the consultant that scored the highest technical points within the budget, for negotiation;

(c) in the case of the Least Cost Selection Method, invite the consultant which qualified the technical capacity threshold and quoted the lowest cost, for negotiation.

60. Negotiation.—(1) The proposal evaluation committee, in order to conclude a contract, shall complete the pre-contract negotiations with the successful consultant on proposal implementation methodology, work plan, training and other inputs in the manner as may be prescribed.

(2) The proposal evaluation committee shall, if the negotiation mentioned in sub-section (1) fails, negotiate with the next highest evaluated consultant, and similarly with other evaluated consultants until a contract is signed, but it shall not negotiate simultaneously with more than one consultant.

(3) The applicable taxes and value added tax shall not be taken into account in determining the cost during the financial evaluation of proposals related to procurement of intellectual or professional services under domestic and international procurement.

(4) The proposal evaluation committee and the successful consultant shall, in order to conclude the negotiations, execute the agreed minutes of negotiation and initial the proposed draft contract agreement.

61. Approval process.—(1) The proposal evaluation committee shall submit the evaluation report, with its recommendation in accordance with section 7(5).

(2) The approving authority shall, having considered the report submitted under sub-section (1) arrive at a decision and notify the decision to all concerned including the procuring entity.

62. Signing of contract.—The procuring entity shall, upon receipt of approval for the signing of the contract and provided that no complaint has been lodged under section 29 and 30 of this Act, invite the successful consultant to sign the contract.

63. Completion of the process.—The procuring entity shall, following the signing of the contract with the successful consultant, notify all other consultants that they have been unsuccessful.

CHAPTER SEVEN

PROFESSIONAL MISCONDUCT, OFFENCES, ETC.

64. Professional misconduct, offences, etc.—(1) No officer or employee engaged in the procurement of goods, works or services under this Act, shall undertake or attempt to undertake any procurement of goods, works or services in contravention of any provisions of this Act or rules made in pursuance of this Act.

(2) The procuring entity shall, during the process of procurement and execution of contract, ensure that its officers and employees do not engage in any corrupt, fraudulent, collusive or coercive practices and similarly, a tenderer or a consultant or a person, as defined in this Act, shall abide by the code of ethics and ensure that neither it nor any member of its staff or any other intermediaries working on its behalf, engage in any such practices.

(3) An officer or employee to whom this Act applies, committing any act in contravention of sub-section (1), shall be guilty of misconduct or corruption under rule 3 (b) and 3 (d) of the Government Servants Discipline and Appeal Rules, 1985 or under the Service Rules relating to general conduct and discipline, as applicable to such officer or employee, and on those grounds departmental proceedings may be initiated against him.

(4) In addition to, or as an alternative to the actions under sub-section (3), criminal proceedings against the officer or employee concerned or a person may also be initiated under the relevant section of the Prevention of Corruption Act, 1947 and, in appropriate cases, under the Penal Code, 1860.

(5) The head of the procuring entity may, in case it appears to him that a person has contravened any of the provisions of this Act, declare such person ineligible for further participation in the particular procurement proceedings or in any other procurement proceedings in future.

CHAPTER EIGHT

USE OF ELECTRONIC PROCESSING SYSTEM IN PUBLIC PROCUREMENT, ETC.

65. Public procurement under electronic processing system (e-Government procurement).—(1) For carrying out the purposes of this Act, any or all government procurements under this Act may be undertaken using electronic processing system.

(2) The electronic processing system and the principles relating thereto shall be prescribed by the Government.

Explanation.—For the purposes of this section, "electronic processing system" means the online processing of data through a website.

CHAPTER NINE

MISCELLANEOUS

66. Provisions regarding concession contracts.—Notwithstanding anything contained in any other provisions of this Act, the Government may, in accordance with directives and model contract documents issued by it, enter into a concession contract with a person for the provision and operation of public utilities and services incidental thereto through a Build Own Operate, Build Operate Transfer, Build Own Operate Transfer agreement with joint public and private financing or with entirely private financing.

67. Responsibilities of the Government regarding monitoring, etc.—For carrying out the purposes of this Act, the Government shall, through a Central Procurement Technical Unit or any other unit established by it, relating to procurement monitoring, coordination and management, perform the following responsibilities, namely:—

(a) providing for monitoring compliance with and implementation of this Act through the authority as designated by the Government;

(b) arranging for performance of the necessary functions and responsibilities incidental thereto, through the authority as designated by the Government; and

(c) performing any other responsibilities as prescribed.

68. Special provisions relating to public procurement in case of urgent national need, etc.—(1) The Government may, in order to deal with an urgent national need or a catastrophic event, procure for the public interest, following the Direct Procurement Method or any other method, as mentioned in section 32, for carrying out a procurement activity according to the recommendation of the Cabinet Committee on Economic Affairs constituted by it.

(2) Unless the Government otherwise decides in the interest of national security or national defence, public procurement shall be undertaken in accordance with this Act.

69. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Government or any public servant for anything which is done or intended to be done in good faith in pursuance of this Act.

70. Power to make rules.—The Government may, by notification in the official Gazette, make rules for carrying out the purposes this Act.

71. Powers of the Government to remove complications.—For the purpose of removing any complications in giving effect to any provision of this Act on account of any ambiguities occurring therein, the Government may, by notification in the official Gazette, issue directions, clarifying or interpreting such provision keeping consistency with other provisions, as to how such matters shall be dealt with.

72. Authentic English text.—After the commencement of this Act, the Government shall, by notification in the official Gazette, publish an authentic English text of this Act :

Provided that in the event of conflict between the Bangla text and the English text, the Bangla text shall prevail.

73. Repeal and Savings.—(1) The rules, all other provisions or any other documents pertaining to procurement specifically mentioned in this Act, by whatever name they may be called, shall, in so far as they are inconsistent with any provision of this Act, stand repealed on the date of commencement of this Act:

Provided that the rules, all other provisions or any other documents pertaining to procurement made under this Act, by whatever name they may be called, shall not be contrary to or inconsistent with any provision of this Act.

(2) All actions taken under the rules, regulations and instructions prevailing for procurement before the commencement of this Act shall, notwithstanding the repeal under sub-section (1), be disposed of in accordance with the provisions of the repealed rules, regulations and instructions, as if they had not been repealed.

(3) The Public Procurement Regulations, 2003 shall remain in force until the rules under this Act are made.

By Order of the President

Mohammad Shahidul Haque
Secretary.

ড. মোঃ আলী আকবর (উপ সচিব), উপ পরিচালক, বাংলাদেশ সরকারি মুদ্রণালয়, তেজগাঁও, ঢাকা কর্তৃক মুদ্রিত।
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