

DISSERTATION PAPER

***A STUDY OF STANDARD TENDER DOCUMENTS (GOODS) OF PPR
2008 UNDER UN PROCUREMENT MANUAL***

Submitted by

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DECLARATION

It is hereby declared that this dissertation or any part of it has not been submitted elsewhere for the award of any degree or diploma.

February, 2015

Md. Hasibul Mahmud

CERTIFICATE

This is my pleasure to certify that the dissertation entitled “A study of Standard Tender Documents (Goods) of PPR 2008 under UN Procurement Manual” is the original work of Md. Hasibul Mahmud that is completed under my direct guidance and supervision. So far I know, the dissertation is an individual achievement of the candidate’s own efforts, and it is not a conjoint work. I also certify that I have gone through the draft and final version of the dissertation and found it satisfactory for submission to the BRAC Institute of Governance and Development, BRAC University in partial fulfillment of the requirements for the degree of Masters in Procurement and Supply Management.

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ABSTRACT

The study of the Standard Tender Documents under UN procurement manual actually reveals the comparison related clauses of goods procurement form the STDs and the aforesaid manual.

The Standard Tender Documents are prepared by the Central Procurement Technical Unit of Implementation, Monitoring and Evaluation Division under the Ministry of Planning, Bangladesh. Though the CPTU has several types of Standard Tender Documents, the study mainly confined with the documents of goods procurement available on website.

The study is to find out the loopholes of STD (Goods) comparing the related terms and conditions of UN Procurement Manual and PPR 2008. The study finds some of the difficulties and dissimilarities between the Rules and the terms of STD (Goods). The study also finds the lack of tune in harmonization of clauses of STDs and inconsistency of applicability of similar clauses. Though some of the STDs give the PE the more wide options of applications of certain terms and conditions, it makes the documents a bit more complex to use. Again in some cases or situations the PE's option is limited by the clauses of STD (Goods) which in terms simplified the documents.

However, being very recent introduction of STD (Goods) by the CPTU and the documents are still in the draft form and being modified time to time with the change of Rules and Acts and also the difficulties faced by the concerned PE to apply, the STDs are pretty much high standard documents for procurement of goods with related services.

The study finds that some fine tuning of the STDs will make them very high and appreciable standards of documents and those can be compared with the model form of contracts.

The author refers to some further study of the Standard Tender Documents (Goods) in comparison with the tender documents of UN and with view to the experts of PPR 2008 and UN Procurement for fine tuning and actual findings of laps and gaps of the goods documents.

Finally the study describes its findings at conclusion part and recommends some further study for enhancement of the Standard Tender Documents (Goods).

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ABBREVIATIONS

API	-	American Petroleum Institute
ASG/OCSS	-	Assistant Secretary General, Office of Central Support Services
ASME	-	American Society of Mechanical Engineers
BDT	-	Bangladesh Taka (Currency)
BPO	-	Blanket Purchase Order
BSTI	-	Bangladesh Standard Testing Institute
BVM	-	Best Value for Money
CAO	-	Chief Administrative Officer
CMS	-	Chief of Mission Support (Field Mission)
CPAR	-	Country Procurement Assessment Report
CPO	-	Chief Procurement Officer
CPTU	-	Central Procurement Technical Unit
DOA	-	Director of Administration
DM	-	Department of Management
DP	-	Domestic Preference
DPM	-	Direct Procurement Method
DRU	-	Director Receiving Unit
EOI	-	Expression of Interest
FRR	-	Financial Regulations and Rules
GCC	-	General Condition of Contract
HCC	-	Headquarter Committee on Contract
HOPE	-	Head of Procuring Entity
ICA	-	Institutional Contractor Agreement
ICT	-	International Competitive Tender
IEB	-	Institute of Engineers, Bangladesh
IFE	-	Invitation for Enlistment
IFT	-	Invitation to Tenderers (Bidders)
IMED	-	Implementation Monitoring and Evaluation Division
IMIS	-	Integrated Management Information System
INCOTERM	-	International Commercial Term
IPR	-	Intellectual Property Right
ISO	-	International Standard Organization

ITT	-	Instructions to Tenderers (Bidders)
JVCA	-	Joint Venture Consortium or Association
LCC	-	Local Committee on Contract
LTM	-	Limited Tendering Method
NCT	-	National Competitive Tender
NOA	-	Notification of Award
OAH	-	Office Away from Headquarters
OCSS	-	Office of Central Support Services
OTM	-	Open Tendering Method
PCC	-	Particular Condition of Contract
PE	-	Procuring Entity
PEC	-	Proposal Evaluation Committee
PG	-	Procurement of Goods
PMS	-	Procurement Management Section
PO	-	Purchase Order
POC	-	Proposal Opening Committee
POS	-	Procurement Operations Service
PPA	-	Public Procurement act
PPR	-	Public Procurement Rules
PPS	-	Peace Keeping Procurement Section
PS	-	Performance Security
PSB	-	Property Survey Boards
RFI	-	Request for Information
RFP	-	Request for Proposal
RFQ	-	Request for Quotation
R&I	-	Receipt and Inspection
SME	-	Subject Matter Experts
SOW	-	Statement of Works
SRFQ	-	Standard Request for Quotation
STD	-	Standard Tender Documents
TCO	-	Total Cost of Ownership
TD	-	Tender Document
TDS	-	Tender Data Sheet
TEC	-	Technical Evaluation Committee

TIN	-	Tax Identification Number
TOC	-	Tender Opening Committee
TOR	-	Terms of Reference
TOS	-	Tender Opening Sheet
TS	-	Tender Security
TSC	-	Technical Sub Committee
TSTM	-	Two-Stage Tendering Method
TTS	-	Travel and Transport Services
UN	-	United Nations
UNCCS	-	United Nations Common Codification System
UNCITRAL	-	United Nations Commission on International Trade Law
UNGCC	-	United Nations General Conditions of Contracts
UNGM	-	United Nations Global Marketplace
UN/PD	-	United Nations Secretariat Procurement Division
USG/DFS	-	Under-Secretary-General, Department of Field Support
USG/DM	-	Under-Secretary-General, Department of Management
VAT	-	Value Added Tax
VRA	-	Vendor Registration Application
VRO	-	Vendor Registration Officer(s)

1.0 INTRODUCTION

1.1 Background of the Study

Public Procurement Act- 2006 and Public Procurement Rules 2008 enacted in Bangladesh on 31 January 2008. The Central Procuring Technical Unit (CPTU) under Implementation, Monitoring and Evaluation Division of Ministry of Planning is the authority to implement, modify and update the rules of PPR. After enactment of PPA-2006 and PPR-2008, CPTU introduced Standard Tender Documents for both Goods and Works procurement. The procuring entities are bound to use those Standard Tender Documents (STDs) for procurement of goods and works under PPA 2006 and PPR 2008. Actually these STDs are standardized form for contracting between buyers and sellers which become contract document after signing of the tender or bid. The STDs are formulated using the acts, PPA-2006 and rules, PPR-2008. The STDs are simplified format of procurement rules, regulations, processes and procedures of procurement and it becomes driving document of contract after being signed by the parties of the contract.

The United Nations is the largest organizations of the world and procures billions of dollar goods and services each year from all over the world through a significant numbers of organizations working under it. For procurement of UN organizations' there is procurement manual issued by Department of Management, Office of the Central Support Services at Procurement Division in UN Headquarters at New York.

In order to strengthen and sustain the capacity of public procurement in Bangladesh, a new Technical Assistance (TA) project named "Public Procurement Reform Project II (PPRP II)" was approved in June, 2007 and is under implementation now. Under the aforesaid project a number of government officials are selected to study and research on various procurement issues, jointly organized by the Chartered Institute of Purchasing and Supply (CIPS), UK and Institute of Governance Studies, BRAC University, Bangladesh. A top-up Masters program is planned in this project and this research study work stands at the core of that Masters program.

1.2 Problem Statement

The STDs are the practical application of both PPA-2006 and PPR -2008. There are several STDs both for goods, works and services procurement. The STDs are designed for various thresholds of procurement values and for national and international tendering. Though the STDs are very newly introduced these require to prove their value and worth in comparison with world's largest organizations procurement guideline (Manual).

The rules and acts are not same all over the world and the requirement of organizations vary form time to time and with their activities they are involved in. Even some donor agencies prefer their own tender documents or some Model Form like FIDIC.

There are a number of Standard Tender Documents for goods procurement such as

- ✓ PG1
- ✓ PG2
- ✓ PG3
- ✓ PG4

And these are used for different tendering processes. However there are mentioned about some more documents in PPR 2008 like PG5, PG6 and PQG but are not found either in draft or final form on CPTU website. That's why the study is confined with above mentioned four STDs of Goods procurement.

1.3 Research Questions

- ✓ Are STDs well harmonized with the acts (PPA-2006) and rules (PPR-2008) and the processes and procedures of tendering followed under aforesaid acts and rules?
- ✓ Are there any similarities or dissimilarities with UN procurement Manual and in concern with UNCITRAL Model law on public procurement?
- ✓ What could be the possible scope of improvement in STDs?

1.4 Research Objectives

The main objective of the study is to critically review the Standard Tender Documents (Goods) issued by CPTU under UN procurement manual and UNCITRAL Model Law on public procurement. The review, comparison and analysis will help to find out the shortcomings of Standard Tender Documents and also to find out the scope of improvements.

1.5 Rationale of the Study

The study is to find out the strength and weakness of contract administration through analysis of tender documents which in course of time become the driver of contract management, dispute resolution and successful completion of contract under PPA 2006 and PPR 2008. The standard tender documents state several legal issues of contract which can make contract administration and contract management easier and those are as follows:

- ❖ Communication Proceedings
- ❖ Contract Termination
- ❖ Dispute Resolution
- ❖ Eligibility
- ❖ Ethical Standards
- ❖ Incentives
- ❖ Liquidated Damages
- ❖ Payment Procedures
- ❖ Pricing Mechanism
- ❖ Scope of Supply
- ❖ Time

1.6 Scope and Limitations of the Study

There are several standard tender documents for works, goods and services but this study only examines the STDs for goods procurement and is also confined with the STDs available on CPTU website for use. There are a number of renowned Model forms of contract and procurement guidelines such as World Bank guideline, ADB guidelines, EU Procurement Directives etc but this study is confined with the UN procurement manual, UN General Business Guide and UNCITRAL Model Law of public procurement. This research is mainly confined with UN Procurement manual but takes some help and example from UN General Business Guide and UNCITRAL Model Law of Public Procurement.

1.7 Methodology

The secondary data and literary review is the method of the study for review and analysis of standard Tender Document for goods procurement in PPR 2008. Firstly it involves of analysis of STDs with PPA-2006 and PPR-2008 and then comparison with UN Procurement Manual and UNCITRAL Model Law on Public Procurement. This is qualitative method and comparison is done by related information reviewed.

2.0 REVIEW OF STANDARD TENDER DOCUMENTS (GOODS)

The Standard Tender Documents mean the documents issued by the procuring entity under the Law, PPA 2006 and the rules, PPR 2008 where the terms and conditions of procurement proceedings are elaborately documented. And the STDs (Goods) are the documents that set out the terms and conditions of goods procurement under PPA 2006 and PPR 2008. The Standard Tender Documents for procuring of goods under the law, PPA-2006 and the rules, PPR-2008 are prepared by CPTU, IMED of Ministry of Planning in Bangladesh. These documents are not similar to model forms of contract by preparation, issue and use; rather these can be categorized as standard form of contract of procurement. The CPTU not only prepares the documents for goods but also prepares standard documents for works and services procurement. The STDs are to be used for public procurement under PPA-2006 and PPR-2008 in any where in Bangladesh for using public funds with very few exceptions like donor funded procurement and so on where the terms and conditions are stated in different ways in funding policy. For goods procurement under aforesaid act and rules there are four types of STDs for various thresholds and tendering methods.

2.1 PG 1 (SRFQ Document)

2.1.1 Introduction

This is the lowest threshold STD for procurement of goods and named by shorting procurement of goods in PG and giving number 1. The document is used for SRFQ method and up to the values of BDT 0.5 millions. This STD is only for use of nationally competitive tender (NCT). The STD has several sections for its practical use in SRFQ method. The STD, PG1 is for use in SRFQ method for procurement of simple, off the shelf, low value goods and related services.

2.1.2 Guidance Notes for Procuring Entity

The first part of PG1 is guidance notes for using STD on quotation method. This section describes the applicable rules of PPR 2008 and the section of related act, PPA 2006. In the section of PG1, there are 15 (fifteen) notes included applicable rules, acts, time-limits, tender security, performance security, costs of document, advertisement process, the specifications of goods and related services, warranty period, quoted price mechanism, splitting of object procurement, submission, opening, evaluation and awarding processes of quotation and required minimum number of responsive quotation for evaluation.

The second part of PG1 is the form for RFQ. This part is included the name of PE, date, name of goods and related services, submission deadline for quotation, required validity period for quotation, payment currency, tax, duties, levies and other charges payment rules, required legal eligibility and capacity documents, deadline of delivery of goods from the issuing date of Purchase Order and the reserved right of the PE.

The procurement under Request for Quotation Method (RFQM) should follow the provisions pursuant to Rules 69 to 73 of the PPR, 2008 in accordance with Section 32 of the PPA, 2006. SRFQ is based upon best national practices that have been adapted to suit the particular needs of procurement.

2.1.3 Quotation Submission Letter

The third part and heart of STD is RFQ submission letter and required price schedule with necessary technical specifications of goods and related services. In this portion, the quotationers have to declare the unconditional acceptance of terms and condition given by

PE. The quotationers have to submit the declaration of the compliance of technical specification for goods and related services in prescribed format of STD, PG1 as follows:

Sl no	Item No	Description of Items	Full Technical Specification and Standards	Country of Origin	Make and Model
1	2	3	4	5	6

Table – Technical Specifications of goods and related services

The column 1, 2, 3 and 4 to be filled in by the Procuring Entity and column 5 & 6 by the Quotationer of above table for fulfilling the conditions of quotation. The quotationers also have to submit the price schedule of goods and related services in the form of STD, PG1 shown in following table:

Sl no	Item no	Description of Items	Unit of Measurement	Quantity	Unit Rate or Price		Total Amount		Destination for Delivery of Goods
					In figure	In words	In figure	In words	
1	2	3	4	5	6	7	8	9	

Table – Price Schedule for Goods and Related Services

The column 1, 2, 3, 4, 5 and 9 to be filled in by the Procuring Entity and Col. 6, 7 & 8 by the Quotationer of above table for fulfilling the conditions of quotation.

2.1.4 Terms and Condition for Supply of Goods and Payment

The included terms and conditions are mainly categorized into three following parts

- a) Rights and responsibilities of procuring entity
- b) Right and responsibilities of the supplier
- c) The bindings for the both parties

a) Rights and responsibilities for Procuring Entity

It is the responsibility of procuring entity to give supplier sufficient time period to deliver. In case of Force Majeure situation, any reasonable causes and/or any delays due to procuring entity's faults, it is the responsibility of the procuring entity to give supplier justifiable time extension (compensation). The procuring entity should check and verify the supplied delivery of goods and related services and consequently either accept or reject the delivery depending on defects and/or unconformity with specifications found by giving due notice to the supplier. The procuring entity should fix the warranty time period and should retain or deduct the security deposit, at the rate of five (5-10) percent of total contract price from the payment due to the supplier after the acceptance of Delivery Chalan. The procuring entity should return the security deposit within 21 days after expiry of warranty period. The procuring entity shall modify, amend and introduce the terms and conditions of contract in line with Rules, where necessary. The procuring Entity reserves the right of termination of contract partly or in full at any time as follows in STD, PG1:

- i. If the supplier fails to deliver Goods and related services as per Delivery Schedule and Specifications.
- ii. In the judgement of the Procuring Entity, the supplier has engaged in any corrupt, fraudulent, collusive or coercive practices in competing for or in delivery of goods and related services.
- iii. The supplier fails to perform any other obligation(s) under the Contract.

b) Right and responsibilities of the supplier

It is Supplier's responsibility to pay all taxes, duties, fees, and such other levies under the Applicable Law. The quoted prices or rates by the supplier should be inclusive of profit and overhead and, all kinds of taxes, duties, fees, levies, and other charges to be paid under the Applicable Law. The supplier should indemnify the Procuring Entity from any claim, loss of property or life to himself/herself, his/her workmen or staff, any staff of the Procurement Entity or any third party while delivering the Goods and related services. It is supplier's liability to fulfil the obligations (compliance of maintenance guarantee, after sales services and warranty) pursuant to Rule 40(5) of PPR 2008. Any claims or damages related to the delivered goods and related services during delivery and/or during warranty period should be remedied by the supplier at the supplier's own costs. It is supplier's responsibility to be aware of provision on corruption, fraudulence, collusion and coercion in Section 64 of the Public Procurement Act, 2006 and Rule 127 of the Public Procurement Rules, 2008.

c) The bindings for the both parties

The terms and conditions of contract should be binding upon both the Procuring Entity and the Supplier for the purpose of contract administration and contract management. Both the Procuring Entity and the Supplier should use their best efforts to settle amicably all possible disputes arising out of or in connection with this Contract or its interpretation. The total price of the contract should be in BDT and written both in word and figure. The modification to Scope of Supply and Variations to the quantities ordered should not be permissible under any circumstances. The implementation and interpretation of these Terms and Conditions should, in general, be under the purview of the Public Procurement Act, 2006 and the Public Procurement Rules, 2008.

2.1.5 Conclusion

Due to very low threshold and nationally circulated tendering, the STD, PG1 is a handsome one to use. This document is set by very basic conditions and requirement for procurement of goods. There are not so many references to other section and all the necessary terms and conditions are clearly described in the STD, PG1. The required instructions for related parties are also included and some of the conditions remain open for the expertise of PE.

2.2 PG 2 (OTM/LTM Documents)

2.2.1 Introduction

This is the STD with the threshold value up to BDT 2.5 million and used for nationally circulated tender. This document may be used for both Open Tendering Method and Limited Tendering Method. The STD, PG2, is applicable when a Procuring Entity wishes to select a Tenderer (a Supplier) for the supply of small value goods and related services in which the contract is awarded on the basis of lowest evaluated tender. Using this document, the Tender is invited for off-the shelf readily available goods under contract for short-duration and of low risks.

2.2.2 Guidance on Use of Standard Tender Document

The guidance notes have been prepared by CPTU to assist Procuring Entity in preparation of the Tender Document from the STD for procurement of Goods and Related Services estimated costs up to BDT 2.5 million. The STD, PG2 has seven sections and some of the sections can be modified by the Procuring Entity. The Procuring Entity addresses its specific needs through the information provided in the Tender Data Sheet (TDS) and the Particular Conditions of Contract (PCC) as well as in the detailed requirements of the

procurement in the Schedule of Requirements, the Technical Specifications and/or the Drawings. Among those seven sections, Section 1: Instruction to Tenderers and Section 3: General Conditions of Contract must not be altered or modified under any circumstances by the Procuring Entity. The STD, PG2, provides all the information that a Tenderer needs in order to prepare and submit a Tender. The document provides a sound basis on which the Procuring Entity can fairly, transparently and accurately carry out a Tender evaluation process on the Tenders submitted by the Tenderers.

All concerned are advised to refer to the Act, PPA 2006 and Rules, PPR 2008, while participating in any Tendering process.

2.2.3 Instructions to Tenderers

This part of STD states the necessary directions and bindings for Tenderer or supplier to be capable of participating Tender. The instructions are divided into seven sub sections for the convenience of Tenderer or Supplier.

Section A: General

This sub-section states the rules of ethical practices for the parties entering into the contract and the eligibility criteria for Tenderers. In case of corrupt, fraudulent, collusive and coercive practices, the rights of the Procuring Entity are defined with the directive actions. For eligibility, the financial, legal, commercial, professional and performance criteria are well described in the sub section. The applicability of Law is been defined in this section. One of the notable instructions is ITT Clause 3.7 of PG2, where the effect of previous performance was defined as follows:

“Tenderers are not restrained or barred from participating in Public Procurement on grounds of poor performance in the past under any Contract.”

Section B: Tender Document

This sub-section is constituted with the directions related to the tender documents where the clarification of tender documents and addendum to the tender document and their timeline are defined. The communications process among the Procuring Entity and the Tenderer are clearly predefined in written form.

Section C: Qualification Criteria

The qualification criteria include the eligibility criteria, the minimum threshold of financial and experience criteria which are required to become a responsive Tender to be evaluated for contract award. This section also refers to other sections of ITT clause like ITT Clause 3.0, ITT Clause 7 to 9 and TDS of the Tender Document. The most noticeable criteria of the section are subcontractor clause stated in ITT Clause 10.1 of PG2 as follows:

“The successful Tenderer shall under no circumstances assign the supply of Goods or any part of it to the Subcontractor(s).”

