

Bangladesh

Legal and institutional framework

Bangladesh has recently reformed its legal and institutional framework governing public procurement. In 2003, the Public Procurement Regulations were passed at the executive level, along with binding implementation procedures. These comprehensive regulations were largely inspired by the UNCITRAL Model Law on Procurement of Goods, Construction, and Services. Further reforms that mainly attempt to pass a procurement framework at the level of a parliamentary law are currently under way. The current legal framework is binding for all procuring agencies at all State levels; they also extend to some enterprises that spend government or development funds. The Government can decide not to apply rules in the interest of national security and defense. Like the UNCITRAL model law, the Procurement Regulations do not cover issues like the needs assessment or the project implementation, phases that are particularly exposed to corruption. The framework therefore does not provide for particular safeguards against corruption-induced creation of “needs” or delivery of substandard goods, works, and services.

The Public Procurement Regulations 2003 establish a Central Procurement Technical Unit (CPTU), which evaluates and oversees the implementation of the procurement regulations, issues guidance and policies, coordinates training, and keeps a list of debarred suppliers. Actual purchases are conducted in a decentralized manner by each ministry, department, or other authority. For procurement exceeding BDT25 crore (about USD3,800,000), the approval of the Cabinet Committee on Government Purchases is required.

Procurement methods and procedures

The procurement regulations designate open tendering as the standard procurement procedure. Other procurement methods such as restricted tendering or direct procurement may be applied for low-value procurement and emergency procurement, and under various other conditions enumerated in the regulations. Detailed descriptions of the conditions that allow the application of a procurement method other than open tendering, as well as certain requirements for approval by a superior body, are aimed at ensuring that such conditions are not created or purported in an abusive manner.

To ensure wide participation and thus reduce the risk of collusion or failure of the tender, information about open tenders must be advertised in Bengali- and English-language daily newspapers and, if their value exceeds BDT1 crore (about USD150,000), on the CPTU central Web site. The CPTU Web site also provides information about relevant regulations and guidelines, thereby contributing significantly to the transparency of the regulatory framework.

The bid evaluation and the selection of the winning offer are conducted by committees established within each procuring entity. These committees consist of at least five members, two of whom should be procurement experts not affiliated with the procuring entity. The lowest price is the prime selection criterion, but other criteria can be factored into the evaluated price. The procurement regulations impose mandatory disqualification for the submission of any false information. While this rule may deter dishonest bidders, the fact that the conditions for disqualification are rather broadly defined may also lead to their abuse by corrupt procurement agents to disqualify unwanted suppliers.

Safeguarding and enforcing integrity

Bangladesh applies the general codes of conduct for public officials to procurement personnel; procurement-specific provisions that would take into account the particularities and risks of public procurement have not been adopted. The existing code of conduct prohibits public officials from accepting any advantage or gift.

In addition to the abovementioned mechanism of mandatory disqualification of bidders that have submitted false information for participation in a single tender, such bidders can be generally debarred from access to government contracts for a specified or unlimited period of time. The procuring entities themselves have discretionary power to decide on debarment. The procurement regulations do not provide any further guidance or criteria for the application of this sanction despite its important economic impact and despite the risk that this sanction may be abusively imposed to extort bribes or undermine competition.

Bangladesh has established an administrative complaint mechanism that allows addressing complaints directly to the concerned procuring entity; appeals are handled by a review panel that is independent from the procuring entity. Complaints have to be submitted within seven calendar days and appeals within three calendar days. Judicial review of the procurement decision is possible in addition to the administrative complaint mechanism.

In support of these review procedures, procurement entities are obliged to keep records and documents of the proceedings for at least five years. The minimum content of these documents is stipulated in the procurement regulations. Any concerned person may consult the documents from the moment of the closure of a contract or the proceedings.

A way forward

Bangladesh is encouraged to pursue its plans to pass the constitutive elements of its procurement framework at the level of a parliamentary law. In this context, Bangladesh is invited to consider extending regulations to encompass the phases of needs assessment and the delivery and implementation phase with a view to further strengthening existing anti-corruption measures in these crucial phases of procurement.

Bangladesh is encouraged to review the provisions and conditions for disqualification and debarment of suppliers with a view to specifying proportional conditions in order to protect these sanction mechanisms against corruption-induced abuse.

To strengthen the effectiveness of its administrative review mechanisms, Bangladesh is further encouraged to consider whether enough time is provided for submitting complaints.

Relevant documentation

Central Procurement Technical Unit: <http://www.cptu.gov.bd/cptu.aspx>