Section D: Tender Preparation

This part includes the detail directions for Tenderer to prepare the tender which has several instructions related to following as per PG2

- ✓ Only one tender
- ✓ Issuance, Sale and Language of TD
- ✓ Content of Tender
- ✓ Tender Submission Letter and Price Schedule
- ✓ Tender Prices
- ✓ Tender Currency
- ✓ Eligibility Documents
- ✓ Documents establishing the conformity of Goods
- ✓ Tender validity period

✓ Tender Security

Among the above criteria, most of them refer to some other ITT Clauses, TDS and tender forms to be applicable and useful for preparing the Tender to be submitted by the Tenderer or Supplier. In the event of LTM, the tender validity and tender security clauses are not applicable. Otherwise the clauses define the validity period of tender and the validity of tender security and their extension procedures.

Section E: Tender Submission

The tender submission section describes the processes and procedures of submission, deadline, modification, substitution and withdrawal of tender.

Section F: Tender Opening and Evaluation

This section gives the Tenderer or Supplier the clear knowledge of opening and evaluation process followed by the procuring entity. The four stages of evaluation process are mentioned in this section that is followed by TEC:

- i. Preliminary Examination
- ii. Technical Examination and Responsiveness
- iii. Financial evaluation and Price Comparison
- iv. Post qualification of lowest evaluated responsive tenders.

The evaluation process is conducted by the Technical Evaluation Committee (TEC). The right of procuring entity is well described in case of acceptance and/or rejection of tenders in this section. One of important clause of this section related to negotiation is stated in ITT Clause 32.1 of PG2 as follows:

“No negotiations shall be held during the Tender evaluation or award with the lowest or any other Tenderer.”

Section G: Contract Award

This section gives the knowledge to Supplier or Tenderer about the winning criteria and procedures to finalize the tender into a successful contract between the Procuring Entity and the selected supplier. The details of contract signing procedures with complain procedures and debriefing processes are stated in this section of ITT. The issuance, acceptance of NOA and formalities to final contract signing refer to some valid performance security and contract forms of STD. The important and remarkable clause of debriefing stated in ITT Clause 39.2 of PG2 is mentioned below:

“Debriefing of Tenderers by the Procuring Entity shall outline the relative status and weakness only of his or her Tender requesting to be informed of the grounds for not accepting the Tender submitted by him or her, without disclosing information about any other Tenderer.”

2.2.4 Tender Data Sheet

The Tender Data Sheet (TDS) is the setup of referred criteria from the ITT section fix up the Procuring Entity. The Procuring Entity’s discretion to define the criteria includes general and specific experience criteria, financial capability, the basis of tender invitation, amount of tender security and performance security with in predefined limit, place and deadline of tender submission, place and date of tender opening and contracting person’s address for clarification.

2.2.5 General Conditions of Contract

The General Condition of Contract defines some useful key terms related to the procurement and also gives the suppliers vision of tendering processes, abiding rules and laws and appropriate way to conclude the contract either successful or unsuccessful. The important clauses include the following as per PG2:

- ✓ Assignment
- ✓ Acceptance

- ✓ Terms of Payment
- ✓ Inspections and Tests
- ✓ Warranty
- ✓ Liquidated Damages
- ✓ Termination for Default
- ✓ Dispute Resolutions.

Among above one of the strict criteria, ‘Terms of Payment’, defined by GCC Clause 10.1 of PG2 stated below:

“The method and conditions of payment to be made to the Supplier under this Contract shall be as follows:

On Delivery and Acceptance: Hundred (100) percent of the Contract Price of the Goods delivered shall be paid after submission of documents specified in GCC Clause 5, supported by the Acceptance Certificate issued by the Procuring Entity pursuant to GCC Clause 7.”

Another very useful and important clause in the GCC Clause is ‘Dispute Resolution’ in which there are two methods named Amicable Settlement and Arbitration mentioned and the procedures described. The GCC Clauses of the STD, PG2 refer to PCC, PPA, PPR, Arbitration Act and some other GCC Clauses for convenient application of clauses. There is no way of modification of GCC Clauses by the Procuring Entity.

2.2.6 Particular Conditions of Contract

This is the part where the Procuring Entity can use all its expertise to fulfill the requirement. In this section, the procuring entity is able to define its need and the need for contract by modifying following criteria:

- ✓ The supporting papers or documents
- ✓ Warranty Period
- ✓ Liquidated Damages
- ✓ The name and place of Arbitration

All the above criteria may be set in favour of procuring entity but that may impact on the price and availability of suppliers. So, this is the portion by which the performance of effective and efficient Procuring Entity can be measured.

2.2.7 Tender Forms and Contract Forms

The section includes total eight numbers of forms in two categories namely Tender Forms and Contract Forms. The tender forms are used during Tendering process to communicate between the Supplier and the Procuring Entity and the contract forms are used to communicate between the successful Tenderer and the Procuring Entity to finalize the Contract. The precedence of documents are predefined in the STD’s GCC clause and also mentioned in the Contract Agreement Form (PG2-7) which defines the priority of terms and conditions governing the contract. The precedence as per PG2 is

- (a) The signed Form of Contract Agreement;
- (b) The Notification of Award;
- (c) The completed Tender;
- (d) Conditions of Contract;
- (e) Technical Specifications;
- (f) Price Schedules and Schedule of Requirements and;
- (g) Other document, if any

2.2.8 Schedule of Requirements

This section defines the scope of contract and the delivery requirements in a tabular form. The following template of table from PG2 is self explanatory:

Item No.	Description of Item	Unit of Measurement	Quantity	Point of Delivery	Delivery Period Required (from date of contract signature in weeks)
1	2	3	4	5	6

Table: List of Goods and related service and Delivery Schedule

2.2.9 Technical Specifications

The Technical Specification is the measuring indicator of the quality of goods and related services. This is the benchmark of comparing the quality of supplied goods and related services and set the acceptance and/or rejection criteria. The Procuring Entity should follow the Rule 29 of PPR 2008 in preparing the technical specifications. This is the section where the Procuring Entity can use all its skills, knowledge, expertise and technical competence to make effective procurement of goods and related service. A set of precise and clear specifications is a prerequisite for Tenderers to respond realistically and competitively to the requirements of the Procuring Entity. For simplicity, the technical specification may be defined by Standards like ISO, API, BSTI and ASME etc. Sometimes it can be organizational standards like Bangladesh Railway Standard.

2.2.10 Conclusion

At a glance, the STD, PG2 is a complete document for low threshold tender and applicable for both OTM and LTM. There are a standard set of criteria for low value tenders. Some of discontinuity observed among the sections of this STD like ITT and TDS. Being draft document, the all probable mistakes are to be corrected before finalization of documents. And any sorts of modifications may be appended to the betterment of this STD.

2.3 PG 3 (OTM Documents)

2.3.1 Introduction

This is the STD without any upper threshold value and used for nationally circulated tender. This document can be used for Open Tendering Method when the Procuring Entity wishes to select a Supplier for the supply of Goods and related services. The STD, PG3, is applicable when a Procuring Entity awards the contract on the basis of lowest evaluated responsive tender. The STD, PG3 is based upon internationally acceptable model formats, which have been adapted to suit the particular needs of procurement within Bangladesh.

2.3.2 Guidance on Use of Standard Tender Document

The guidance notes have been prepared by CPTU to assist Procuring Entity in preparation of the Tender Document from the STD for procurement of Goods and Related Services estimated costs above BDT 2.5 million. The STD, PG 3 has eight sections and some of the sections can be modified by the Procuring Entity. The Procuring Entity addresses its specific needs through the information provided in the Tender Data Sheet (TDS) and the Particular Conditions of Contract (PCC) as well as in the detailed requirements of the procurement in the Schedule of Requirements, the Technical Specifications and/or the Drawings. Among those eight sections, Section 1: Instruction to Tenderer and Section 3: General Conditions of Contract must not be altered or modified under any circumstances by the Procuring Entity. The STD, PG3 provides all the information that a Tenderer needs

in order to prepare and submit a Tender. The document provides a sound basis on which the Procuring Entity can fairly, transparently and accurately carry out a Tender evaluation process on the Tenders submitted by the Tenderers. All concerned are advised to refer to the Act, PPA 2006 and Rules, PPR 2008, while participating in any Tendering process.

2.3.3 Instructions to Tenderers

This part of STD states the necessary directions and bindings for tenderer or supplier to be capable of participating Tender. The instructions are divided into seven sub sections for the convenience of Tenderer or Supplier.

Section A: General

This sub-section states seven points that illustrate the scope, site visit, sources of fund, the rules of ethical practices for the parties entering into the contract, the eligibility criteria for Tenderers and the eligibility of goods and related services. In case of corrupt, fraudulent, collusive and coercive practices, the rights of the Procuring Entity are defined with the directive actions. For eligibility of Tenderers, the financial, legal, commercial, and professional and performance criteria are well described in the sub section. In this section the capability of Government organizations are also defined for eligibility as Tenderers. The eligibility of supplied goods and related services with their definition and country of origin are clearly defined. The origin of the goods and related services is defined by the ITT Clause 6.2 of PG3 as follows:

*“For purposes of this clause, **“origin”** means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or through manufacturing, processing, or assembling, another commercially recognized new product results that differs substantially in its basic characteristics from its components.”*

One of the important restrictions for Tenderers to be eligible is stated in ITT Clause 5.6 of PG3 where the association with the consultants is restricted as follows:

“Tenderers should not be associated, or have been associated in the past, directly or indirectly, with a consultant or any of its affiliates which have been engaged by the Procuring Entity to provide consulting services for the preparation of the specifications and other documents to be used for the procurement of the Goods to be supplied under this Invitation for Tenders.”

Some of the clauses are referred to other clauses of the section and other sections of STD which in practice becomes the Tender Document.

Section B: Tender Document

This sub-section is constituted with the directions related to the tender documents where the clarification of tender documents, pre-tender meeting and addendum to the tender document and their timeline are defined. The communications process between the Procuring Entity and the Tenderers are clearly predefined in “written” form except the pre-tender meeting which is two-way simultaneous communication of Tender Document related issues. The pre-tender meeting is advance form of clarifications and answer to the questions arising from tender documents to the Tenderers at the discretion of procuring entity.

Section C: Qualification Criteria

The qualification criteria include necessary technical and professional criteria, satisfactory litigation history, the eligibility criteria, minimum financial capability and experience criteria which are required to become a responsive Tender to be evaluated for contract award. The satisfactory litigation history is best described in the ITT Clause 15.1(b) of PG3 as follows:

“satisfactory resolution of all claims under litigation cases and shall not have serious negative impact on the financial capacity of the Tenderers. All pending litigation shall be treated as resolved against the Tenderers.”

The most noticeable criterion of this STD is subcontractor clause stated in ITT Clause 16 where the eligibility of subcontractor(s) is allowed with required necessary arrangements. Some of this section’s clauses are governed by the set condition of TDS by PE.

Section D: Tender Preparation

This part includes the detail directions for Tenderer to prepare the tender which has several instructions related to following as per STD, PG3

- ✓ Only one tender
- ✓ Costs of Tendering
- ✓ Issuance, Sale and Language of TD
- ✓ Contents of Tender
- ✓ Tender Submission Letter and Price Schedule
- ✓ Alternatives
- ✓ Tender Prices and Discounts
- ✓ Tender Currency
- ✓ Eligibility Documents for Tenderer
- ✓ Documents establishing the eligibility and conformity of Goods
- ✓ Documents for Tenderer Qualifications
- ✓ Tender validity period
- ✓ Extension of Tender Validity and Tender Security
- ✓ Tender Security
- ✓ Form of Tender Security
- ✓ Authenticity of Tender Security
- ✓ Return of Tender Security
- ✓ Forfeiture of Tender Security
- ✓ Format and Signing of Tender

The notable criteria mentioned in this section are tender prices and discounts, alternatives, extension of tender validity and tender security, return of tender security and forfeiture of tender security. The alternatives clauses are clearly stated in ITT Clause 23.2 of PG3 as follows:

“Only the technical alternatives, if any, of the lowest evaluated Tenderer conforming to the basic technical requirements will be considered by the Procuring Entity.”

The tender prices and discounts clause identifies several issues of tender. ITT Clause 24.7 of PG3 defines the responsiveness for ‘lot-by-lot’ basis tendering as follows:

“Tenders being invited for a number of lots on “lot-by-lot” basis, the lot not quoting at least eighty (80) percent of the total number of items under that lot and, not representing at least sixty five (65) percent of the equivalent lot value determined in the methodology as stated under ITT Sub Clause 24.8, shall be considered non-responsive.”

The discounts for the quoted prices are defined by ITT Clause 24.12 of PG3 as follows:

“Tenderers wishing to offer any unconditional discount for the award of more than one lot shall specify the discount applicable to each lot, or alternatively, to any combination of lots within the package in their Tender. Discounts will be submitted as stated under ITT Sub Clause 24.11, provided the Tenders for all lots are submitted and opened together.”

The of the most important criteria for pricing mechanism is defined by the ITT Clause 24.14 of PG3 that states the fix price contract as follows:

“The price of a Contract shall be fixed in which case the unit prices may not be modified in response to changes in economic or commercial conditions.”

The return of tender security is defined by the ITT Clause 34.1 of PG3 as follows:

“No Tender Security shall be returned to the Tenderers before contract signing.”

Among the above, some of the criteria refer to some other ITT Clauses, TDS and tender forms to be applicable and useful for preparing the Tender to be submitted by the Tenderer or Supplier.

Section E: Tender Submission

The tender submission section describes the processes and procedures of submission, deadline, modification, substitution and withdrawal of tender. In case of multiple dropping options, there are some directions for procuring entity and for the place of submission the ITT Clause 38.3 of PG3 states as follows:

*“If submission of Tenders is allowed in more than one location, the date and time, for submission of Tenders for both the primary and the secondary place(s), shall be the **“same and not different”** as specified in the **TDS**.”*

And the condition to be fulfilled for selection of multiple places is defined by ITT Clause 38.4 of PG3 as follows:

*“The Procuring Entity shall ensure that the Tenders received at the secondary place(s) are hand-delivered at the primary place as stated under ITT Sub Clause 38.1, within **THREE (3) HOURS** after the deadline for submission of Tenders at the secondary place (s), in case of **MULTIPLE DROPPING** as stated under ITT Sub Clause 38.3, as specified in the **TDS**.”*

This section also defined the late tender as received after the deadline of the tender submission and is directed to return unopened to Tenderer.

Section F: Tender Opening and Evaluation

This section gives the Tenderer or Supplier the clear knowledge of opening and evaluation process followed by the procuring entity. The opening of tender is conducted by the Tender Opening Committee (TOC) and the process is described in details. The four stages of evaluation process are mentioned in this section that is followed by TEC:

- i. Preliminary Examination
- ii. Technical Examination and Responsiveness
- iii. Financial evaluation and Price Comparison
- iv. Post qualification of lowest evaluated responsive tenders.

All four above processes are described in details with necessary conditions to be followed by both the Tenderer and TEC. Some very important points are identified in those processes such as clarification on Tender by ITT Clause 49.3 of PG3 as follows:

“Any request for clarifications by the TEC shall not be directed towards making an apparently non-responsive Tender responsive and reciprocally the response from the concerned Tenderer shall not be articulated towards any addition, alteration or modification to its Tender.”

The restriction of disclosure of information is guided by the ITT Clause 50.1 of PG3 as follows:

“Following the opening of Tenders until issuance of Notification of Award no Tenderer shall, unless requested to provide clarification to its Tender or unless necessary for submission of a complaint, communicate with the concerned Procuring Entity.”

The correction of arithmetical errors by TEC drives the evaluation process by ITT Clause 51.2 of PG3 as follows:

“TEC shall correct the arithmetic errors and shall promptly notify the concerned Tenderer(s), if the Tenderer does not accept the correction of arithmetic errors, its Tender shall be rejected.”

The post-qualification of responsive lowest evaluated Tenderer is conducted by TEC to finalize the contract and is directed by the ITT Clause 55.1 of PG3 as follows:

“The determination on Post-qualification shall be based upon an examination of the documentary evidence of the Tenderer’s eligibility and qualifications submitted by the Tenderer as stated under ITT Clause 26 and 28, clarifications as stated under ITT Clause 49 and the qualification criteria as stated under ITT Clause 12,13,14 and 15. Factors not included therein shall not be used in the evaluation of the Tenderer’s qualification.”

Any negotiation with the tenderer as usual is barred by clause in the section of STD. The right of procuring entity is well described in case of acceptance and/or rejection of tenders in this section. One of important clause of this section related to informing reasons for rejection in ITT Clause 58.1 of PG3 as follows:

“Notice of the rejection will be given promptly within seven (7) working days of decision taken by the Procuring Entity to all Tenderers and, the Procuring Entity will, upon receipt of a written request, communicate to any Tenderer the reason(s) for its rejection but is not required to justify those reason(s).”

Section G: Contract Award

This section gives the knowledge to Supplier or Tenderer about the winning criteria and procedures to finalize the tender into a successful contract between the Procuring Entity and the lowest evaluated supplier. The details of contract signing procedures with complain procedures and debriefing processes are stated in this section of ITT. The issuance, acceptance of NOA and formalities to final contract signing refer to some valid performance security and contract forms of STD. The NOA has its own acceptance criteria and it can be defined as ‘an offer’ by the PE to the bid winning Tenderer or Supplier. The ITT Clause 61.3 of PG3 states the acceptance criteria as follows:

“The NOA shall be accepted in writing by the successful Tenderer within seven (7) working days from the date of its issuance.”

There is a timeline to conclude the contract between the PE and successful Tenderer described in ITT Clause 66.2 of PG3 as follows;

“Within twenty-eight (28) days of the issuance of NOA, the successful Tenderer(s) and the Procuring Entity shall sign the contract.”

The debriefing to the Tenderer has been well defined or molded by the ITT Clause 68.2 of PG3 as follows:

“In the case of debriefing confidentiality of the evaluation process shall be maintained.”

There are also the instructions of dispute resolution, publications of NOA, rights of complain by the Tenderer etc. A number of clauses refer to other clauses of this section, some applicable form and other section like TDS of the STD.

2.3.4 Tender Data Sheet

The Tender Data Sheet (TDS) is the setup of referred criteria from the ITT section fix up by the Procuring Entity. The Procuring Entity’s discretion to define the criteria includes eligibility of Tenderer, eligibility of Goods and related Services, general and specific experience criteria, financial capability, production capacity, options of alternatives, option of manufacturer authorization, claims and litigation history criteria, economic factors to be applicable, limit of variation, profile of adjudicators, the basis of tender invitation, amount of tender security and performance security with in predefined limit, place and deadline of tender submission, place and date of tender opening and contracting person’s address for clarification.

2.3.5 General Conditions of Contract

The General Condition of Contract defines some useful key terms related to the procurement and also gives the suppliers vision of tendering processes, abiding rules and laws and appropriate way to conclude the contract either successful or unsuccessful. The

GCC also defines the Governing Laws, Languages, responsibilities of both PE and Supplier and interpretation. The important clauses include the following as per PG3:

- ✓ Interpretation
- ✓ Assignment
- ✓ Confidential Details
- ✓ Trademark, Patent and IPR
- ✓ Copyright
- ✓ Acceptance
- ✓ Subcontracting
- ✓ Terms of Payment
- ✓ Insurance
- ✓ Specifications and Standards
- ✓ Inspections and Tests
- ✓ Warranty
- ✓ Liquidated Damages
- ✓ Limitation of Liability
- ✓ Adjustment for changes in Legislation
- ✓ Force Majeure
- ✓ Termination
- ✓ Amendment of Contract
- ✓ Settlement of Disputes

The assignment and subcontracting clauses defines the option of transferring and sharing the responsibility of the Tenderer. Trademark, Patent and IPR clause defines the issue related to the applicable Law. One of the important clauses, Entire Agreement defines the applicability of the contract clause by GCC Clause 2.2 of PG3 as follows:

“The Contract constitutes the entire agreement between the Procuring Entity and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract Agreement; except those stated under GCC Sub Clause 7.1(i).”

The Liquidated Damages clause defines the incentive procedures of the contract. Insurance clause defines the responsibility of the Supplier for incidental loss or damage. The Specifications and Standards and Inspection and Tests clauses define the requirements of PE and quality confirmation process respectively. The ‘Limitation of Liability’ clauses define the limit of responsibility of the Tenderer or Supplier, which can be better explained by the GCC Clause 34.1(b) of PG3 as follows:

“the aggregate liability of the Supplier to the Procuring Entity, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the supplier to indemnify the Procuring Entity with respect to patent infringement.”

The definition of ‘Force Majeure’ situations, the process of notice and the consequences of Force Majeure are defined by the related clause in GCC. The termination procedures, amendment and dispute settlement procedures are also defined by the respective clauses in this section of STD. The performance security and warranty clauses give the assurance of the delivery and required services during warranty period of contract. The ‘Packing and Documents’, ‘Delivery and Documents’ and ‘Transportation’ clauses define the responsibility of the Tenderer or Supplier during handling and delivery of supply. There are some other clauses that define the requirements, procedures, changes to contract, changes to legislation and responsibilities of parties into the contract.

The GCC Clauses of the STD refer to PCC, PPA, PPR, Arbitration Act, IPR Act, Trademark Act, Patent and Design Act and some other sections for convenient application of clauses. There is no way of modification of GCC Clauses by the PE.

2.3.6 Particular Conditions of Contract

This is the part where the Procuring Entity can use all its expertise to fulfill the requirement. In this section, the procuring entity is able to define its need and the need for contract by modifying following criteria:

- ✓ The points of Delivery
- ✓ The supporting papers or documents
- ✓ Methods and Conditions of Payment
- ✓ Inspections and Tests Process
- ✓ Warranty Period
- ✓ Liquidated Damages
- ✓ The name and place of Arbitration

All the above criteria may be set in favour of procuring entity but that may impact on the price and availability of suppliers. So, this is the portion by which the performance of effective and efficient Procuring Entity can be measured. There is an option of appointing Adjudicator jointly by the parties into the contract; otherwise the appointment of Adjudicator is defined by the PCC of PG3 as follows:

“In case of disagreement between the parties, the Appointing Authority for the Adjudicator is the President of the Institution of Engineers, Bangladesh (IEB).”

2.3.7 Tender Forms and Contract Forms

The section includes total thirteen numbers of forms in two categories namely Tender Forms and Contract Forms. The tender forms are used during Tendering process to communicate between the Supplier and the Procuring Entity and the contract forms are used to communicate between the successful Tenderer and the Procuring Entity to finalize the Contract. The precedence of documents are predefined in the STD's GCC clause and also mentioned in the Contract Agreement Form (PG3-10) of PG3 which defines the priority of terms and conditions governing the contract. The precedence is

- a) the signed Form of Contract Agreement;
- b) the Notification of Award
- c) The completed Tender
- d) Particular Conditions of Contract;
- e) General Conditions of Contract;
- f) Technical Specifications;
- g) Drawings;
- h) Price Schedules and Schedule of Requirements and;
- i) other document including correspondences listed in the PCC forming part of the Contract

As per requirements of contract by using STD, PG3, there are more forms than PG2 as named below:

- PG3-2: Tender Information Sheet
- PG3-3: Subcontractor Information
- PG3-6: Manufacturer Authorization Letter
- PG3-12: Bank Guarantee for Advance Payment

2.3.8 Schedule of Requirements

This section defines the scope of contract and the delivery requirements in a tabular form.

The required Goods and Related services are specified separately using different template of tables. The Goods list and Delivery schedule table of PG3 is as follows:

Item No.	Description of Item	Unit of Supply	Quantity of Units required	Point of Delivery	Date Required (in weeks)
1	2	3	4	5	6

In the above table, the required weeks starts from the date of signing the contract and this table is filled by the PE. On the other hand, the related services are specified in following table template of PG3:

Item No.	Description of Related Services	Unit of Supply	Quantity of Units Required	Point at which Services are required	Required Completion Date for Services
1	2	3	4	5	6

The required completion date count starts from the date of contract signing and the PE must decide whether there is a separate unit of supply and quantity of units otherwise may specify ONE (1) in both columns or LUMP SUM in Column 4.

2.3.9 Technical Specifications

The Technical Specification is the measuring indicator of the quality of goods and related services. This is the benchmark of comparing the quality of supplied goods and related services and set the acceptance and/or rejection criteria. The Procuring Entity should follow the Rule 29 of PPR 2008 in preparing the technical specification. This is the section where the Procuring Entity can use all its skills, knowledge, expertise and technical competence to make effective procurement of goods and related service. A set of precise and clear specifications is a prerequisite for Tenderers to respond realistically and competitively to the requirements of the Procuring Entity. For simplicity, the technical specification may be defined by Standards like ISO, API, BSTI and ASME etc. Sometimes it can be organizational standards like Bangladesh Railway Standard. The specifications should require that all items, materials and accessories to be included or incorporated in the goods be new, unused, and of the most recent or current models, and that they include or incorporate all recent improvements in design and materials.

2.3.10 Drawings

The Drawings section supplements the Technical Specifications for the Goods and Related Services to be procured. This section gives opportunity to Procuring Entity to add the necessary drawings. The Drawings should be clearly dated, numbered and show any revision number(s) with authorized signature from the Procuring Entity.

2.3.11 Conclusion

The document, PG3 is most furnished one for nationally competitive open tendering. The document covers almost each and every issue of PPR and PPA in relation to nationally competitive tendering process.

2.4 PG 4 (OTM Documents)

2.4.1 Introduction

This is the STD without any threshold value and used for internationally circulated tender. This document can be used for Open Tendering Method when the Procuring Entity wishes to select a Supplier for the supply of Goods and related services. The STD, PG4, is applicable when a Procuring Entity awards the contract on the basis of lowest evaluated responsive tender. The STD, PG4, is based upon internationally acceptable model formats, which have been adapted to suit the particular needs of procurement for Bangladesh.

2.4.2 Guidance on Use of Standard Tender Document

The guidance notes have been prepared by CPTU to assist Procuring Entity in preparation of the Tender Document from the STD for procurement of Goods and Related Services. The STD, PG4 has eight sections and some of the sections can be modified by the Procuring Entity. The Procuring Entity addresses its specific needs through the information provided in the Tender Data Sheet (TDS) and the Particular Conditions of Contract (PCC) as well as in the detailed requirements of the procurement in the Schedule of Requirements, the Technical Specifications and the Drawings sections. Among those eight sections, Section 1: Instruction to Tenderer and Section 3: General Conditions of Contract must not be altered or modified under any circumstances by the Procuring Entity. The STD, PG 4, provides all the information that a Tenderer needs in order to prepare and submit a Tender. The document provides a sound basis on which the Procuring Entity can fairly, transparently and accurately carry out a Tender evaluation process on the Tenders submitted by the Tenderers. The Invitation for Tenders (IFT) is provided in the Tender Document for information only. All concerned are advised to refer to the Act, PPA 2006 and Rules, PPR 2008, in particular Section 33 and Rule 83 respectively, while participating in any Tendering process.

2.4.3 Instructions to Tenderers

This part of STD states the necessary directions and bindings for Tenderer or Supplier to be capable of participating Tender. The instructions are divided into seven sub sections for the convenience of Tenderer or Supplier.

Section A: General

This sub-section states seven points that illustrate the scope, interpretation, site visit, sources of fund, rules of ethical practices for the parties entering into the contract, the eligibility criteria for Tenderers and the eligibility of goods and related services. In case of corrupt, fraudulent, collusive and coercive practices, the rights of the Procuring Entity are defined with the directive actions. For eligibility of Tenderers, the financial, legal, commercial, and professional and performance criteria are well described in the sub section. In this section the capability of Government organizations are also defined for eligibility as Tenderers. The source fund clause defines several issues especially important one for Development Partner by ITT Clause 3.3 of PG4 as follows:

“Payments by the development partner, if so indicated in the TDS, will be made only at the request of the Government and upon approval by the development partner in accordance with the applicable Loan/Credit/Grant Agreement, and will be subject in all respects to the terms and conditions of that Agreement.”

The eligibility of supplied goods and related services with their definition and country of origin are clearly defined. The origin of the goods and related services is defined by the ITT Clause 6.2 of PG4 as follows:

“For purposes of this clause, “origin” means the country where the goods have been mined, grown, cultivated, produced, manufactured or processed; or through manufacturing, processing, or assembling, another commercially recognized new product results that differs substantially in its basic characteristics from its components.”

One of the important criteria for Tenderers to be eligible is stated in ITT Clause 5.8 of PG4 as follows:

“Tenderers are not under a declaration of ineligibility by an international financing agency such as World Bank, Asian Development Bank or any other international agency”

The eligibility of subcontractors is defined by the ITT Clause 5.12 of PG4 as follows:

“These requirements for eligibility will extend, as applicable, to Sub-contractor proposed by the Tenderer.”

Some of the clauses are referred to other clauses of the section, other sections of STD, Section 64 of the PPA, 2006 and Rule 127 of the PPR, 2008.

Section B: Tender Document

This sub-section is constituted with the directions related to the tender documents where the clarification of tender documents, pre-tender meeting and addendum to the tender document and their timeline are defined. The communications process between the Procuring Entity and the Tenderers are clearly predefined in “written” form except the pretender meeting which is two-way simultaneous communication of Tender Document related issues. The pre-tender meeting is advance form of clarifications and answer to the questions arising from tender documents to the Tenderers at the discretion of procuring entity. But non-attendance in pretender meeting by the Tenderer will not be a cause for disqualification. Incase of addendum the acknowledgement of Tenderer is defined by the ITT Clause 11.3 of PG4 as follows:

“The Tenderer shall acknowledge receipt of an addendum.”

Section C: Qualification Criteria

The qualification criteria include necessary technical and professional criteria, satisfactory litigation history, the eligibility criteria, minimum financial capability and experience criteria which are required to become a responsive Tender to be evaluated for contract award. The noticeable clause of this section is ‘Appointment of Subcontractor’ where the eligibility of subcontractor(s) is allowed. The case of ineligibility of subcontractor will be guided by ITT Clause 16.6 of PG4 as follows:

“If the Purchaser determines that a subcontractor is ineligible, the subcontracting of such portion of the Goods assigned to the ineligible subcontractor shall be disallowed.”

Some of this section’s clauses are governed by the set condition of TDS by PE.

Section D: Tender Preparation

This part includes the detail directions for Tenderer to prepare the tender which has several instructions related to following as per PG4

- ✓ Only one tender
- ✓ Costs of Tendering
- ✓ Issuance, Sale of TD
- ✓ Language of TD
- ✓ Contents of Tender
- ✓ Tender Submission Letter and Price Schedule
- ✓ Alternatives
- ✓ Tender Prices and Discounts
- ✓ Tender Currency
- ✓ Eligibility Documents for Tenderer
- ✓ Documents establishing the eligibility and conformity of Goods
- ✓ Documents for Tenderer Qualifications

- ✓ Tender validity period
- ✓ Extension of Tender Validity and Tender Security
- ✓ Tender Security
- ✓ Form of Tender Security
- ✓ Authenticity of Tender Security
- ✓ Return of Tender Security
- ✓ Forfeiture of Tender Security
- ✓ Format and Signing of Tender

The notable criteria mentioned in this section are tender prices and discounts, alternatives, extension of tender validity and tender security, return of tender security and forfeiture of tender security. The discounts method should be clearly stated as mentioned in ITT Clause 23.9 of PG4 as follows:

*“The Tenderer wishing to offer any discount shall indicate the methodology for their application in the Tender Submission Letter (Form PG4-1) **for being awarded of more than one lot.**”*

The tender prices and discounts clause identifies several issues of tender. ITT Clause 23.7 of PG4 defined the responsiveness for ‘lot-by-lot’ basis tendering as follows:

“Subject to ITT Sub-Clause 23.5, a Lot tender not offering a particular item which represents more than fifty percent (50%) of the estimated lot value identified by the Purchaser and specified in the TDS, even if it complies with the requirement of minimum number of items based on percentage of the total number of items as stated under ITT Sub Clause 23.5, shall be considered non-responsive.”

The sub-clauses 23.11 and 23.12 of PG4 describe the procedures for items to be considered under Incoterm “EXW” and ‘CIP’ or “CIF” respectively. The tender currency for expenditure inside Bangladesh is defined by ITT Clause 24.1 of PG4 as follows:

“For expenditures that will be incurred in Bangladesh, the Tenderer shall quote the prices in Bangladesh Taka.”

The extension of tender security has specific timeline described by ITT Clause 28.1 of PG4 as follows:

*“In justified exceptional circumstances, prior to the expiration of the Tender validity period, the Purchaser following Rule 21 of the Public Procurement Rules, 2008 may solicit, **not later than ten (10) days** before the expiry date of the Tender validity, compulsorily all the Tenderers’ consent to an extension of the period of validity of their Tenders.”*

The return of tender security is defined by the ITT Clause 32.2 of PG4 as follows:

“No Tender security shall be returned to the Tenderers before contract signing, except to those who are found non-responsive.”

And ITT Clause 32.3 of PG4 states as follows:

“Tender securities of the non-responsive Tenders shall be returned immediately after the Evaluation Report has been approved by the Purchaser.”

Among the above, some of the criteria refer to some other ITT Clauses, TDS and tender forms to be applicable and useful for preparing the Tender to be submitted by the Tenderer or Supplier.

Section E: Tender Submission

The tender submission section describes the processes and procedures of submission, deadline, modification, substitution and withdrawal of tender. In case of electronic submission of tender, ITT Clause 35.8 of PG4 states as follows:

“Tenderers submitting tenders electronically shall follow the electronic tender submission procedures specified in the TDS.”

This section also defined the late tender as received after the deadline of the tender submission and is directed to return unopened to Tenderer. The clauses referred to the rules of PPR 2008 and section of PPA 2006.

Section F: Tender Opening and Evaluation

This section gives the Tenderer or Supplier the clear knowledge of opening and evaluation process followed by the procuring entity. The opening of tender is conducted by the Tender Opening Committee (TOC) and the process is described in details. One of the important criteria states by ITT Clause 42.2 of PG4 as follows:

*“Tenders shall be opened in public immediately after the deadline for submission of Tenders at the place, date and time as specified in the TDS but no later than **ONE HOUR** after expiry of the submission deadline. Tender opening shall not be delayed on the plea of absence of Tenderers or his or her representatives.”*

The four stages of evaluation process are mentioned in this section that is followed by TEC:

- i. Preliminary Examination
- ii. Technical Examination and Responsiveness
- iii. Financial evaluation and Price Comparison
- iv. Post qualification of lowest evaluated responsive tenders.

All four above processes are described in details with necessary conditions to be followed both by the Tenderer and TEC. Some very important points are identified in those processes such as clarification on Tender by ITT Clause 47.3 of PG4 as follows:

“Any request for clarifications by the TEC shall not be directed towards making an apparently non-responsive Tender responsive and reciprocally the response from the concerned Tenderer shall not be articulated towards any addition, alteration or modification to its Tender.”

The clarification request should be in written and only signed by the Chairman of TEC. The restriction of disclosure of information is guided by the ITT Clause 48.1 of PG4 as follows:

“Following the opening of Tenders until issuance of Notification of Award no Tenderer shall, unless requested to provide clarification to its Tender or unless necessary for submission of a complaint, communicate with the concerned Purchaser pursuant to Rule 31 of the Public Procurement Rule,2008.”

The correction of arithmetical errors by TEC drives the evaluation process and determines the eligibility of Tenderer by ITT Clause 49.3 of PG4 as follows:

“Any Tenderer that does not accept the correction of the Tender amount following correction of arithmetic errors as determined by the application of ITT Sub-Clause 49.2 shall be considered as non-responsive.”

The notable clause of currency conversion is described ITT Clause 50.1 of PG4 as follows:

*“For evaluation and comparison purpose, TEC shall convert all Tender prices expressed in the amounts in various currencies into an amount in Bangladeshi Taka currency, using the **selling exchange rates** established by the Bangladesh Bank, on the date of **Tender opening**.”*

The procuring entity can consider ‘Domestic Preference’ as important evaluation factor, described by the clauses and the amount is defined by ITT Clause 51.2 of PG4 as follows:

*“If **domestic preference shall be a tender-evaluation factor**, the Purchaser will grant a margin of fifteen percent (15%) domestic preference to Goods manufactured in Bangladesh during the evaluation of its Tender while comparing the same with those of other Tenderers under the classification set out in ITT Sub-Clause 51.3. The evaluation will be carried out in accordance with the provisions set out in ITT Clause 54.”*

The price of unquoted items can be assessed and an option for unquoted items is described by ITT Clause 53.2 of PG4 as follows:

“If the winning lot is missing some items as stated under ITT Sub Clause 53.1, comprising less than twenty percent (20%), the Purchaser may procure the missing items from the Tenderer offering the least cost for those remaining items.”

Any negotiation with the tenderer as usual is barred by clause in the section of STD. The right of procuring entity is well described in case of acceptance and/or rejection of tenders in this section. The rejection of all tenders is described by ITT Clause 58.2 of PG4 as follows:

“All Tenders can be rejected, if -

- (a) the price of the lowest evaluated Tender exceeds the official estimate, provided the estimate is realistic; or*
- (b) there is evidence of lack of effective competition; such as non-participation by a number of potential Tenderers; or*
- (c) the Tenderers are unable to propose completion of the delivery within the stipulated time in its offer, though the stipulated time is reasonable and realistic; or*
- (d) all Tenders are non-responsive; or evidence of professional misconduct, affecting seriously the Procurement process is established pursuant to Rule 127 of the Public Procurement Rules, 2008.”*

One of important clause of this section related to informing reasons for rejection in ITT Clause 59.1 of PG4 as follows:

“Notice of the rejection, pursuant to Rule 35 of the Public Procurement Rules, 2008, will be given promptly within seven (7) days of decision taken by the Purchaser to all Tenderers and, the Purchaser will, upon receipt of a written request, communicate to any Tenderer the reason(s) for its rejection but is not required to justify those reason(s).”

Section G: Contract Award

This section gives the knowledge to Supplier or Tenderer about the winning criteria and procedures to finalize the tender into a successful contract between the Procuring Entity and the lowest evaluated supplier. The details of contract signing procedures with complain procedures and debriefing processes are stated in this section of ITT. The issuance, acceptance of NOA and formalities to final contract signing refer to some valid performance security and contract forms of STD. The NOA has its own acceptance criteria and it can be defined as ‘an offer’ by the PE to the bid winning Tenderer or Supplier. The ITT Clause 62.3 of PG4 states the acceptance criteria as follows:

“The NOA shall be accepted in writing by the successful Tenderer within seven (7) working days from the date of its issuance.”

In the performance security clause there is an important issue defined by the ITT Clause 63.2 of PG4 as follows:

*“Performance Security shall be furnished by the successful Tenderer in the amount specified in the TDS and **denominated in the currencies** in which the Contract Price is payable pursuant to Rule 102 (8) of the Public Procurement Rules, 2008.”*

There is a timeline to conclude the contract between the PE and successful Tenderer described in ITT Clause 67.2 of PG4 as follows;

“Within twenty-eight (28) days of the issuance of Notification of Award, the successful Tenderer and the Purchaser shall sign the contract provided that the Performance Security submitted by the Tenderer is found to be genuine.”

The debriefing to the Tenderer has been well defined in the section and the confidentiality should be properly guided. The right to complain by the Tenderer is also well described by the respective clauses. The important clause of complain is ITT Clause 70.2 of PG4 as follows:

“Circumstances in which a formal complaint may be lodged in sequence by a potential Tenderer against a Purchaser pursuant to Rule 56 of the Public Procurement Rules, 2008, and the complaints, if any, be also processed pursuant to Rule 57 of the Public Procurement Rules 2008.”

And ITT Clause 70.6 of PG4 for review:

“The Tenderer may appeal to a Review Panel only if the Tenderer has exhausted all his or her options of complaints to the administrative authority as stated under ITT Sub-Clause 70.2.”

There are also the instructions of dispute resolution, publications of NOA, rights of complain by the Tenderer etc. A number of clauses refer to other clauses of this section, some applicable forms other section like TDS of the STD and related rules of PPR 2008.

2.4.4 Tender Data Sheet

The Tender Data Sheet (TDS) is the setup of referred criteria from the ITT section fix up by the Procuring Entity. The Procuring Entity’s discretion to define the criteria includes eligibility of Tenderer, eligibility of Goods and related Services, general and specific experience criteria, financial capability, production capacity, options of alternatives, option of manufacturer authorization, claims and litigation history criteria, maximum amounts to be subcontracted, option of final destination, named port of destination, options of electronic submission, options of domestic preference, economic factors to be applicable, limit of variation, options of pretender meeting, the basis of tender invitation, amount of tender security and performance security with in predefined limit, place and deadline of tender submission, place and date of tender opening and contracting person’s address for clarification.

2.4.5 General Conditions of Contract

The General Condition of Contract defines some useful key terms related to the procurement and also gives the suppliers vision of tendering processes, abiding rules and laws and appropriate way to conclude the contract either successful or unsuccessful. The GCC also defines the Governing Laws, Languages, responsibilities of both PE and Supplier and interpretation. The important clauses include the following as per PG4:

- ✓ Interpretation
- ✓ Use of Contract Documents and Information
- ✓ Trademark, Patent and IPR
- ✓ Copyright
- ✓ Assignment
- ✓ Subcontracting
- ✓ Acceptance
- ✓ Amendment to Order
- ✓ Terms of Payment
- ✓ Insurance
- ✓ Specifications and Standards
- ✓ Inspections and Tests
- ✓ Warranty
- ✓ Liquidated Damages
- ✓ Limitation of Liability
- ✓ Changes in Laws and Regulations

- ✓ Force Majeure
- ✓ Termination
- ✓ Amendment of Contract
- ✓ Settlement of Disputes

The assignment and subcontracting clauses defines the option of transferring and sharing the responsibility of the Tenderer. Trademark, Patent and IPR clause defines the issue related to the applicable Law. One of the important clauses, Entire Agreement defines the applicability of the contract clause by GCC Clause 4.2(a) of PG4 as follows:

“The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of parties with respect thereto made prior to the date of Contract Agreement; except those stated under GCC Sub Clause 5.1(i).”

The clauses of contracts are separate and applicable separately. The invalidity of any clauses will not affect the applicability of other clauses of contract which is defined by GCC Clause 4.5(a) of PG4 as ‘Severability’ as follows:

“If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.”

The Liquidated Damages clause defines the incentive procedures of the contract. The insurance clause defines the responsibility of the Supplier for incidental loss or damage. The Specifications and Standards and Inspection and Tests clauses define the requirements of PE and quality confirmation process respectively. The ‘Limitation of Liability’ clauses define the limit of responsibility of the Tenderer or Supplier, which is better explained by the GCC Clause 36.1 of PG4 as follows:

“Except in cases of criminal negligence or wilful misconduct, and in the case of infringement of patent and intellectual property rights, if applicable, the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, the aggregate liability of the Supplier to the Purchaser shall not exceed the total Contract Price, provided that this limitation shall not apply, to the cost of repairing or replacing defective equipment or, to any obligation of the Supplier to pay liquidated damages to the Purchaser.”

The definition of ‘Force Majeure’ situations, the process of notice and the consequences of Force Majeure are defined by the related clauses in GCC. The termination procedures, amendment and dispute settlement procedures are also defined by the respective clauses in this section of STD. The purchaser’s right to terminate for defaults after the ‘Force Majeure’ situation well described in GCC Clause 42.1(b) of PG4 as follows:

“As a result of force majeure, the Supplier is unable to deliver or perform any or all of the GOODS, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Purchaser stating that the circumstance of force majeure is deemed to have ceased.”

The termination procedures require verified report and the definition of verified report is described by the GCC Clause 1.1(q) of PG4 as follows:

*“**Verified Report** means the report submitted by the Purchaser to the Head of the Purchaser setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.”*

The performance security and warranty clauses give the assurance of the delivery and required services during warranty period of contract. The ‘Packing and Documents’, ‘Delivery and Documents’ and ‘Transportation’ clauses define the responsibility of the

Tenderer or Supplier during handling and delivery of supply. There are some other clauses that define the requirements, procedures, changes to contract, changes to laws and regulations and responsibilities of parties into the contract.

The GCC Clauses of the STD refer to PCC, PPA, PPR, Trademark Act, Patent and Design Act and some other sections for convenient application of clauses. There is no way of modification of GCC Clauses by the Procuring Entity. The use of ‘INCOTERM’ in the related section drives some clauses of the section and defines the responsibilities of the parties into the Contract.

2.4.6 Particular Conditions of Contract

This section gives Procuring Entity the opportunity to use all its expertise to fulfill requirement. In this section, the procuring entity is able to define its need and the need for contract by modifying following criteria as per PG4:

- ✓ The points of Delivery
- ✓ Options of INCOTERM
- ✓ Final Destination
- ✓ The supporting papers or documents
- ✓ Methods and Conditions of Payment
- ✓ Sample Provision
- ✓ Inspections and Tests Process
- ✓ Warranty Period
- ✓ Liquidated Damages
- ✓ The options of using Arbitration Law and/or Rules

All the above criteria may be set in favour of procuring entity but that may impact on the price and availability of suppliers. So, this is the portion by which the performance of effective and efficient Procuring Entity can be measured.

2.4.7 Tender Forms and Contract Forms

The section includes total eleven numbers of forms in two categories namely Tender Forms and Contract Forms. The tender forms are used during Tendering process to communicate between the Supplier and the Procuring Entity and the contract forms are used to communicate between the successful Tenderer and the Procuring Entity to finalize the Contract. The precedence of documents are predefined in the STD’s GCC clause and also mentioned in the Contract Agreement Form (PG4-8) which defines the priority of terms and conditions governing the contract. The precedence as per PG4 is

- a) the signed Form of Contract Agreement;
- b) the Notification of Award
- c) The completed Tender
- d) Particular Conditions of Contract;
- e) General Conditions of Contract;
- f) Technical Specifications;
- g) Drawings;
- h) Price Schedules and Schedule of Requirements and;
- i) other document including correspondences listed in the PCC forming part of the Contract

As per requirements of contract by using STD PG4, there are more forms than PG2 as named below:

- PG4-2: Tender Information Sheet
- PG4-3A, 3B, 3C: Price Schedule for Goods
- PG4-5: Manufacturer Authorization Letter
- PG4-10: Bank Guarantee for Advance Payment

The PG4-3A, 3B, 3C forms actually consists of three forms for three groups of Goods and their prices. The groups are listed below:

3A : Goods Manufactured in Bangladesh

3B : Goods Manufactured outside Bangladesh, to be imported

3C : Goods Manufactured outside Bangladesh, already imported

2.4.8 Schedule of Requirements

This section defines the scope of contract and the delivery requirements in a tabular form. The required Goods and Related services are specified separately using different template of tables. The Goods list and Delivery schedule table of PG4 is as follows:

Item No.	Description of Item	Unit of Measurement	Quantity	Point of Delivery <i>[Final (Project Site) Destination as specified in TDS]</i>	Delivery Date Required (in weeks)	
					Earliest Delivery Date	Latest Delivery Date
1	2	3	4	5	6	7

In the above table, the required weeks count starts from the date of contract signature, or the date of opening L/C, or the date of confirmation of the L/C and this table is filled by the PE. On the other hand, the related services are specified in following table template of PG4:

Item No.	Description of Item	Unit of Measurement	Quantity	Place where Services shall be performed	Final Completion Date(s) of Services
1	2	3	4	5	6

2.4.9 Technical Specifications

The Technical Specification is the measuring indicator of the quality of goods and related services. This is the benchmark of comparing the quality of supplied goods and related services and set the acceptance and/or rejection criteria. The Procuring Entity should follow the Rule 29 of PPR 2008 in preparing the technical specification. This is the section where the Procuring Entity can use all its skills, knowledge, expertise and technical competence to make effective procurement of goods and related service. A set of precise and clear specifications is a prerequisite for Tenderers to respond realistically and competitively to the requirements of the Procuring Entity. For simplicity, the technical specification may be defined by Standards like ISO, API, BSTI and ASME etc. Sometimes it can be organizational standards like Bangladesh Railway Standard. The specifications should require that all items, materials and accessories to be included or incorporated in the goods be new, unused, and of the most recent or current models, and that they include or incorporate all recent improvements in design and materials.

2.4.10 Drawings

The Drawings section supplements the Technical Specifications for the Goods and Related Services to be procured. This section gives opportunity to Procuring Entity to add

the necessary drawings. The Drawings should be clearly dated, numbered and show any revision number(s) with authorized signature from the Procuring Entity.

2.4.11 Conclusion

This is the most detailed document for goods procurement as it is applicable for international tendering and without any threshold value. This STD, PG4 includes possible all clauses of PPR and PPA related to international procurement in relation to goods procurement.

3.0 REVIEW OF PUBLIC PROCUREMENT RULES 2008

The PPR is the rules of procurement in Bangladesh using public fund. With the aid of World Bank and through a reform project, the public procurement act and rules are formulated for Bangladesh. The act is named Public Procurement Act (PPA), 2006 and under that act the rules PPR 2008 have been formulated. The objectives of public procurement reform project in Bangladesh are as follows:

- ✓ Improved Governance in Public Procurement
- ✓ Increased efficiency, transparency and accountability of public procurement.

In alignment with the objectives, the rules are formulated and the PPR 2008 is implemented from January 31, 2008. The Public Procurement Rules 2008 is divided into nine (9) chapters and there are twelve schedules included with that. The chapters describe the preparation of procurements, methods and principles of procurement, process of procurements, professional misconducts and e-government procurement related issues. The schedules are consists of several forms, sheets, reference times and values, checklist, flowcharts, procurement plan format, STDs, various templates and records to be maintained for procurements. The chapters of PPR are reviewed below:

3.1 Chapter-I: Preliminary

This chapter defines the three important issues related to applications, definitions, title and commencement of the rules. The commencement of the rules is well defined by the applicability of PPA 2006. The definitions section defines several terms and procedures related to this rules. The scope and application of the PPR 2008 is also determined by the rule 3 of this chapter. For foreign aids, loans and grants, the application of PPR is guided by the Rule 3, sub-rule 1(d) of PPR 2008 as follows:

“Procurement of Goods, Works or Services under a loan, credit or grant agreement or under any other agreement with a development partner or with a foreign state or an organization, provided that if there is anything to the contrary in any such agreement entered into, the provision of that agreement shall prevail.”

3.2 Chapter-II: Preparation of Tender Proposal, Committee Etc.

The chapter consists of two parts named preparation of tender proposal and committees respectively. The preparation of tender document is guided by the Rule 4(1) of PPR 2008 as follows:

“Documents needed for Pre-Qualifications, Tenders and Proposals shall be prepared by the Procuring Entity following the Standard Documents issued by the CPTU listed in Schedule.”

The precedence of contract documents has been clearly defined in Rule 4(7) of PPR 2008. The requirements related issues are mentioned to be clearly set in the tender documents as defined in Rule 4(3) of PPR 2008;

“The Procuring Entity shall set out clearly the following information and conditions in the Tender or Proposal Documents

- (a) the description of the Works and Physical Services to be carried out;*

- (b) the drawings and location of the Works;*
- (c) the description of the Goods and related Services to be supplied;*
- (d) the location of delivery or installation;*
- (e) the schedule for delivery and completion;*
- (f) the minimum performance requirements;*
- (g) the warranty, defects liability and maintenance requirements;*
- (h) the currency(ies) the tenderers shall quote in the tenders and the applicable and the applicable date of its exchange rate;*
- (i) the amount(s) and currency(ies) of Tender security and performance security;*
- (j) the terms and mode of payment of the Contract price;*
- (k) the presence or absence of Advance Payment, in line with the government orders and agreements with development partners;*
- (l) the minimum insurance coverage; and*
- (m) any other relevant terms and conditions.”*

The technical specifications are to be prepared as non-restrictive manner for fair and competitive tendering. The documentation for consultancy services is referred to Chapter six of the Rules. The tender prices are directed to be determined on the basis of the delivered price of the Goods to the designated destination, or for the completion of Works or installation, inclusive of all associated and related Services thereof to be performed by the Tenderers. All the taxes, vats and duties to be paid by the Tenderers and directed to be shown separately in price schedule. There is a general option of price adjustment for a contract of more than 18 months durations and in case of necessary the price adjustment may be allowed with the approval of HOPE. The rule gives Procuring Entity the right to maintain record of Tenderers.

The second part of the Chapter describes the formation of committees, appointment of external members, chair of evaluation committee, approval of tender and approval of delegated procurements. There are three committees mentioned in the Rules of PPR 2008:

1. Tender/Proposal Opening Committee (TOC/POC)
2. Tender/Proposal Evaluation Committee (TEC/PEC)
3. Technical Sub-Committee (TSC)

In case of evaluation committee there is an option for external members and the criteria is defined by the Rule 8(5) (d) of PPR 2008 as follows:

“officers experienced in technical, commercial, financial or legal matters from other Ministries or Divisions, Agencies, or experts from Universities or reputable professional bodies or specialists from the relevant fields in the case of the external members.”

The duties and responsibilities of each committee are well prescribed by the rule. The timeline of committee formation, removal of evaluation committee members and eligibility of external members are described in details in the rules. The procedures of chairing the evaluation committee meeting, approval of tender or proposal and approval of delegated procurements are also defined in this Chapter of PPR. For delegated procurements, the procedures are described by the Rule 12(2) of PPR 2008 as follows:

“The Head of the Procuring Entity and the Procuring Entity of the designated executing agency for such delegated procurement shall act as the Head of the Procuring Entity and the Procuring Entity respectively and shall perform as follows-

- (a) undertake the procurement in accordance with the provisions of these Rules;*
- (b) give approvals as per the Delegation of Financial Powers;*
- (c) administer the Contract and supervise the project implementation.”*

For delegated procuring, the owner takes over authority from executing agency upon completion.

3.3 Chapter-III: Principles of Procurement

This chapter consists of twelve parts and there are 48 rules in total. This chapter describes the conditions and requirements for procurement under the rules PPR 2008. This chapter provides guidelines for procurement processes under the Rules, PPR 2008 that are described in following chapters. The parts are focused on different issues of procurement as described below:

PART-1: General Guidelines

This is the first part of the chapter which includes public accessibility of act, forms of communications, procurement planning, splitting of procurement objects and competition in procurement etc. According to the rule, the PPR has been published and the procurement related documents are published for conducting the procuring activities by PE. There are several options of communications and among them written forms of communications are main forms of communications. Other forms of communications are allowed with conditions as stated by Rule 14(2) of PPR 2008:

“Communications made by fax or e-mail shall be confirmed by submission of a duly signed document by the sender or an authorised officer or nominee of the sender.”

According to rule, the preparation of procurement plan is made mandatory and the splitting of object of procurement is restricted by conditions. The procurement planning and selection of procurement methods are guided by the rules. In case of splitting of object of procurement, one of the important conditions is described by the Rule 17(5) of PPR 2008 as follows:

“In the cases where a single object of Procurement is split into more than one (1) package and packages are split into more than one (1) lot under Sub- Rules (1), (2) & (3), the Tenders for each of the packages or lots shall be placed for approval before the authority competent to approve the sum total of those packages or lots, prior to the issuance of Notification of Award for any one (1) of those packages or lots.”

The competition of procurement is guided by the conditions of the rules and the communications of e-GP is referred to the Chapter 8. The competition of procurement is especially guided by the Rule 18(2) of PPR 2008 as follows:

“The criteria to be taken into account for assessment of Applicants’, Tenderers' or a Consultants’ qualifications shall be clearly mentioned in the relevant Documents and the Applicant or Tenderer shall be allowed sufficient time to respond, and such period shall be stated in the applicable Document.”

PART-2: Determining Tender or Proposal Validities and Security Deposits

This part provides the guideline of validity determination, timeline for tender evaluation, tender security, extension of validity, extension of validity of TS, forfeiture of TS, and return of TS, performance security and retention. The validity period of tender is guided by schedule II of PPR. The amount of tender security, performance security and retention money and their limits are guided by the rules. The period of validity, extension of validity, verification of authenticity, forfeiture of Tender Security and return of Tender security procedures are described and defined the limit of extension.

PART-3: Preparation of Specification and Confidentiality

In this part, there are some descriptions of procedures of preparing technical specifications, terms of reference, disclosure of information and safe custody of received tender. There are guidelines for preparing technical specifications and one of the restrictions is defined by Rule 29(3) of PPR 2008:

“There shall be no reference, in technical specification of Goods, to a particular trade mark or trade name, patent, design or type, named country of origin, producer or service Supplier.”

The Procuring Entity is also given the opportunity to prepare specification by using recognized international standards. The preparation of terms of reference for consultancy services is referred to Rule 116 of PPR 2008.

PART-4: Rejection of Tenders, Proposals Etc.

This part provides guidelines on rejection of all tenders, actions to be taken following rejection and informing reasons for rejection. The rule sets the criteria for rejection of all tenders. After the rejection of all tenders, the activities of Procuring Entity are defined by the rules. In case of Professional Misconduct, the action is referred to Sub-Rule 127(4) of chapter 7 of PPR 2008. The guideline of informing the rejection of all tenders defined by Sub-Rule 35(1) of PPR 2008 as follows:

“A Procuring Entity shall notify all Applicants or Tenderers of it after the rejection of all Tenders, Proposals or Quotations within the period specified in Schedule II.”

The informing reasons of rejecting all tenders are also guided by rules and are specifically defined upon written request from the Tenderers.

PART-5: Approval Procedures, Notifications of Award and Publication

In this part, the detail procedures of approval for several types of organizations existing in Bangladesh are described with conditions. The rules of this section are referred to related schedule annexed to the PPR. The notification of award procedure is also included the debriefing as defined by the Sub-Rule 37(4) of PPR 2008 as follows:

“Debriefing of Tenderers or Applicants by a Procuring Entity shall outline the relative status and weakness only of his or her Tender or Application requesting to be informed of the grounds for not accepting the Tender or Proposal submitted by him or her, without disclosing information about any other Tenderer or Applicant.”

PART-6: Contract Administration and Management

The contract administration and management part describes the procedures of works, goods and consultancy services contracts separately. The main elements of administrations are defined by Sub-Rule 38(4) of PPR 2008 as follows:

“The main elements of contract administration and management may include –

- (a) review and approval of the work plan;*
- (b) monitoring periodically progress in implementation of the contract, including determination of volume of works accomplished according to the work plan, and inspection and testing of quality aspects;*
- (c) management of Variation Orders, Contract suspension and termination, price revisions, Contract remedies such as imposition of liquidated damages, delayed payments, and disputes or claims settlement procedures;*
- (d) management of financial aspects and budget of Contract implementation including payments, cost analysis and accounting;*
- (e) organisation and management of documentation related to contract implementation, and preparation of periodic reports on the implementation of Contract.”*

The works administration and management part includes several issues such as liquidated damages, basis of payment, advance payment, final payment, defects and liability period, defects correction certificate those related to the responsibilities of project managers. The variation order is guided by the criterion defined by the Sub-Rule 39(20) of PPR 2008 as follows:

“If the final quantity of the work done for any particular item increases from the quantity in the Bill of Quantities by more than twenty-five percent (25%), the Project Manager shall adjust the unit rate for that particular item to allow for the change within the context and threshold of the Variation Order, provided that the change in each case exceeds one percent (1%) of the Initial Contract Price.”

The goods administration and management part includes several issues such as inspection, maintenance guarantee, after sales services, timely payment, and warranty obligations related to the responsibilities of project managers. The consultancy services administration and management includes several issues related to service specifications. This part also includes the termination of contract and disputes settlement procedures. There are options for termination of contracts defined by the rules and there are three options of dispute settlement such as Amicable Settlement, Adjudications and Arbitration.

PART-7: Maintaining Records of Procurement

This part gives the guidelines for keeping records of procurement related documents and the guidelines to make those available to concerned persons.

PART-8: Procurement Post Review

This part provides guidelines for periodic post review of procurement and the guidelines of independent consultants. The responsibility of consultants is also defined by the rules. There is also guideline for appointment of independent consultant and the reference.

PART-9: Qualifications of Persons

This part includes the rules related to non-discrimination, qualifications of persons, mandatory documents for qualifications, amendments of mandatory requirements, pre-qualifications procedures, maintaining lists of qualified potential Suppliers or Contractors and appointment of subcontractor or sub consultants etc. The non-discrimination rule

Define the criteria for restraining suppliers from participating. The qualification of persons is also defined by the rule which can be simply stated by the Sub-Rule 48(1) of PPR 2008 as follows:

“Each Person participating in public Procurement, shall provide documentary evidence in regard that-

(a) they are able to abide by the professional and ethical standards set out in the Act and these Rules; and

(b) they are able to implement the contracts for which they are Tendering or offering Services.”

Other qualifications criteria are also defined by the rules and requirements of mandatory documents to the related qualifications are defined. The detail prequalification procedures are described and the necessity of maintaining the lists of qualified potential suppliers or contractors is also defined. The appointment of subcontractor or sub consultants is defined by the rule which excludes the JVCA.

PART-10: Joint Venture

This part is a guideline for procuring entity for giving the Tenderers the opportunity of joint venture contract agreement involving the Procurement of Works, Physical Services and intellectual and professional Services. There is no option for joint venture for goods and related services procurements.

PART-11: Conflicts of Interest

The conflicts of interest and the situations are detail described in the rules. The situation of personal conflicts of interest has been simply defined by the Rule 55(3) of PPR 2008 as follows:

“If any Person has earlier been engaged by a Procuring Entity to supply Goods, Perform Works or provide physical Services for a project, then that Person and any of its affiliates, shall be disqualified from providing consulting Services related to those Goods, Works or Services.”

PART-12: Complaints and Appeals

The circumstances of complains are defined in this part. The procedures for submission of complaints to administrative authority and procedures of disposal are described in details. There is another option of complaints lodging other than administrative authority called

review panel. The formation of review panel and procedures of disposal of appeal by review panels is described by the rules. The authority to suspend the issuance of notification of award until the resolution of appeal is also defined by the rule of this part.

3.4 Chapter-IV: Methods of Procurement for Goods and Related Services, Works, Physical Services and Their Use

This chapter describes the methods available in PPR, their conditions and detail procedures. There are seven parts of this chapter mainly categorized by the procurement method of both national and international procurements. The first five parts of the chapter includes the national procurement method and part six describes the several international procurement methods. And finally last part of the chapter describes the method of framework agreement. Each part is described in detail below:

PART-1: National Procurement: Open Tendering Method

The part one describes both the use of OTM and other methods for procurement of goods, works and consultancy services. The preference of use of OTM is clearly mentioned in this part of chapter. The timeline of tendering processes and flowcharts are referred to related schedule and rules of the PPR. One of the important guidelines for OTM is defined by the Sub-Rule 61(4) of PPR 2008 as follows:

“The minimum time allowed for Tenderers to prepare and submit their Tenders for Goods, Works and Physical Services shall not be less than as specified in Schedule II, provided that the Tender Documents are ready for sale and made available by the date of publication of the advertisement.”

PART-2: National Procurement: Limited Tendering Method

The guidelines for using LTM and the processes of LTM are defined by the rule. The conditions for using LTM are defined by the rules. There are two conditions of using LTM such as with defined threshold and without threshold. There is an option described for PE to invite tender from enlisted Tenderers. This part refers to other rules and related schedule of PPR.

PART-3: National Procurement: Two-Stage Tendering Method

In this part, the conditions of TSTM and the procedures are defined by the rules. The evaluation procedures for both stages are described in details with necessary conditions. There is option for discussions with the Tenderers in evaluation stage of first stage by the Sub-Rule 67(3) of PPR 2008 as follows:

“The Evaluation Committee may then engage in confidential and separate discussions, if necessary, with each of the responsive Tenderers concerning any aspect of their Proposals except the Tender price and each Tenderer shall maintain the confidentiality of his or her Tender and shall not reveal any confidential information or ideas to other Tenderers.”

The second stage of tender is mainly concerned of financial proposal which follows the procedures of OTM.

PART-4: National Procurement: Request for Quotation Method

This part of the chapter describes the conditions, documentation requirement, procedures, submission procedures and evaluation procedures of RFQ. There are options of three types of pricing mechanisms for works procurement through RFQ such as ‘unit rate prices’, ‘cost plus fee’ and ‘lump sump’. The requirement for evaluation of quotations is defined and minimum requirement of three responsive quotations are clearly specified. The rights of Procuring Entity are defined in the chapters which includes the extension of time to submission and diversification of source of supply. The submission of quotation has several options as defined by the Sub-Rule 72(1) of PPR 2008 as follows:

“The Tenderer shall have the choice to submit its offer in a sealed envelop clearly marked on the top as ‘Quotation’ or by fax or e-mail.”

The evaluation procedures of quotations are described in details. The evaluation criteria for RFQ are defined by the rules. Any criteria of evaluation of quotation such as technical, social or economic are required to be justified. In case of RFQ, the method is driven by threshold of annexed schedule II of PPR.

PART-5: National Procurement: Direct Procurement Method

This part of the chapter describes the types of direct procurements and their procedures in details with required conditions. The use of direct procurement is discouraged by the Sub-Rule 74(2) of PPR 2008 as follows:

“The Head of a Procuring Entity shall strictly control the use of the Direct Procurement Method as it- does not provide the benefits of competition, lacks transparency and could encourage unacceptable and fraudulent practices.”

Each form of direct procurements is described in details as the types are also stated by Sub-Rule 75(1) of PPR 2008 as follows:

“Until contrary to the context direct Procurement shall be applicable in any of the following cases-

- (a) Direct Contracting; or*
- (b) Additional deliveries and Repeat Orders; or*
- (c) Variation Orders; or*
- (d) Extra Work Order; or*
- (e) Direct cash purchase; or*
- (f) Force account.”*

All forms of direct procurements are allowed with conditions and specified threshold. There is no requirement of advertisement and an option of negotiation for prices of the contract.

PART-6: International Procurement

This part describes the conditions of international competitiveness for various tendering methods such as

- i) Open Tendering Method (OTM)
- ii) Two-Stage Tendering Method (TSTM)
- iii) Request for Quotation Method (RFQ)
- iv) Limited Tendering Method (LTM)
- v) Direct Procurement Method (DPM)

This part also describes the procedures related to evaluation and the conditions applicable for international procurement such as domestic preference, the conditions of DP for JVCA. This section also provides the guidelines for the procurement by Embassies and in special cases by national carrier. The rules referred to related schedule for threshold and other rules of PPR for clarifications and applicability.

PART-7: Framework Agreements

In this part, the various types of framework agreements with necessary conditions are described in details. One of the important criteria for framework agreement is stated by Sub-Rule 89(4) of PPR 20008 as follows:

“Framework Contracts shall not be used to procure items or Goods for prices higher than the market prices.”

The framework agreement is followed by either the Open Tendering Method or Limited Tendering method. The framework agreement period is defined in three years by the rule.

3.5 Chapter-V: Processing Of Procurement

This chapter describes the process of procurement dividing into three major parts. Each of three parts are consists of conditions and detail procedures of Rules. The parts are stated below:

PART-1: Advertisement

The part, advertisement describes the procedures and requirement of circulation of invitations for ensuring competitiveness. There are several options to advertise the invitation for international procurement mentioned in this part of chapter. The minimum requirements of newspaper circulation of invitation, guideline for time frame and publication in website are defined in this part. The advertisements are specified by the related formats of respective schedule. The re-advertisement, amendments and addendum publication is guided by the Sub-Rule 90(2) (g) of PPR 2008 as follows:

“subsequent changes or amendments to any invitation shall also be readvertised preferably in the same newspapers and websites where it was originally published.”

PART-2: Pre-Qualification

In this part, the pre-qualifications procedures are described. The detail of requirements for pre-qualifications is described in this part. The opening and evaluation procedures for pre-qualifications are described. The opening and evaluation process are defined to be conducted by the TOC and TEC respectively. This part defines the requirement of TSC, and post qualification as stated by the Sub-rule 93(20) PPR 2008 as follows:

“A post-qualification of the successful Tenderer(s) will be done prior to contract award even if Pre-Qualification has been carried out.”

PART-3: Processing of Tenders

This part describes the process of tenders from issuance of Tender Documents to Signing of Contract in details. The important issues are modifications to Tender Documents, preparation and submission of Tenders, opening of Tenders, post-qualifications, approval process and notifications. The availability of any modifications as well as Tender Documents and security of Tender Document in website are defined by the rules. The addendum and modifications of tender Documents are to be circulated by fax, mail or email within specific time period. The timeline for modifications or amendments to Tender Documents are defined by the rule and respective schedule. The places and deadline for preparation and submission of Tenders are defined by the rule. The opening and evaluation procedures of tenders and responsibility of respective committee and their members are defined by the rules. The evaluation tenders by the rule describes the responsibility of TEC members including the note of dissent procedure by any of the members. The Chairperson of a TEC has the rights to ask Tenderers for clarifications of their Tenders, including breakdowns of unit rates, in order to assist the examination and evaluation of the Tenders by the rule. There is no minimum requirement of number of responsive tenders as stated by the Sub-Rule 98(14) of PPR 2008 as follows:

“There shall be no requirement for a minimum number of responsive Tenders i.e. an evaluation shall proceed and an award shall be made even if only a single Tender is received and found responsive, provided the Tender has been widely advertised as per requirement of Rule 90, the Tender price is reasonable compared with the market price or is within the official estimate, and the Tender meets the technical specifications and commercial terms and conditions set-out in the Tender Document.”

The timeline for evaluation process are also defined by the rule and respective schedule of PPR. The significant low price quotes are defined and the consequent actions are described by the relevant rules. The procedures and action for significant high price quotes are also defined by the related rules. The procedures for tie in contest between the Tenderers are described and keeping records for evaluation are defined by the rules. The

options of negotiations are clearly described by the related rule. The detail post-qualification procedures and the requirements of post-qualifications are described clearly by relevant rules of the part. The approval process of the rules describes the procedures and defines the timeline for approval of Tender. In NOA and contract signing part, the timeline for issuance of NOA, acceptance of NOA and contract signing timelines are defined with related rules and schedule. The submission of performance security, verification of PS and subsequent signing of contract are defined clearly with necessary conditions.

3.6 Chapter-VI: Procurement of Intellectual and Professional Services

The chapter mainly describes the types and process of Intellectual and Professional Services procurement. The chapter consists of three parts and those are described below:

PART-1: Methods and Procedures

In this first part, the methods and procedures of procurement of Intellectuals and Professional Services are described. A number of methods for procurement of services are described by the respective rules. They are listed below:

- ✓ Quality and Cost Based Selection
- ✓ Selection under Fixed Budget
- ✓ Least Cost Selection
- ✓ Selection of Consultants Qualifications
- ✓ Community Service Organizations
- ✓ Single Source Selection
- ✓ Selection by Design Contest
- ✓ Selection of Individual Consultants

All of the above methods and their applicability with necessary conditions are described by the respective rules of the chapter.

PART-2: Processing of Expression of Interests and Proposals

This part of the chapter describes the procedures of procurement of Intellectual and Professional services. The description includes the submission and opening of EOI, assessment of EOI, preparation of TOR, RFP, submission and opening of RFP. However all the process before the evaluations are describes in this part.

PART-3: Evaluation of Proposals, Negotiations and Completion of the Process

The process of evaluation of technical and financial proposals both separately and combined are described in details in this part of the chapter. In case of combined evaluation for QCBS method, the weighting system and the process are described clearly. The condition of negotiation and detail procedures of negotiations are described. The consequences of both successful negotiations and failure of negotiations are defined. The final stage of evaluation and the tender is also described with necessary conditions and applicable procedures.

3.7 Chapter-VII: Professional Misconduct

This is the chapter where the professional misconducts, offences and their consequences are defined by the rules. The four types of illegal practices are defined by the rule and those are as follows:

- ✓ Corrupt Practices
- ✓ Fraudulent Practices
- ✓ Collusive Practices
- ✓ Coercive Practices

The application of this rule and code of ethics are clearly defined and described. The consequences are also defined and referred to related act and section of PPR. One of the important consequences can be noted from Sub-Rule 127(8) of PPR 2008 as follows:

“A Person, or an officer or staff member of the Procuring Entity to whom the Act and these Rules apply, committing an offence related to professional misconduct, shall be dealt with as described in the Act in Section 64 (3) and (4) and Anti-corruption Commission Act 2004.”

3.8 Chapter-VIII: E-Government Procurement

In this chapter, the implementation of e-GP and the priority of rules are defined.

3.9 Chapter-IX: Miscellaneous

The chapter consists of concession contract related provisions and responsibilities of Government regarding monitoring. The applicability of these rules is restricted for concession related contract but the maximum competitiveness of the contract is directed to be ensured by suitable procurement process like OTM. The responsibility of Government regarding monitoring is assigned to CPTU and defined as well. The responsibilities include following:

- ✓ Propose Amendment to the Act, Rules or Documents
- ✓ Issue guidance, instructions regarding interpretation and implementation
- ✓ Prepare and Distribute STD
- ✓ Deliver Annual Report
- ✓ Develop Website
- ✓ Publish concise bulletin relating to advertisement
- ✓ Summarize Procurement post review reports
- ✓ Track procurement performance
- ✓ Publish performance report in the website

4.0 REVIEW OF UNITED NATIONS PROCUREMENT MANUAL

The UN procurement manual is prepared and issued by the Department of Management, Office of Central Support Service in Procurement Division at United Nations. The latest version of UN procurement manual is 7 and issued on 1 July 2013. The procurement manual consists of total sixteen chapters. Each of the chapters describes the issues related to procurement in details.

4.1 Chapter 1. Introduction and Overview of the United Nations Procurement Manual

The chapter describes the purposes of procurement manuals, best value for money, FRR, explanation of terms and abbreviations, procurement division's computerized system and internet website. The purpose of the procurement manual is to provide guidance on procurement policies, procedures and practices to all staff members involved in the procurement and acquisition processes and activities in all such offices and locations. The UN through the procurement manual also assigns and defines the responsibilities of procurement staff at its Headquarters (HQ), Offices Away from Headquarters (OAHs), Regional Offices, Commissions and Tribunals, as well as Peacekeeping/Political Operations (Field Missions). The Procurement Manual reflects the principle of segregation of responsibilities between requisitioning and procurement entities by specifying their separate and distinct functions within the overall procurement process. The general principles followed by UN procurement are as follows:

- ✓ Best Value for Money
- ✓ Fairness, Integrity and Transparency
- ✓ Effective International Competition
- ✓ The Interest of UN

The Best Value for Money is defined as the “Optimization of whole-life costs and quality needed to meet the user’s requirements, while taking into consideration potential risk factors and resources available”. The goal of BVM is to maximize the benefits for organization. The responsibility to achieve BVM is not limited to procurement staffs but also belongs to staff developing budgets, requisitioners, end-users, contract managers, finance officers, etc. The BVM principle is applicable throughout the acquisition process. There are several factors to determine the BVM principle. The factors described in the chapter are listed below:

- ✓ Cost-related factors
- ✓ Non-cost-related factors
- ✓ Market Environment
- ✓ Competitive, fair, ethical and transparent sourcing
- ✓ Risks factor

There are some other issues described under United Nations FRR related to procurement in the manual. Those issues are just listed below:

- ✓ Authority and Responsibility
- ✓ Competition
- ✓ Formal Methods of Solicitation
- ✓ Exceptions to the use of Formal Methods of Solicitation
- ✓ Cooperation
- ✓ Written Contracts
- ✓ Advance and Progress Payment

In the above listed issues, the minimum requirements, the conditions, restrictions and applicability of those are described. The explanation of terms and abbreviations used in manuals are also included in this chapter. Finally, there are descriptions of computerized systems, internet website and procurement extranet of UN/PD.

4.2 Chapter 2. Organization, Responsibilities and Functions of Procurement Offices

The chapter mainly describes the responsibilities of organizations, the function of UN procurement division and function of local procurement structure. The responsibility of procurement is divided by the organization in UN as follows:

1. Head Quarter
2. Offices Away from Head Quarters
3. Field Missions

The responsibilities vary depending on the size and complexity of duty station. Generally, the responsibilities of OAH and Field Mission are to the extent feasible and mirror those at UN Headquarters. The function of United Nation Procurement Division (UN/PD) is to ensure effective, efficient and economical procurement operation. Another major responsibility of UN/PD is to provide policy guidance and direction to Field Missions and, upon request, OAH and other UN agencies and subsidiary organs which may have their own delegation of procurement authority or a need for procurement support services. The responsibilities of head of UN/PD are well described in the chapter of the manual. The procurement services are divided into two separate parts and those are as follows:

1. Field Procurement Services
2. Headquarter Procurement and Support Services

The responsibilities of each division are well defined by the manual. The size and composition of the Procurement Office at Field Missions and OAHs depend on many factors like mandate, location, complexity of acquisition projects, size of troops etc. With the delegated authority, the functional Head's responsibility of the Field Mission and OAHs are same as the ASG/OCSS, in relation to the procurement.

4.3 Chapter 3. Delegation of Procurement Authority

The chapter describes the authorized officials, procurement authority and responsibility at various levels of organization in details. The Under Secretary General for Management is responsible for the procurement functions of the United Nations, shall establish all United Nations procurement systems and shall designate the officials responsible for performing procurement functions. The officials who have duly received a Delegation of Procurement Authority issued under the authority of the ASG/OCSS pursuant to Financial Rule 105.13 may enter into financial commitments relating to procurement activities on behalf of the United Nations. The authorized officials for procurement are clearly defined in the chapter of manual with the reference of related orders and rules. The procurement authority and responsibility are clearly defined by in the chapter for different offices of the UN organizations like Headquarter, Field Mission and OAHs. The authority of procurement said to be defined by the point 3.2.4 of the UN Procurement manual as follows:

“Any commitment made by Procurement Staff in their official capacity is made on behalf of the UN, in accordance with established regulations and rules and defined lines of authority for such action.”

The delegations of authority require Procurement Staff to exercise their duties and responsibilities with the utmost care, efficiency, impartiality and integrity. The delegation of financial power at HQ is stated with relevant conditions as delegated by the ASG/OCSS. The sub-delegation of financial authority by the UN/DPD for various levels of UN officials is also noted in the chapter of this procurement manual. The delegation of emergency situations is also noted in this chapter. The delegation of financial authority of OAHs and Field Missions are stated in the chapter with various conditions and according to the grade of officials. The system of Local Procuring Authority is defined and their functions, responsibilities and authority are well described in the chapter of this manual. The modifications proceeding for individual authority in general or emergency situations is described in the manual and belongs to ASG/OCSS.

4.4 Chapter 4. Ethical Standards in Procurement

This chapter describes the issues related to ethics of procurement abide by the UN organisations. This chapter describes the UN regulatory framework and the responsibilities of staff members in procurement. The staff members' responsibility is defined by this chapter of UN Procurement manual as follows:

“4.1.1a) Staff members must adhere to the ethical standards and responsibilities that apply to procurement activities in order to protect the integrity, fairness and transparency of the procurement process.”

This part of the chapter also refers to the Article 100 and 101(3) of UN Charter to define the responsibility of staff members on ethical issues. This chapter also describes the procedures of oath by the staff members to discharge their duties and responsibilities as an international civil servant of UN. This chapter describes the UN staff regulations and rules which includes several issues related to ethical standards. The accountability of staff members are described by UN regulations 1.3(a) as follows:

“Staff members are accountable to the Secretary-General for the proper discharge of their functions. Staff members are required to uphold the highest standards of efficiency, competence and integrity in the discharge of their functions. Their performance will be appraised periodically to ensure that the required standards of performance are met.”

The rules restrict some ethical issues mentioned in this chapter like specific instances of prohibited conduct, Honours, Gifts or Remuneration, conflict of interest etc. There is mention of financial rules of UN to be maintained by the staff in this chapter of manual. The following ethical issues are described and defined in the manual

- ✓ Conflict of Interest
- ✓ Confidentiality
- ✓ Financial Disclosure
- ✓ Gifts and Hospitality
- ✓ Post Employment Restrictions
- ✓ Corrupt, Fraudulent and Unethical Practices

Among the above issues, corrupt, fraudulent and unethical practices define a number of issues related to procurement. The definitions are stated as described in UN Procurement Manual as below:

“Fraudulent practice” or **“fraud”** means a misrepresentation of facts in order to influence a procurement or selection process or the execution of a contract to the detriment of a person(s), and includes collusive practices among bidders or consultants (prior to the submission of bids or proposals) designed to establish prices at artificial, non-competitive levels and to deprive other parties, including the organization of the benefits of free and open competition.

“Corrupt practice” or **“corruption”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of another party in the procurement or selection process or in contract execution.

“Unethical Practice” means conduct that violates the provisions of paragraphs 20 (conflict of interest); 21 (gifts and hospitality); or 22 (post-employment) of the United Nations Supplier Code of Conduct.

“Bribery”: the act of unduly offering, giving, receiving or soliciting anything of value to influence the process of procuring goods, services or works, or executing Contracts.

“Extortion” or **“Coercion”**: the act of attempting to influence the process of procuring goods, services or works, or executing Contracts by means of threats of injury to person, property or reputation.

“Collusion” or **“Bid Rigging”**: a scheme or arrangement between two or more Vendors, with or without the knowledge of the UN, designed to establish prices at artificially non-competitive levels. Common schemes of collusion are:

a) **Bid suppression**: one or more Vendors who otherwise would be expected to bid, or who have previously bid, agree to refrain from bidding or withdraw a previously submitted Bid so that the designated winning competitor’s Bid will be accepted.

b) **Complementary bidding**: an agreement by Vendors whereby at least one of them agrees to submit a Bid that is either too high to be accepted or contains special terms and conditions that will not be acceptable to the UN.

c) **Bid rotation**: Vendors submit Bids but agree to take turns being the low Bidder.

d) **Subcontracting**: Vendors agree not to bid or to submit a losing Bid in exchange for subcontracts from the successful Bidder.

e) **Market division**: Vendors divide markets among themselves allocating specific customers, products or territories to themselves.

This chapter refers to some administrative issuances, bulletins, information circulars and the UN Supplier Code of Conduct. It is mentioned in the manual that United Nations has

adopted “Zero Tolerance” policy regarding ethical issues like acceptance gifts and hospitality. There are restrictions on employment of former UN staff members.

4.5 Chapter 5. Global Compact

This chapter describes the issues related to global business. The manual describes that the UN encourages the responsible corporate citizenship and universal social and environmental principles to meet the challenges of globalizations. There are ten principles mentioned related to four main categories in this chapter. The categories are as follows:

- ✓ Human Rights
- ✓ Labour
- ✓ Environment
- ✓ Anti-corruption

However, the participation in global compact has no relation to UN procurement system registration process or operations.

4.6 Chapter 6. Overview of the Procurement Process

The process of UN procurement is described in brief in this chapter. The process starts by the registration of potential suppliers. The UN in its sole discretion determines the eligibility of vendors and establishes a pool of vendors. In the next stage, the UN receives and evaluates the responses to solicitation and justifies both eligibility and financial requirements. Finally the contract is signed with successful bidders following negotiations and the contract is managed according to the manual. The unsuccessful bidders are notified accordingly and there is an option of debriefing also.

4.7 Chapter 7. Vendor Registration and Management

The UN maintains a centralized electronic Register of Vendors for sourcing the supply of UN needs for goods, services and works to HQ, OAHs and Field Missions. The United Nations Secretariat Register of vendors resides on United Nations Global Marketplace (UNGM). Using established criteria, the United Nations evaluates vendors’ applications to determine whether the application complies with UN requirements and are thus eligible for registration. The UN awards contracts to vendors registered with the UN Secretariat through the vendor due diligence review process. The responsibility of vendor registration is stated by the chapter and done by a team designated by the Director, UN/PD. The Vendor Registration Officers, VRO(s) are responsible for administering and maintaining the register of vendors, including the evaluation of vendor registration applications and advising the vendor review committee on the status of vendor evaluations. The registration process of vendors and the pre-requisite of registration are described in details. The ethical pre-requisite of registration is stated by the point 7.5.1f of UN procurement Manual as follows:

“They undertake not to engage in proscribed practices (including but not limited to: corruption, fraud, coercion, collusion, obstruction, or any other unethical practice), with the UN or any other party, and to conduct business in a manner that averts any financial, operational, reputational or other undue risk to the UN.”

The exceptional registration procedures are also stated in the chapter. The factors of evaluation for vendor registrations are categorized and stated in four groups in manual as follows:

1. Pre-requisite for eligibilities
2. Relevance of the goods and services offered to UN
3. Certificate of Incorporation
4. Financial Condition

The criteria for registration of vendors for several levels are tabulated below:

Sl. No	Criteria for Registration (Mandatory)	Basic (Less than \$40,000)	Level 1 (Between \$40,000 to \$500,000)	Level 2 (Above \$500,000)
1	Basic vendor information	Yes	Yes	Yes
2	Pre-requisite for eligibility	Yes	Yes	Yes
3	Acceptance of UN supplier code of conduct	Yes	Yes	Yes
4	Commodity Code	Yes	Yes	Yes
5	Minimum 3 years business experience	No	Yes	Yes
6	Current certificate of incorporation or legal status/capacity	No	Yes	Yes
7	Three letters of reference over last year business including sufficient details of reference project.	No	Yes	Yes
8	Name of: Owner(s), Principals and any former corporate incarnation.	No	No	Yes
9	The names of intermediaries, agents and/or consultants (if any)	No	No	Yes
10	Financial statement for last three years with auditor report.	No	No	Yes

The threshold value for registration shown in above table is estimated value of contract award. The vendors are encouraged to submit the documents with above mandatory criteria as follows:

- ✓ Applicant's code of ethics
- ✓ Anti-Fraud compliance Programme
- ✓ Evidence of applicant's participation in UN Global Compact
- ✓ Applicant's commitment to align operations and strategies with universally accepted principles in the areas of human rights, labour, environment and anti-corruption.

The proceedings of evaluation of Vendor Registration Application (VRA) by the Vendor Registration Officer(s) are described. In case of rejection of VRA, an automatic notification is issued to the respective vendor and VRO has to ensure it. The Vendor Registration Officer has the ability to allow the vendor to satisfy the criteria by three attempts. In case of rejection, the vendor has the right to appeal to lead VRO for review of his application (VRA). The condition and procedures of provisional registration is also described in the manual. The consequences of provisional registration are well defined. The registered vendors data are maintained by all the VROs and be available upon request from procurement staff for review. The maintenance and updating of the register of vendors are described in detail in the chapter. A committee named Vendor Review Committee is responsible to review and update the resister of vendors. The responsibility of VRC is defined by the UN Procurement Manual as follows:

1. Review application to register of vendors submitted by the VRO that do not meet the registration criteria.
2. Review complaints from requisitioners and/or other UN staff against vendors who were alleged to have failed to perform in accordance with the terms and conditions of contracts awarded.
3. Review proposals for special approval of vendors recommended by a Procurement Section.

The suspension and removal from the register of vendor proceedings are described in the chapter. The criteria for suspension or removal from the register are listed in details in the chapter. The functions of VRC are also defined in case of suspension or removal from the register of the vendors. The authority to take decision to suspension, removal or reinstate are described in the manual.

4.8 Chapter 8. The Acquisition Process

The chapter describes the acquisition planning, definitions of requirements and specifications, establishing of time-line, requirement and approval of funding and the survey of market in the manual. In the part of acquisition planning, there mention of three types of planning as listed below:

1. Short term planning
2. Long term planning
3. Annual plans

The contents of plans are also mentioned in the manual. The contents of plans are listed below:

- ✓ Item No
- ✓ Types of goods, services or works using UN nomenclature
- ✓ Estimated quantity or term
- ✓ Estimated value if US Dollar, funding source, budget reference
- ✓ Delivery date or quarter when the goods are required to be delivered or the services or works are required to commence and be completed
- ✓ Any other relevant information

The importance of specifications, SOWs and TORs are described and the responsibility of related departments or offices like requisitioners are defined for developing specifications, SOWs and TORs as Subject Matter Experts(SME). The options of standardizations are also mentioned in the case of goods and services procurement. The responsibility of requisitioners to make timeline of procurement is described and the expediting responsibility of them is also described in the manual. The responsibility of requisitioners to ensure the sufficient funding and approval for funding is defined in the manual. The detail requirement of market survey and the procedures are stated in the manual. Market surveys are used to survey a specific market or industry to ascertain qualified sources capable of satisfying the Requisitioners needs and to determine competition, capabilities or estimated costs with respect to a specific good or service sought. The responsibility of requisitioners for technical research is also mentioned to keep abreast of technological and other developments. The scope of market survey by the procurement officers is described in the manual as follows:

- ✓ Contact knowledgeable individuals in the market
- ✓ Review the results of recent Market Surveys undertaken to meet similar needs
- ✓ Conduct internet research on the industry
- ✓ Obtain source lists of similar items from other agencies, trade organisations or other sources
- ✓ Review catalogues and other product literatures
- ✓ Issues RFI

The detail requisition procedures from the requisitioners to procurement office and the responsibility of certifying officers are stated and defined in the manual. The functions, authority and responsibility of related offices and officers are well described in the process.

4.9 Chapter 9. The Solicitation Process

In this chapter, the detail solicitation procedures are divided into three parts and described accordingly. The parts are described separately in the following.

PART-1: Preparation for solicitation and vendor selection

This part includes the preparation of documents, requisition evaluation, identification of sources and the process of REOI. The preparation and issuance of solicitation documents are guided by the related financial rules of UN and described in the chapter. The requisition evaluation by the procurement officers are guided by the Financial Regulations and Rules (FRR) of UN. The typical aspects of requisitions that do not conform to the FRR are stated in the chapter. These aspects can be listed into three broad heading below:

1. Requirements designed to limit or eliminate competition.
2. Unreasonable delivery times
3. Unrealistic budget estimates

The detail procedures of identifying the potential sources including provisional vendors are described to fulfill the principle of FRR. The process of limiting the number of vendors and the minimum number of vendors for the particular value range of procurement are described in the section of the chapter. The geographic equitability to invite the tender is also guided by the chapter. And finally the process and require conditions for REOI are described in the last portion of this part of chapter in details.

PART-2: Methods of Solicitation

This part describes the types and methods of solicitation and both the formal and informal methods are described in brief. The sole sourcing process is described and the justification of sole sourcing is stated by the points 9.10.2 of UN Procurement Manual as follows:

“In such cases, in order to ensure the fairness, integrity and transparency of the process, the Procurement Officer may post, if feasible, at an early date, a notice of intent to procure the requirement using informal methods of Solicitation in the form of an REOI. This notice should give Vendors the opportunity to submit a statement of their qualifications so that they may indicate whether they have qualifications to fulfill the requirement. This should justify the rationale for sole source selection process.”

The vendor limitation also has to consider the security issue to consider and the UN/PD is guided to take help from the Department of Safety and Security. The process of removing vendors from the list and the process to precede the recommendation of vendors by the requisitioners are described in the chapter with various conditions applicable. Before solicitation, the certification of fair list is issued by the procurement officer to ensure invitation from appropriate and eligible vendors. The conditions and procedures for low value direct procurement is described and guided in the manual. The selection and modifications of standard solicitation documents are described in the manual. The UNGCC and exceptions to formal solicitation are described. The guidance for ‘Exigency’ is stated in the chapter. The ‘Exigency’ is defined by the General Assembly Decision 54/468 as follows:

“an exceptional, compelling and emergent need, not resulting from poor planning or management, or from concerns over the availability of funds, that will lead to serious damage, loss or injury to property or persons, if not addressed immediately.”

The amendments, cancellation, consultation with offices of Legal Affairs and languages of solicitation documents are defined by the manuals. The drafting of solicitation documents are guided by the manual and advised to prepare in co-operation with the requisitioners. The several issues related to the price of procurement are mentioned to be

included in the documents. The various considerations mentioned in the UN Procurement Manual for pricing mechanism of solicitation documents are as follows:

- ✓ Firm Fixed Price without escalation
- ✓ Firm Fixed Price with escalation
- ✓ Fixed Fee
- ✓ Minimum Guarantee or Cost Plus Pricing

Generally Firm Fixed Price is said to be preferred but other pricing mechanisms have their suitability described in the chapter also. Generally accepted procurement techniques, both Performance-Based Contracting and Incentive Contracting encourage the Vendor to perform at a lower cost than the maximum, not to exceed amount agreed to in the contract and allow the Vendor to share in the resulting cost savings at a pre-determined level. The responsibility of preparing the solicitation document is defined in the manual.

PART-3: Terms and conditions

In this part of the chapter, the following procurement related terms and conditions are described in the UN Procurement Manual:

- ✓ All or nothing solicitation
- ✓ Total cost of ownership (TCO)
- ✓ Similar Items
- ✓ Quantities
- ✓ Closing and Opening Date
- ✓ Period of validity of Bids and Proposals
- ✓ Delivery Time and Place
- ✓ Inspections and acceptance Clauses
- ✓ Method of Submission
- ✓ Security Instrument
- ✓ Liquidated Damages
- ✓ Payment for Delivery
- ✓ Quality Assurance
- ✓ Evaluation Criteria
- ✓ Subsidiaries, Related Entities and Joint Venture
- ✓ Sub-contractors
- ✓ UNGCC
- ✓ Rejection of Submission
- ✓ Demonstrations and Samples
- ✓ Deviation from Published Procurement Procedures
- ✓ Bid Summary Sheet
- ✓ Issuance of Solicitation Documents
- ✓ Contact with Vendors
- ✓ Meeting with Vendors
- ✓ Clarification Requests
- ✓ Incoterms

All the above mentioned terms and conditions are clearly described in the chapter and their applicability and uses are prescribed for procurement officers and the bidders.

4.10 Chapter 10. Management and Treatment of Vendor Submissions

The chapter describes the submission procedures and the responsibilities of related officers and vendors. Three types of options mentioned to be applicable for submissions are as follows:

1. Direct Submissions (Mail, Courier Service or Hand Delivery)
2. Facsimile Submissions

3. Electronic Submissions

But the later two submissions need to be permitted in the solicitation documents. The safeguarding procedures and consequences of unsolicited submissions are described. The reasons and conditions of unsolicited documents are defined by the section of the chapter. The conditions of withdrawal and modifications of submissions are described. The modifications due to errors and omissions, errors in affixing signature and clerical errors are described and their consequences are defined. The procedures for late submission and extension of submission closure deadline are described. Generally the late submissions are rejected except the following conditions as per the UN Procurement Manual:

1. Delay due to the fault of UN
2. Delay in delivery could not be reasonably foreseen by the bidder or force majeure

The submission procedures for RFQ are defined and stated as no public opening needed for. The detail of public opening procedures for submissions and the responsibility of public opening officers are defined. The attendance at submission opening and their responsibilities are defined by the section of the manual. The public submission opening officer should record the relevant information and read aloud the following as per UN Procurement Manual:

- ✓ Vendor's name
- ✓ The unit price of each line item
- ✓ Delivery period
- ✓ Total cost
- ✓ Payment terms and discount offered, if any
- ✓ Any other details specified by procurement officer

The information is recorded on the Solicitation Abstract Sheet and that sheet contains the following data:

- ✓ Price
- ✓ Quantity
- ✓ Objective
- ✓ Delivery time and schedule
- ✓ Compliance with specifications
- ✓ TOR or SOW
- ✓ Discounts, if any
- ✓ Warranty and after sales service

The availability of data after the opening and the time period for that is defined by the section of the chapter.

4.11 Chapter 11. The Source Selection Process

This chapter is divided into two parts and those parts are reviewed in the following:

PART-1: This part of the chapter mainly includes the processes, conditions and criteria form source selection to the opening of tender. The general qualification criteria for vendor to be selected as source are described in the section Of UN Procurement Manual as follows:

- ✓ have or be able to obtain adequate financial resources to perform the Contract
- ✓ be able to comply with the required or proposed delivery or performance schedule
- ✓ have a satisfactory past and current performance record
- ✓ have a satisfactory record of integrity and business ethics
- ✓ have or be able to obtain the necessary organisation, experience and accounting/operational controls and technical skills

- ✓ have or be able to obtain the necessary production, construction and technical equipment and facilities
- ✓ be otherwise qualified to receive an award under applicable UN regulations, rules, policies and practices – i.e., have the capacity to receive and perform the proposed Contract

The criteria for rejection of submission and procedures of rejections are described. The necessity of source selection plan and details of that plans are described. The components of source selection plans are listed as per UN Procurement Manual as below:

- ✓ Description of the requirement
- ✓ Solicitation Method and justification there of
- ✓ Sourcing method and details there of the UN Common Codification System (UNCCS)
- ✓ Contractual instrument to be used
- ✓ Evaluation Team(s) responsible for commercial and technical evaluation
- ✓ Evaluation Criteria and reasonable minimum criteria
- ✓ Weighting
- ✓ Market conditions
- ✓ Planning and procurement activity schedule
- ✓ Rating and scoring system
- ✓ Required level of expertise and Requisitioner resource capacity
- ✓ Risk factors that should be assessed during the evaluation and potential remedies
- ✓ Any relevant information with regard to the forthcoming contract management capacity and expertise, staff training, equipment maintenance, after sale service, disposal, etc

The several types of committees, their functions, formation and responsibilities are defined. The committees are as per UN Procurement Manual as follows:

- ✓ Source Selection Committee
- ✓ Evaluation Committee
- ✓ Technical Evaluation Team
- ✓ Commercial Evaluation Team

The importance and adherence to solicitation documents and the Solicitation Abstract Sheet are defined. The evaluation criteria and their types are described in details. The considerable factors for evaluation and the basis of categorization for evaluation criteria are stated. The evaluation criteria are defined into five following categories as per UN Procurement Manual as below:

1. Discrete – There should be no confusion or overlap in the criteria selection, description and evaluation
2. Reliable - Clear and measurable criteria that can be evaluated consistently across multiple Submissions and Evaluators
3. Practical - Criteria that are verifiable and designed to measure facts rather than assumptions and promises from the Vendor. Practical criteria are tangible, with little likelihood of being construed differently by different Vendors
4. Fair – Criteria that are relevant to the procurement and do not unduly exclude Vendors from the procurement
5. Balanced -- Criteria that give appropriate and defensible weight when viewed objectively in the context of the procurement action

The clarifications procedures, opening of commercial procedures and the opening of technically non-compliant submissions are also described in the chapter.

PART-2: The part two includes the evaluation procedures, conditions applicable for various conditions and award procedures of contract. This part of chapter also describes

the process of communications and debriefing. Any requirements, guidelines, documents, clarifications or related communicated information are directed to be fully documented in the procurement case file. The bid evaluations procedures are described and the conditions and circumstances for the best and final offer are described in details. The conditions for the Best and Final Offers are defined by the section of UN Procurement Manual as follows:

- ✓ Clarification from Vendors on their technical proposals is needed, which may affect the commercial proposal
- ✓ Clarification of requirements and/or correction of factual errors in the Solicitation Documents are needed
- ✓ There are weaknesses in the Submissions that are remediable
- ✓ Commercial proposals are tied

The requirements for the proof of availability of products are defined by the section of chapter. The evaluation of delivery terms are defined as the primary factor and alternative delivery points in various transportation options are described. The conditions for split awards are defined and submission rules for various Incoterms are stated. The importance of discounts, the circumstances of tie bids and the conditions of exceeding the estimated costs are clearly described. The details risk management strategies are elaborated. The risk responses are listed below as per manuals:

- ✓ Ignoring risk
- ✓ Reducing risk
- ✓ Transferring risk
- ✓ Managing risk

The discussions and negotiations with vendors and the conditions are explained in the chapter. The awarding procedures in details like recommendation of award, request for information from vendors, notice of consideration for award, statement of award and the award are described by the respective section of the chapter. The consequences after the award are described in the last few sections of the chapter. These include debriefing, letter of regret, legal review, contact number and obligations of fund etc.

4.12 Chapter 12. Organization and Functions of, and Review by, the HCC and LCC

This chapter mainly describes the organizational function of headquarter and local committee. The composition and responsibilities of both HCC and LCC are described in detail in relation to contract. The review procedures by the committee are described and the role of procurement officer with respect to committee is defined in the section of the chapter. The pre-clearance, meetings and decisions of the contract committee are defined by the respective section of this manual. The special case and emergency cases are also defined in the chapter. Two types of special cases and their consequences are defined by the UN Procurement Manual. The definitions of those special cases are given below:

1. Fully ex post facto cases: A procurement action, whether a written contractual instrument exists or not, in which goods or services have already been fully furnished prior to submission of the procurement action to the relevant Contracts Committee(s) for its advice and/or approval of all other appropriate officials.
2. Partially ex post facto cases: A procurement action, whether a written contractual instrument exists or not, in which goods or services have been provided in part prior to submission of the procurement action to the relevant Contracts Committee(s) for its advice and/or the approval of all other appropriate officials.

The procedures for the special cases and the responsibility of related committees are described in details.

4.13 Chapter 13. Contractual Instruments

The way the contracts between the parties are formed, conducted and governed called contractual instrument. The contractual instruments are used by the UN as follows:

- ✓ Blanket Purchase Orders (BPO)
- ✓ Purchase Orders
- ✓ Customized Contract (including System Contracts)
- ✓ Institutional Contractor Agreements (ICAs)
- ✓ Letter of Assists

One of the important and special types of contractual instrument is used internally in UN called Internal Purchase Orders. The internal purchase orders are issued internally within the UN to obligate funds against Contracts for future payment for goods or services provided under a Contract and are not sent to Vendors. The details procedures and conditions for Blanket Purchase Orders (BPO) are described with the threshold value of procurement. The Purchase Order (PO) is the appropriate contractual instrument only when there is no contract or in case of a Systems Contract. Generally, in complex and complicated conditions the contractual terms and conditions are formulated by negotiations to furnish the contract with the vendors called customized contract. The standard contract generally consists of followings as per UN Procurement Manual:

- ✓ Identifications of the parties
- ✓ Order of Precedence
- ✓ Specifications, TOR or SOW
- ✓ Duration/Term of Contract
- ✓ Responsibilities of the Vendor
- ✓ Responsibilities of UN
- ✓ Contract Monitoring and Supervision
- ✓ Reporting Requirements
- ✓ Payment Terms
- ✓ Payment Methods
- ✓ Liquidated Damages
- ✓ Performance Security
- ✓ Additional Insurance Requirements
- ✓ Warranties
- ✓ Amendment or Modification of Contract
- ✓ Notice Provisions
- ✓ Signatures of the parties

The details of system contract and the applicability with conditions for that type of contracts are described in the chapter. The system contract is generally awarded after competitive bidding. The ICA and the letter of assists type contracts with conditions and procedures are described in the chapter. Other contractual instruments like Memorandum of Understanding are mentioned in this chapter with reference to financial regulations.

4.14 Chapter 14. Delivery and Receiving Process

This chapter describes the process of receiving and inspection of materials and the responsibility of related department and their officers. The responsibility of UN Headquarter and Field Offices are defined and the main responsibility stated to receive the materials at UNHQ belongs to the Travel and Transport Services (TTS) department. The detail procedures for receiving goods under various 'INCOTERM' are described. The responsibility of UN/PD and the procedures for them in receiving are depicted in the manual. The inspection procedures, the returning material to vendor and issues from the stores are guided by the manual. All the above procedures described to be completed with

the aid software system named Integrated Management Information System (IMIS) for assurance of receipt.

4.15 Chapter 15. Contract Management and Administration

The contract management is a key element in the procurement process to ensure that Best Value for Money will be achieved throughout the acquisition process. The contract management includes Vendor Performance evaluation and rating on timely delivery, quality and assistance to the requisitioners and/or end-users. This chapter describes the process of contract management, vendor performance evaluation, vendor performance rating, contract administration, dispute resolution, amendments of contracts, subcontractor, contract closure, maintaining of files and contract logs. The functions and responsibility of contract management staff are defined in the manual. The process of vendor performance rating and the responsibility of related officers are described in the chapter. The performance of vendors is measured against several factors and those factors are stated in the manual. The remedial actions are described for below par performances of vendors. Five types of vendor performance rating forms are mentioned in the UN Procurement Manual as follows:

- ✓ Short Form of Specialist Report
- ✓ Supplier Performance Report
- ✓ Contractor Performance Report
- ✓ Short Term Air Charter Services
- ✓ CPR for Short Term Sea Transport Services

The dispute resolution procedures are described in details and the name the applicable laws are depicted in the manual like UNCITRAL Conciliation Rules and UNCITRAL Arbitration Rules. The three types of dispute resolution mechanisms mentioned in UN Procurement Manual as follows:

- ✓ Amicable Settlement (negotiation)
- ✓ Conciliation
- ✓ Arbitration

The responsibility and procedures for amicable settlement are described in details. The functions of the Office of the Legal Affairs (OLA) are also described on dispute resolution procedures. The contract amendment procedures are described with the responsibility of related officers. A vendor performance report is followed by the closure of contract to the procurement office. The maintenance of files is prescribed in the manual and divided into following phases:

- ✓ Pre-Solicitation
- ✓ Solicitation
- ✓ Vendor Responses
- ✓ Evaluation
- ✓ Award
- ✓ Post-award
- ✓ Others

The responsibility for keeping files and contract log are defined by the UN Procurement Manual.

4.16 Chapter 16. Property Disposal

The detail of property disposal is described in the chapter. For disposal, there is Property Survey Boards (PSB) and the responsibilities of the boards are defined by the manual. The responsibilities include the estimation of sales value, determine the exchange or replacement of property, transfer of surplus property to other projects, economical

destruction of surplus or unserviceable property and justify the interest of UN through the disposal of property by gift or sale on nominal prices. The sales procedure starts with the preparation of solicitation documents which require approval of PSB. The minimum numbers of bidders and criteria of solicitation documents are defined by the manual. The treatment of the bids is defined and the property is sold to the bidder offering best value to the organizations. The sale is itemized and successful bidders are notified in writing with the lists of items. There is option of system contracts of continuing sale of items over a period of time. There are two other options than solicitations named negotiation or 'Spot Sales' and trade-in. The negotiations or spot sales are restricted by the threshold value. The amount of bid security or deposits and the procedures for deposits are described by the manual. The procedures for bill of sale and timeline of issuing the bill are also defined by the manual in this chapter. The timeline for removal of property is guided by in this chapter. The details procedures of disposition of assets of UN peacekeeping missions are described in the chapter. The procedures of disposal of real property are defined by the UN procurement Manual as follows:

“Any proposed sale of real or immovable property owned by the United Nations shall be referred to the Office of Legal Affairs for advice, wherever appropriate.”

5.0 REVIEW OF UNCITRAL MODEL LAW ON PUBLIC PROCUREMENT

This law is formulated by United Nation Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries. The objectives of the UNCITRAL Model Law ON Public Procurement are summarized below:

1. Maximizing economy and efficiency in procurement;
2. Fostering and encouraging participation in procurement proceedings by suppliers and contractors regardless of nationality, thereby promoting international trade;
3. Promoting competition among suppliers and contractors for the supply of subject matter of the procurement;
4. Providing for the fair, equal and equitable treatment of all suppliers and contractors;
5. Promoting integrity of, and fairness and public confidence in, the procurement process;
6. Achieving transparency in the procedures relating to procurement.

The UNCITRAL model of law on public procurement consists of total eight (8) chapter and 69 articles. The chapters describe several definitions, procurement methods, detail procedures for procurement methods and the challenging proceeding. The chapters are briefly described below with the headline:

5.1 Chapter-I: General Provisions

The General Provisions chapter describes a number of points relating to procurement, scope of law, definitions and suppliers. There are total 26 articles in this chapter to describe the issues. The communication procedures for procurement are described by the article 7 in details. The means of communication and the confidentiality of information are defined. The qualifications of suppliers and contractors are defined by the article. The evaluation criteria are described by the article and all the non-price criteria are defined by the Article 11(4) of UNCITRAL Model Law as follows:

“To the extent practicable, all non-price evaluation criteria shall be objective, quantifiable and expressed in monetary terms.”

The conditions and procedures of several issues are described by the articles of the chapters of UNCITRAL Model Law and those are listed below:

- ✓ The value of Procurement
- ✓ Language of Document
- ✓ Manner of Submission
- ✓ Place of Submission
- ✓ Deadline of submission
- ✓ Clarifications and Modifications of Documents
- ✓ Clarifications of Qualification Information
- ✓ Tender Securities
- ✓ Pre-qualifications Procedures
- ✓ Cancellation of Procurement
- ✓ Rejection of Abnormally Low Submissions
- ✓ Exclusion of a Supplier or Contractor
- ✓ Acceptance of Submission and Contract
- ✓ Public Notifications of Award

The confidentiality and disclosure of information is clearly defined by the article and their applicability is also briefly stated for fair competition. This chapter provides the guideline of maintaining Audit-trails and necessary information of suppliers and contractors. The Article 26 of UNCITRAL Model Law provides the guidelines for enactment of Code of Ethics for employees, officers, procuring entities and also describes the necessity of maintaining systematic way of application and training on that Code of ethics. Most of the above issues are referred to some related laws and other articles of this law.

5.2 Chapter-II: Method of Procurement and Their Condition; Solicitation and Notices of the Procurement

The numbers of procurement methods mentioned in this chapter of UNCITRAL Model Law those are listed below:

- ✓ Open tendering
- ✓ Restricted tendering
- ✓ Request for quotations
- ✓ Request for proposals without negotiation
- ✓ Two-stage tendering
- ✓ Request for proposals with dialogue
- ✓ Request for proposals with consecutive negotiations
- ✓ Competitive negotiations
- ✓ Electronic reverse auction
- ✓ Single-source procurement

The OTM is preferred method of procurement and the use of other procurement methods need to be justified by the relevant conditions and article of this Law. This chapter describes the basic conditions of requirement for using other methods of procurement than OTM that are describes in detail in following chapter of the Law. The conditions mentioned in the article for RTM in UNCITRAL Model Law are summarized below:

- ✓ Highly Complex
- ✓ Specialized Nature
- ✓ Available from Limited sources
- ✓ The require time and cost is disproportionate to the value of procurement

The conditions for using RFQ, RFP, TSTM, Electronic Reverse Auction and Framework Agreement are also defined by the article of this chapter. The solicitation and publications procedures of several types tendering methods are also described in the chapter. All the procedures of above refer to related articles of the Law.

5.3 Chapter-III: Open Tendering

This chapter describes the details proceedings of Open Tendering Method of procurement. The chapter is divided into three sections to describe various part of tendering. The first section of chapter describes the process of solicitation, content of invitation tender, provision of solicitation documents and content of solicitation documents for OTM. The process and detail of related points are described in detail. The second section describes the detail procedures of tender presentation by the suppliers or contractors. One of the remarkable criteria of two way communication is defined by the Sub-Article 42(2) (b) of UNCITRAL Model Law as follows:

“The procuring entity shall provide to the supplier or contractor a receipt showing the date and time when its tender was received.”

The period of tender validity or effectiveness, modifications and withdrawals are defined by the article of the chapter. The third and final section of the chapter describes the evaluation procedures of OTM that includes the opening, examination and evaluation of tender. The negotiations with the suppliers or contractors are prohibited by the article of this chapter for OTM. The proceedings also refer to some other related articles of the Law in this section of chapter.

5.4 Chapter-IV: Procedures for Restricted Tendering; Request for Quotation and Request for Proposal without Negotiation

In this chapter, the descriptions of three types of tendering methods are stated in brief. The tendering methods are listed below:

1. Restricted Tendering
2. RFQ
3. RFP without Negotiation

The method, RFQ is barred from any kind of modifications, withdrawal and negotiations. Only one price quotation with all possible applicable charges included to be priced by the bidders in RFQ method. The RFP without negotiation is described in details with require necessary conditions. The procedures are described as two envelope tendering method and the first envelope contains the technical, quality and performance proposal and the second one contains the financial proposals. The first envelope is opened first and examined and evaluated with require criteria. This examination and evaluation reflects the ability of bidders to perform the task and qualify them on the basis of pass-fail criteria. The non-responsive or failed bidders are notified by a notice of rejection and the reasons for the rejection, together with the unopened envelope containing the financial aspects of the proposal. The responsive suppliers or contractors are invited to the opening of financial proposal and the score of the technical, quality and performance characteristics of each responsive proposal and the corresponding financial aspect of that proposal is read out in the presence of the suppliers or contractors. Finally the proposals are evaluated on the basis of two following grounds and criteria of RFP to select the bidder:

1. The non-price criteria of the proposal
2. The prices

All the above descriptions refer to some other chapters and articles of Law applicable.

5.5 Chapter-V: Procedures for Two-Stage Tendering; Request for Proposal with Dialogue; Request for Consecutive Negotiations; Competitive Negotiation and Single Sourcing Procurement

In this chapter of UNCITRAL Model Law, a number of tendering methods are described with their require conditions. The methods are listed as follows:

1. Two-Stage Tendering Method
2. RFP with Dialogue
3. RFP with Consecutive Negotiations
4. Competitive Negotiation
5. Single Source Procurement

In first stage of TSTM, the proposal submitted by the bidders without price and generally includes the followings:

- ✓ Technical
- ✓ Quality
- ✓ Performance Characteristics
- ✓ Contractual Terms and Conditions
- ✓ Professional Competence
- ✓ Technical Competence
- ✓ Qualifications

There is provision of discussion with suppliers or contractors after initial responsive bidding. While discussing with the suppliers or contractors, the PE are directed by this Law to maintain equal opportunity to participate the discussions. The discussions are generally covered by the above mentioned criteria by the initial proposals. In the second stage, the PE invites the tender from the initial responsive bidders to present final tender with prices in response to a revised set of terms and conditions of procurement. The revisions of terms and conditions of tender are guided by the articles of this Law and in no condition; the PE can modify the subject matter of procurement. Actually the revising gives the PE to refine the aspects of the descriptions of subject matter of procurement. Any deletion, modification or addition made by the PE is guided to be communicated to the suppliers or contractors. Any suppliers or contractors are entitled to withdraw from the tendering process without forfeiting the tender security. Finally the submitted tenders are evaluated to determine the successful tender.

The RFP with dialogue is described in this chapter. The RFP with dialogue is stated to be conducted by two ways –

1. With Pre-Selection
2. Without Pre-Selection

Using pre-selection, the numbers of suppliers are limited but the Law provides the direction to select maximum number of suppliers for effective competition. The pre-selected suppliers are entitled to submit the proposals for following tendering process of RFP and incase of direct solicitation of RFP, any suppliers or contractors are eligible to submit proposal. The contents of RFP documents and the terms and conditions of evaluations are well described in the chapter and the PE is entitled to charge price for documents. The proposals are examined and evaluated and a notice of rejection and the reasons for the rejection is promptly dispatched to each respective supplier or contractor whose proposal was rejected. The dialogue is conducted with each responsive supplier or contractor and it is directed by the Law that the minimum number of the supplier or contractor is to be three for effective competition. The conduction of dialogue with the supplier or contractor is guided by the article as to be conducted by the same representatives of procuring entity. The modifications of terms and conditions are defined by the article. Following the dialogue, the PE requests all suppliers or contractors to

present the final and best offer in writing. There is no provision of discussion with respect to best and final offer. The successful tender meets the requirements of procuring entity in best way.

The RFP with consecutive negotiations proceedings are described in the chapter. The initial submission of proposal by the suppliers or contractor will results them in a ranking of responsive bidder. The ranking is prepared by the criteria of technical, quality and performance characteristics of proposal. The negotiation then conducted according to the ranking of the supplier or contractor as long as the contract is awarded. The best ranked contractor or supplier gets the opportunity first for negotiation. The negotiation mainly concerns the financial characteristics of proposal. During negotiation, the PE is restricted from modification of subject matter of procurement and any other qualification criteria of proposal. The PE can not reopen the negotiation to any supplier or contractor with which it has terminated the negotiations.

In the method of competitive negotiation, the PE conducts negotiation with a sufficient number of suppliers or contractors to ensure effective competition. After the negotiations, the PE request for the best and final offer from the responsive suppliers or contractors and finally evaluated best offer is selected for awarding the contract.

Single source procurement is defined by the article in this chapter of UNCITRAL Model Law. The negotiation and the scope of negotiation are also defined by the article. Most of the articles of the chapters refer to other related articles, especially the chapter II, procurement method and conditions of this Law.

5.6 Chapter-VI: Electronic Reverse Auctions

This chapter describes the detail electronic procedures for reverse auction as stand-alone procurement system. Generally reverse auction gives the suppliers or contractors the opportunity to bid multiple times in a tender before the deadline of submission. For effective competition, the minimum number of suppliers or contractors is required to be resister in this method of procurement. The other criteria of eligibility for suppliers or contractors are guided by the elated article of the Law.

This chapter also describes the reverse auction as a phase of procurement where the award criteria to contract to be held by the auction. The detail criteria for this type of auction solicitation by the PE are defined by the article. The registration and the timing of electronic reverse auction are specifically defined by the article of this chapter. There are some other requirements or consequences of electronic reverse auction which are defined in this chapter.

5.7 Chapter-VII: Framework Agreement Procedures

In this chapter of the law, two types of framework agreements are described and those are as follows:

1. Close Framework Agreement
2. Open Framework Agreement

The detail procedures of both types of Framework agreement are described with require conditions for those types of agreement. Both types of agreements are guided to be for specific time period in this chapter. The basic difference between Open and Close Framework is all the suppliers or contractors are contracted at time in Close Framework and the suppliers or contractors can be selected at any time over the period of operation in Open Framework Agreement. But the terms and conditions for selecting the suppliers or contractors remain same over the operation period. Any variations in terms and conditions are described by the Article 59(2) (c) of UNCITRAL Model Law as follows:

“Any variation in the terms and conditions of the separate agreements for a given procurement is minor and concerns only those provisions that justify the conclusion of separate agreements.”

The procedures for Framework agreements are described as two stage of Tendering process. The first stage is to select the suppliers or contractors for agreement and the second stage is a competition among those suppliers to award the contract. For Open Framework Agreement, the maximum number of suppliers or contractors may be fixed by the PE. The change in terms and conditions of agreement is restricted by the article during the period of operation.

5.8 Chapter-VIII: Challenge Proceedings

The right of a supplier or contractor to challenge the decision of procuring entity is reserved by the Law and the procedure is described by the Article 64-69. The challenge to the decision of PE can be best described by the Sub-Article 64(1) of UNCITRAL Model Law as follows:

“A supplier or contractor that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity with the provisions of this Law may challenge the decision or action concerned.”

There are three main types of challenging procedure mentioned in this chapter of law.

1. Appeal to reconsider to PE
2. Appeal to Independent Body
3. Appeal to Court or Courts

Above three processes are described by the three separate articles in details. There are not many descriptions of Court proceedings, only the conditions are described. The first of three process of challenge is defined as to reconsider the decision of PE by any supplier or contractor. The proceeding of Independent body is described in details and all possible outcomes are mentioned in the article 67 of UNCITRAL model Law. The mentioned probable outcomes of Independent Body are listed down:

- ✓ Prohibit PE from acting, taking decision or to proceed
- ✓ Require PE to take decision according to the compliance of Law
- ✓ Overturn in whole or part of the decision of PE
- ✓ Revise the decision of PE
- ✓ Confirm the decision of PE
- ✓ Overturn the award of procurement
- ✓ Dismiss the application
- ✓ Require the compensation of payment

All above decisions are to be challenged by supplier or contractor in Court. The confidentiality of challenge is specifically described in the article 69 of UNCITRAL Model Law. The suspension of procurement decision may or may not be suspended after getting the appeal of review from the suppliers or contractors. The suspension decision has some conditions and review authority is solely authorized for suspension. There are guidelines for non disclosure of information and no public hearing in the event of challenge proceedings other than in Court.

6.0 ANALYSIS AND FINDINGS

The study of STDs is analyzed with comparing to UN procurement manual in several points of considerations. The research question was to find out the similarity and dissimilarity of Standard Tender Documents (Goods) with the rules and procedures of PPR and UN procurement manual with the help of UNCITRAL Model Law of Public Procurement. So, the analysis is confined with those considering following issues:

6.1 Communication Proceedings

The communication is the process of exchanging information. It can be defined as the purposeful activity of exchanging information and meaning across space and time using various technical or natural means, whichever is available or preferred. The communication can be one or both ways. Effective communication is the both way information sharing process which involves one party sending a message or information that is easily understood by the receiving party. The type of communication is as follows:

- ✓ Non-verbal Communication
- ✓ Verbal Communication
- ✓ Oral Communication
- ✓ Business Communication

The communication between the PE and bidders are business communication. The business communication is generally written communication for its applicability as a part of contract and evidence. In the case of procurement of goods, the communications are mainly associated with the following events:

- ✓ Advertisement
- ✓ Invitation
- ✓ Pre-tender meeting
- ✓ Clarifications
- ✓ Submission
- ✓ Addenda
- ✓ Negotiations
- ✓ Request for validity extension
- ✓ NOA and it's publication
- ✓ PO
- ✓ Contract Award
- ✓ Rejection Notice
- ✓ Debriefing

The most of the above events are guided in the Standard Tender Document Goods, PG3 & PG4 and being low value procurement documents; PG1 & PG2 includes a small numbers of them. One of the major differences found in communication procedures especially for high value procurement documents like STDs and PPR 2008 with the UN Procurement Manual is the obligation of debriefing. The debriefing to unsuccessful bidders are optional in STDs and PPR 2008. Categorically it depends upon the request from the Tenderers. All the communications are protected by the disclosure clauses in pursuant to the Rule 31 Of PPR 2008.

However all the communications procedures applicable but the written form of communication is preferred in almost every situation and other forms of communication must be supported in writing and legally authorized. In case e-GP, the rules are said to be formulated separately in PPR 2008 and no indication is shown in STDs. The publications of notices of tender above certain threshold are mandatory in both organizations and CPTU website. This is similar to the publications of notices on UNGM website for UN procurement proceedings. Again, the publications of NOA above threshold are similar to the procedures of publications of award for UN procurement. The advertisements of tenders on newspaper are same with some exception incase of low value procurement of RFQ method. The options for advertisement of tenders are clearly defined by the rules of PPR 2008 with respect to the method of procurements. So the advertisement procedures of STDs are harmonized with the rules of PPR and very much similar to UN Procurement Manual.

6.2 Contract Termination

Termination can be defined as the ending of contract between the parties. The termination of contract may be either in full or partial. There are several types of ending of contract and this is one of the most critical parts of contract. The terminations are mainly dependent on situation. The termination may raise the litigation hazards for both the parties. All parties in to the contract wish a happy and successful ending of contract. A perfect document is said to be have a clear and transparent options of contract termination to avoid the litigation hazards. There are number of options for contract termination described in the STDs of PPR 2008 and also in UN Procurement Manual. The comparative measures for termination of contracts are shown in tabular format below:

Types of Termination	PG1	PG2	PG3	PG4	UN Procurement Manual
Failure to deliver within time	Yes	Yes	Yes	Yes	The clauses of terminations are not clearly specified but procurement from registered vendor gives the opportunity to disqualify the vendor on the ground of ineligibility of supplier which includes all the points discussed here.
Engaged in CFCC Practice	Yes	Yes	Yes	Yes	
Fails to perform any obligations	Yes	Yes	Yes	Yes	
Liquidated Damages reaches it's maximum	Not Mentioned	Yes	Yes	Yes	
Insolvency or Bankruptcy	Not Mentioned	Not Mentioned	Yes	Yes	
Termination for Convenience	Not Mentioned	Not Mentioned	Yes	Yes	
Termination at successful completion	Yes	Yes	Yes	Yes	Yes*

*The contract closure is followed by the evaluation of vendor rating of UN suppliers. The termination clauses protect the PE's right from the unwanted situations but there is very little protection for the Tenderers in STD (Goods) of PPR 2008. All the termination clauses are in favor of PE. The PE may terminate the contract with suppliers giving 28 (Twenty Eight) days written notice by the termination for convenience clauses. In this case, the performed portion of contract or delivered goods and services are paid by the PE according to the contract prices. And the PE can cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier.

6.3 Dispute Resolution

There are a number of dispute resolution techniques available. Some of the dispute resolution techniques are described below.

Negotiation (Amicable Settlement): It is a kind of alternative dispute resolution techniques. Negotiation is voluntary process by which parties attempt to reach a mutually

satisfactory agreement through informal and unstructured discussions. Successful negotiation typically focus on problem solving and trying to satisfying both parties interests without determining who is right and who is wrong. (Wikipedia)

Mediation: It is similar in many respects to negotiation. It is also generally private, voluntary and informal. The focus of Mediation is problem-solving rather than on determining who is right and who is wrong. In Mediation, a mutual third party is chosen by the agreement to help the parties to resolve the dispute. (Wikipedia)

Conciliation: It is a technique whereby the parties to a dispute use a conciliator, who meets both the parties separately and together in attempts to resolves their differences. The conciliator has no authority to seek evidence and usually writes no decision, and makes no award. (Wikipedia)

Adjudication: It is the process of dispute resolution where an independent Adjudicator or Adjudicators reviews the evidence and arguments including legal reasoning set forth by the opposing parties to come to a decision which determines rights and obligations between the parties involved. (Wikipedia)

Arbitration: It is dispute resolution techniques where a dispute is submitted to one or more impartial persons usually experts in the subject matter. The arbitrator decision is private and binding to both parties. (Wikipedia)

The applicable dispute resolution techniques from several STDs and depicted in UN Procurement Manual are shown in a tabular form for ease of comparison.

Sl. No	Dispute Resolution Techniques	Stated and/or Applicable for Contract				
		STD (PG1)	STD (PG2)	STD (PG3)	STD (PG4)	UN Procurement Manual
1	Amicable settlement (Negotiation)	Yes	Yes	Yes	Yes	Yes
2	Conciliation	No	No	No	No	Yes
3	Adjudication	No	No	Yes	Yes	No
4	Arbitration	No	Yes	Yes	Yes	Yes

There is no option of mediation in the above STDs of PPR 2008 and UN Procurement Manual. The applicable rules and law for STD (Goods) of PPR 2008 is Arbitration Act (Act No 1 of 2001) of Bangladesh for national tenders and local Tenderers. In case of international contract, the PE has the right to choose the following options for Arbitration defined in the GCC Clause 47.3(b) of STD, PG4.

- a) UNCITRAL Arbitration Rules
- b) The Rules of ICC
- c) The Rules of Arbitration Institute of Stockholm Chamber of Commerce
- d) The Rules of London Court of International Arbitration

The option to choose one of above four gives the suitability and variety in their contract. But these options are against the process of standardization of contracting criteria and may create difficulty for both the parties. Again selecting of different option for different contract may raise the question of inconsistency from the side of tenderers. For UN procurement the applicable rules are UNCITRAL Conciliation Rules and UNCITRAL Arbitration Rules. So, the dispute settlement techniques applied for STD (Goods) is less legal bound than that of UN Procurement Manual. The litigation applicable for each of the above is completely legally bound. The dispute resolutions in STDs of PPR 2008 are

more focused on informal and amicable settlement. Depending on the complexity the dispute resolution mechanisms are provided in the respective Standard Tender Documents of PPR 2008.

6.4 Eligibility

The eligibility of Tenderers or Bidders means the legal capacity, the technical and financial ability to perform the task to be asked by PE. The eligibility is ensured by some evidences and certificates provided by the Tenderers or Bidders. The legal capacity of Tenderers stated in STDs is verified by the Valid Trade License, Tax Identification Number and VAT Registration Number. Others requirements for ability to perform tasks are identified by the professional registration, years of experiences, eligibility declaration, litigation history, not barred from participating public procurement, eligibility of goods and services and eligibility of subcontractors. The financial capacity of Tenderers in STDs is defined by the criteria of solvency, liquid asset, not in a receivership etc. On the other hand, the eligibility criteria in UN Procurement Manual are categorized into three stages of vendor registration depending on the value of contract estimation. Moreover, UN Procurement Manual describes some extra criteria to promote anticorruption, labour rights, human rights and environment issues. However the comparative scenarios of basic eligibility are shown in following table:

Criteria	PG1	PG2	PG3	PG4	UN Manual
No Prohibition/ Suspension	Require	Require	Require	Require	Require
Not Bankrupt / In receivership	Require	Require	Require	Require	Require
Not Engage in Proscribed (CFCC)Practice	Require	Require	Require	Require	Require
Do not employ staffs who are or have been staff of PE within year.	Not Necessary	Not Necessary	Not Necessary	Not Necessary	Require
Declaration of Eligibility	Require	Require	Require	Require	Not Mentioned
Acceptance of Supplier Code of Conduct	Not Mentioned	Not Mentioned	Not Mentioned	Not Mentioned	Require
Eligibility of goods and services	*Not Mentioned	*Not mentioned	Require	Require	*Not Mentioned
Trade License	Require	Require	Require	Require	Require
TIN Certificate	Require	Require	Require	Require	Require
VAT Registration	Require	Require	Require	Require	Require
Minimum Number of Litigation History	Not Mentioned	Not Mentioned	Require	Require	Not Mentioned

The eligibility of goods and services are not declared in the manuals and STDs but according to the laws of various national and international organizations, no forbidden goods and/or criminal activities as services can be procured under any circumstances. Though some of the criteria not explicitly mentioned in the STDs and UN Procurement Manual are assumed to be implied. The criteria of STDs are well managed considering the method and threshold of procurement. At last, it is seen from the comparative analysis of eligibility the criteria of STDs are almost same as those of UN Procurement Manual.

6.5 Ethical Standards

Ethics can be defined as the perception of doing right or wrong. The ethics can be categorized in several levels such as personal, organizational and industrial. In this study, the ethical standards of procurement systems are analyzed and compared.

The use of ethical standard determines the equitable and transparent use rules for all concerned. As one of the largest organizations, the UN requires a number of standards on ethical issues and it maintains the ethical standard on very high node.

The unethical practices are defined in the STDs and the consequences for those practices are specifically defined. For any kind of unethical practices the PE retains the right to declare the Tenderers ineligible. The issues related to ethical standards of UN Procurement Manual are compared to the STDs in the following table:

Issues of UN Procurement Manual	Applicable			
	PG1	PG2	PG3	PG4
Oath of the office	No	No	No	No
Conflict of interest	Yes	Yes	Yes	Yes
Financial Regulations and Rules	No such financial rules are mentioned.			
Confidentiality or disclosure of information	No	No	Yes	Yes
Financial Disclosure	Yes	Yes	Yes	Yes
Gifts and Hospitality	No	No	No	No
Post retirement restrictions	No	No	No	No
Fraudulent practice	Yes	Yes	Yes	Yes
Corrupt Practice	Yes	Yes	Yes	Yes
Unethical Practices under United Nations Supplier Code of Conduct	No	No	No	No
Bribery	Not separately mentioned, but included in corrupt practices.			
Extortion or Coercion	Yes	Yes	Yes	Yes
Collusive or Bid Rigging	Yes	Yes	Yes	Yes

Some of the ethical standards mentioned in the UN Procurement Manual are only applicable for their procurement. Again some issues related to ethical use are in more elaborated form in UN Procurement Manual than that of STDs.

In STDs, the unethical practices are defined by four points of Corrupt, Fraudulent, Coercive and Collusive practices. Only other very important ethical issues are clearly mentioned in all the STDs is the conflict of interest. From the above comparative table of ethical issues, it can be said that the minimum requirements for procurement is fulfilled in the STDs. Other issues are related to the formulation of laws and code of conduct that require legal support of other laws in jurisdiction of procurement act, PPA 2006 and rules, PPR 2008.

6.6 Incentives

The incentives can be defined as the system or mechanisms by which the performance of the suppliers enhanced or accelerate to finish. There are both positive and negative types of incentives available in practice. There are no options of positive incentives for the bidders except advance payment options. And this advance payment option is very much restricted and applicable in certain circumstances.

The liquidated damage is very common negative incentive mechanisms to promote or energized the supplier to deliver on time. The liquidated damage is applicable in case delay in delivery of goods and services or to perform works on time. The severity of liquidated damages can be varied depending on the situation. In case of the STD (Goods), the amount of liquidated damage is guided by the percentage of total contract price per day and fixing the limit of maximum amount. However, the study of the Standard Tender Documents Goods identifies some of the conditions that can be considered as negative incentives, like deposit of performance security and forfeiture of tender security.

The incentives mechanisms for UN procurement Manuals are more wide and applicable in various issues than that of the STDs of PPR 2008. The applicable incentive mechanisms of UN Procurement Manuals are listed below:

- Advanced payment
- Progress payment
- Fixed Price with Escalation
- Cost Plus Pricing
- Fixed Fee

However the less incentive mechanisms for goods procurement by the PPR 2008 is reflected in the STDs and for simple procurement and fixed price principles of makes it easier to apply and riskier & costlier for the PE in the long run. The loss is minimized by the preferred competitive tendering method and single contract basis contracting.

For longer term relationship, the STDs (Goods) are less feasible than the terms and conditions mentioned ion the UN Procurement Manual. Incase of volatile market conditions, the procurement with the terms and conditions of these STDs (goods) are very difficult to conclude and PE may fail to procure within require time and as and when require.

6.7 Liquidated Damages

According to the UN Procurement Manual, the liquidated damages can be defined as the amounts which a party to a contract agrees to pay as damages, if the party breaches an obligation. The amount of Liquidated Damages must be arrived at in good faith and must be based on an estimate of the actual damage that will ensue from the breach.

But the total amount of liquidated damages is fixed by the GCC Clauses and the rate of liquidated damages is also defined within certain percentage per day by the Clauses of

STDs. This is done to make the liquidated clause easy to apply and simply understandable for all concerned with the contract. But according to the definition of UN Procurement Manual and others like CIPS Books, the amount of liquidated damages must be based on actual estimate of damage that will occur from the breach. Again there is no mention of liquidated damages in low value procurement documents like STD, PG1.

Generally, Liquidated Damages are required and the UN shall require a fixed percentage of the contract value per day or week or other time period that the work is not completed or the goods or services are not delivered, up to a reasonable maximum percentage of the contract value, normally no more than 10 %. Instead of 'per day' rates for failure to perform, a fixed amount is more appropriate for certain types of procurement. (UN Procurement Manual)

Finally with some very few exceptions the applicability and amount of liquidated damages clauses of STDs are harmonized with UN Procurement Manual, UNCITRAL Model Law on Public Procurement and PPR 2008.

6.8 Payment Procedures

The payment procedures of all STDs are almost same and on the basis of delivery and acceptances. The PE reserves the right to deduct or retain the security deposit from the payment. Generally no advance payment or progress payment is allowed by the STDs in pursuant to the rules of PPR2008 for goods procurement. The cent percent payment is made after the acceptance of delivery of goods and related services. The payment schedule for several STDs and UN Procurement Manual are tabulated below:

Terms & Conditions	PG 1	PG2	PG3	PG4	UN Procurement Manual
100% Payment	Yes	Yes	Yes	Yes	Yes
Advanced Payment	No	No	No	No	Yes
Progress Payment	No	No	No	No	Yes
Refund Schedule of Performance Security	21 Days (Security Deposit ¹)	28 Days	28 Days	28 Days	30 Days
Amount of Performance Security	Not required	10% (5% For LTM)	10%	10%	10%
Form of Performance Security	Not Applicable	Bank Draft or Pay Order or Unconditional BG	Bank Draft or Pay Order or Unconditional BG	Bank Draft or Pay Order or Unconditional BG	Cash Deposit ³ or Letter of Credit or BG or Surety Bond or Retention of Payment or Other forms of Security
Form of Tender Security	Not Applicable	Bank Draft or Pay Order or Unconditional BG(Not Applicable ²)	Bank Draft or Pay Order or Unconditional BG	Bank Draft or Pay Order or Unconditional BG	Cash Deposit or Certified Check or Letter of Credit or BG or Surety Bond or Retention of Payment or Other forms of Security ⁴

1. In case of PG1, no tender and performance security is required in pursuant to the Rule 70(6) of PPR 2008. But the security deposit is retained from the bill of payment.
2. In case Limited Tendering Method by the STD, PG2, no tender security is required.
3. In exceptional cases, cash deposit is allowed by the permission of UN/PD
4. Other forms of securities are applicable in consultation with the OLA.

6.9 Pricing Mechanisms

There are several types of pricing mechanisms are mentioned in UN Procurement Manual. The advantages and circumstances of applications are also explained in UN Procurement Manual.

The study identifies the pricing mechanism of STD (Goods) and that is unit rate basis. The rate generally remains fixed over the contract period for PG1 and there nothing mentioned in other STDs. The currency of contract price is mentioned as BDT in PG1, PG2 and PG3. Incase of international procurement by the STD, PG4; there are options for other currency as allowed by the PE. In general, the rate remains fixed for goods and related service procurement with very special circumstances, the adjustment of price is allowed. That means, the pricing mechanism of STDs can be defined as Firm Fixed Price without escalation. The applicable pricing mechanisms are listed in the following table:

Sl. No	The Pricing Mechanism	Stated and/or Applicable in STDs or Manual				
		STD (PG1)	STD (PG2)	STD (PG3)	STD (PG4)	UN Procurement Manual
1	Firm Fixed Price without escalation	Yes	Yes	Yes	Yes	Yes
2	Firm Fixed Price with escalation	No	No	No	No	Yes
3	Fixed Fee	No	No	No	No	Yes
4	Cost plus Pricing	No	No	No	No	Yes

Being applicable for goods, works and services all kinds of pricing mechanisms are mentioned in the UN Procurement Manual. For example 'Fixed Fee' pricing mechanisms are suitable for services only. However, the only applicable pricing mechanism for STD (Goods) is Firm Fixed Price without escalation. So the pricing mechanism of the STD (Goods) of PPR 2008 is said to be less flexible than that of the UN Procurement Manual. The less flexibility of pricing arrangements makes the STDs simple and easy to application. On the other hand less flexibility of pricing is not much attractive for the bidders or Tenderers in the longer term contract and the contract becomes less sustainable in volatile market where the price fluctuations is very common. And in the long run, the PE incurs more cost for the goods, works and services.

For the sake national interest of Bangladesh in pursuant of the Rule 83 of PPR 2008, the 'Domestic Preference' is allowed for international tendering and therefore by the STD, PG4. The domestic preference for the goods and services are limited by maximum 15 (fifteen) percent of the contract prices in the Schedule II of PPR 2008 and the calculation procedures for domestic preferences are described by the Sub-Rule 98(21)(e) of PPR 2008.

The conversion of single currency is defined in the STD, PG4 by the selling exchange of the Central Bank of Bangladesh, Bangladesh Bank. The price adjustment provision is applicable on special cases and for complex contract of more than 18 months long in pursuant to the Rule -5 of PPR 2008. The taxes, duties, fees and such other levies are generally paid by the Tenderers and the conditions are pretty similar in all STDs, UN Procurement Manual, UNCITRAL Model Law on Public Procurement and PPR 2008.

6.10 Scope of Supply

The scope of supply can be defined as the quantity delivered by the Supplier within the schedule of delivery or the change in quantity from the original schedule. The option of

change in scope defines the flexibility of contract and the limit of that change needs to have a ceiling. The applicable issues related to the delivery of goods are stated in table below:

Topic	Applicable for				
	PG1	PG2	PG3	PG4	UN Manual
Testing, Inspection and open to examination.	Yes	Yes	Yes	Yes	Yes
The point of delivery	Yes	Yes	Yes	Yes	Yes
The country of origin, model and specification declaration by Bidders	Yes	Yes	Yes	Yes	Yes
Variation in quantity without change in price.	No	No	Yes	Yes	Yes
Payment for Partial delivery.	No	No	No	No	Yes
Early Delivery clause	No	No	No	No	Yes

The comparative table of delivery terms and conditions shows the scenario of the STDs. For low value procurement, no variation of quantity is allowed and to restrict the use of some certain types of tendering method. The partial payment is not applicable for any of the STDs (Goods) in pursuant to the rules of PPR 2008. The UN Procurement Manual insists on the negotiated terms and conditions of delivery as well as options of schedule and variation of scope. The payment for partial delivery in UN Procurement manual is allowed with certain conditions and require necessary amount of security. The earlier delivery than the schedule brings no effect on the Tenderers as per the terms and conditions of the STDs (Goods) but the earlier delivery options has important role on evaluation of Bids according to UN Procurement Manual.

Finally in the context of delivery terms and conditions, the STDs (Goods) are well harmonized with PPR 2008 and the clauses are almost same for those STDs.

6.11 Time

Time is very important for procurement of goods and services. Right time is one of the R of 'Five R' of procurement that ensure the efficiency and effectiveness of the PE. Time or schedule also provides the concerned a guideline of doing the task. It helps to measure the performance of both the Bidders and PE. The very tight schedule means the less flexibility for the suppliers and may raise the questions ethics and legal issues. Again flexible time or schedule may costs extra and wastage of time only. Incase of very tight schedule, the supplier may cut the cornerstone and/or demand more prices for the delivered goods and services.

Being legal issue, the timeline for procurement is defined in the STDs clearly for the convenient use by the concerned parties. The time schedule for various issues procurement of STDs is shown in table below:

Issues/Criteria	PG1	PG2	PG3	PG4	UN Procurement Manual
Warranty Period	3-6 months	12 months	12 months	12 months	Not Defined
Clarification Response	Not Applicable	Not Defined	5 Days	5 Days	Not defined
TS validity beyond expiry	Not Applicable	28 Days	28 Days	28 Days	Not defined
NOA issue after approval	7 days	7 days	7 days	7 days	Not defined
Acceptance deadline	Not defined	Not Defined	14 Days	14 days	Not defined
Payment deadline	Not defined	Not defined	Not defined	Not defined	30 days
Time extension by PE	Not Applicable	20%	20%	20%	Not defined
Contract Signing Deadline after NOA Issuance	28 Days	28 Days	28 Days	28 Days	Not defined

The most of the cases the timeline is not defined in the procurement manual as it is only the guideline for procurement rules. The options mainly depend on the PE to decide the timeline for procurement related issues. But one of the most important issues are defined in UN procurement Manual is the payment deadline. However, the fixed timeframe for issues of procurement makes the STDs more effective and easily understandable to all concerned. Again some of the issues are not defined for low value procurement and some issues can be modified by the PE who uses the STDs.

7.0 CONCLUSION AND RECOMENDATION

At this part of conclusion, the study of STD (Goods) of PPR 2008 those are actually the form application of the Law, PPA 2006 and Rules, PPR 2008, this is necessary to mention the causes of introducing that Act and Rules. In the awake of new millennium, the procurement reform process of Bangladesh is started and the CPAR was published in 2002. The deficiencies found and mentioned in the CPAR for Bangladesh are as follows:

- ✓ Absent of Legal Framework
- ✓ Bureaucratic procedures leading to delay in decision making
- ✓ Lack of competent staff to carry out procurement functions
- ✓ Poor quality of documentation
- ✓ Ineffective contract administration

The consideration of the above lacking makes it easy to conclude the study. The other report like ‘Assessment of implementation of public procurement regulations’ by the World Bank finds various difficulties on several issues including the issue related to the tender documents and their low thresholds. However, the conclusive findings of the study are described in the following paragraph.

7.1 Conclusion

At this part of conclusion, it is relevant to find out the answer of research question from the objective of the study.

The STDs (Goods) are different from the application point of view and the method of tendering. The STDs, PG1, PG2, PG3 and PG4 are prepared for either different tendering methods or different threshold value. All the STDs are started with the guidance of application for all concern who wishes to use those documents. The STDs are well harmonized in principles of PPA 2006 and PPR 2008. For simplification, the low value STDs like PG1 and to some extent PG2 are in lack of clear set of clauses in pursuant to the rules of PPR 2008. But the clarifications and any questions related to procurement are referred to the PPA 2006 and PPR 2008 makes the STDs completely tuned with the tone. Two major defaults of STDs found that they are still in draft format and some of the STDs like PG5, PG6 and PQG are yet to be formulated and found in CPTU website.

The similarities and dissimilarities between the STDs and the principles of UN Procurement Manual are stated as per the issue of this study. There are more issues to find out the comparative status between the STDs and UN Procurement Manual like the study 'Comparison of Intellectual and Professional service contract evaluation procedure: PPR-2008 Vs World Bank and ADB'. (Islam 2013)

The study finds a number of dissimilarities and also a good number of similarities between the STDs and UN Procurement Manual. The dissimilarities found can be described as minor deviation considering the context of procurement and organizational structure. The study finds that the objectives of PPR 2008 vary from that of UN Procurement Manual. So the STDs (Goods) are more inclined to those objectives to ensure the efficiency, accountability and transparency. The environmental issue is absent in all STDs and PPR 2008. Only the PE can take necessary steps for environmental consideration through setting the clauses and preparing specification accordingly. The PPR 2008 and the STDs have prejudice to efficiency and that is why almost all major activities are time bound by the rules.

The public procurement is mainly concern with social development issue and dedicated for people. The PPA 2006 and PPR 2008 are formulated to protect the greater interest of the people of Bangladesh. A vital point of 'Triple Bottom Line' of procurement, social issue is not clearly mentioned in PPR 2008 and hence in the STDs. For improvement of the STDs, the following possible steps could be taken:

- The similar clauses are indicated by same number in all the STDs for convenient use.
- The threshold value of STDs could be updated regularly.
- All the STDs are to be prepared and finalized soon.
- The environmental issues could be included to ensure responsible procurement.
- The social issue could be included.
- The timeline could be modified especially for low value procurement.
- The emergency procurement document could be formulated.
- The options for Applicable Arbitration Rules could be limited to one or maximum two for consistency of contract.
- The Small and Medium Enterprises could be addressed and facilitated for greater national interest.

If the STDs could be modified accordingly to ensure sustainable and responsible procurement, the private organisations would be motivated to use the STDs (Goods) as Model Form Contract. Finally for the greater interest of society, environment and the people of all the STDs and PPR 2008 could be modify and update.

7.2 Recommendation

There are some limitations while performing this dissertation like the study has been confined with literature review especially the comparison of some procurement related issues from the STD with the respective and relevant issues of UN procurement manual. The standard tender documents are prepared for various threshold value and solicitation procedures. If all the aspects of STD (Goods) are taken into consideration for comparison with the similar bidding documents of UN procurement then the findings will be more specific and accurate. Again the questionnaires to the relevant subject matter experts both STD (Goods) of PPR and UN Procurement system will make the findings more practical, critical and problems oriented to the subject matter.

The study considers the selected issues those are very generalized to all kind of procurement methods. If the comparison considers the methods of procurement for critical review then the future studies will be more subjective and comprehensive. Moreover the findings and analyses of the study can be used for further topic related studies in future.

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