

**SRI LANKA
COUNTRY PROCUREMENT ASSESSMENT REPORT**

**VOLUME II
DISCUSSION AND ANALYSIS OF FINDINGS**



**SOUTH ASIA REGIONAL PROCUREMENT UNIT
THE WORLD BANK**

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ABBREVIATIONS AND ACRONYMS

ADB	Asian Development Bank
BOO	Build, Own, Operate
BOT	Build, Operate, Transfer
CATB	Cabinet Appointed tender Board
CF	Consolidated Fund
CFAA	Country Financial Accountability Study
CIABOC	Commission to Investigate Allegations of Bribery or Corruption
CPAR	Country Procurement Assessment Report
DTB	Departmental Tender Board
ERD	External Resources Department
FR	Financial Regulation
GCC	General Conditions of Contract
GOSL	Government of Sri Lanka
HOD	Head of Department
ICB	International Competitive Bidding
ICTAD	Institute for Construction Training and Development
IDA	International Development Association
JBIC	Japan Bank for International Cooperation
LC	Letter of Credit
LD	Liquidated Damages
M	Million
MOF	Ministry of Finance
MOU	Memorandum of Understanding
MTB	Ministerial Tender Board
NCB	National Competitive Bidding
NCCASL	National Construction Contractors Association of Sri Lanka
NDO	New Delhi Office of World Bank
PD	Project Director
PRA	Procurement Regulatory Agency
PSB	Procurement Support Bureau
PTB	Project Tender Board
RFP	Request for Proposals
Rs.	Rupees (Sri Lanka)
SBD	Standard Bidding Document
SCC	Special Conditions of Contract
TA	Technical Assistance
TB	Tender Board
TEC	Tender Evaluation Committee
TNA	Training Needs Analysis
UNCITRAL	United Nations Commission on International Trade Law
WB	World Bank

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PREFACE

Date and Basis of Report

The World Bank, with the agreement of and in association with, the Government of Sri Lanka (GOSL), carried out a comprehensive assessment of the Public Procurement System in the country. The review was carried out during the period April to November 2002 and addressed all the issues listed in the Initial Concept Memorandum (ICM) approved in February 2002. The outcome of the review is this Country Procurement Assessment Report (CPAR), which has been reviewed internally by the Bank and by the Government of Sri Lanka. Recommendations from the Government have been incorporated in the final report and action plan. In particular, GOSL's recommendation to implement an accreditation system to professionalize procurement is a notable inclusion. A workshop will be held in Summer 2004 to disseminate the findings and recommendations of this report. A Technical assistance grant of around US\$0.75 million has been proposed to assist the Government in implementing an agreed Action Plan.

The CPAR team comprised Deepal Fernando, Implementation Specialist (Task Leader), K.N Venkata Raman and Narayan D. Sharma (Consultants) and W.D. Jayasinghe, Additional Director General of Public Finance and Project Director, Public Expenditure Management Systems Project and Procurement Support Bureau, Sri Lanka. The report was prepared under the close guidance of William B. Herbert, Operations Advisor, World Bank Colombo Office. Advisory support was provided by A. Litvak, Regional Procurement Manager and S. Krishnan, Senior Procurement Specialist, of the World Bank South Asia Regional Procurement Hub, Peter Harrold, Country Director, World Bank Colombo Office, and Faiz Mohideen and N. Pathmanathan, Deputy Secretaries, Treasury, Ministry of Finance, Sri Lanka.

The report is presented in two volumes: Volume I is the Summary Report and Volume II is the Detailed Report. Vol. I describes the key findings on the effectiveness and transparency of the present Public Procurement System and includes a recommended action plan for improving the system. Vol. II presents the in-depth study of the existing Financial Regulations, Guidelines and the legal system in relation to procurement (in the absence of a Public Procurement Law), procedures followed for Government-funded programs vis-à-vis those funded with external assistance, standardization of documents, and the organizational setup for procurement processing and implementation, together with a General Risk Assessment.

Public Sector

1. *Legal and Regulatory Framework*

1.1 *Regulations, Guidelines and the Law*

1.1.1 *Regulations*

The Constitution of Sri Lanka has no special provision regarding award of contracts. Under Article 44 (1) (a) of the Constitution, the President may assign any subject/function to a Minister/Ministry. In pursuance of this, the President has assigned to the Minister of Finance the subject of the “Government Financial Regulations, Interpretation and Amendments.” The Financial Regulations were originally published in 1966 and Chapter XIII laid down the rules to be followed for procurement of works, goods and services. **Apart from this there is no central law or provincial law regulating public procurement.**

Amendments to the Financial Regulations were issued from time to time. Financial Regulations 1966 was replaced by Revised Financial Regulations 1992, including all amendments issued up to 31/12/1991. The Foreword stated as follows:

“ these Regulations have been approved by the Hon. Minister of Finance and will come into from a date to be gazetted. The Financial regulations are binding on Ministries, Departments, Statutory Bodies and all Employees. In the case of Government Corporations too, these Financial regulations will apply unless they have duly adopted their own comprehensive Financial Rules and Procedures. In the case of Divisional Secretariats, the Regulations will apply in addition to the Guidelines already issued by the General Treasury. The Financial regulations will, over-ride the Guidelines, if there is any discrepancy.”

Para 03 of the “Authority” issued by the Ministry of Finance on October 29, 1993 states as follows:

“The Minister of Finance has ordered that in respect of matters such as the procurement of supplies, tender procedures and the execution of works, referred to in Chapter XIII of these Regulations, a Head of Department may, in appropriate circumstances, deviate from the procedures laid down, if he is satisfied that such deviation is necessary in the public interest. Full reasons for doing so should be recorded and the Head of the Department should justify his action. Each such variation should immediately be reported to the Secretary to the Ministry, Director General, Department of Public Finance of the Treasury and the Auditor General. Where such deviation is necessitated by the neglect, delay or default on the part of any officers, their names should also be reported and appropriate action taken against them”

The Regulations hail from pre-independence British days although updated periodically. They did establish a reasonably good framework for tender and contract procedures, but by post liberalization standards and context, they were outdated, somewhat archaic and non-transparent. It could not prevent the occurrence of

irregularities and corrupt practices. Due to its complexity, finalization of contract awards took unusually long periods.

1.1.2 Guidelines

In order to keep the procurement process fully transparent and honest (ensuring a level playing field for all tenderers), speed up the process, and obtain financially the most advantageous and qualitatively the best services and supplies for the country, the Ministry of Finance and Planning closely examined the Financial Regulations 1992 and issued on September 30, 1996 'Guidelines on Government Tender Procedure' in two parts: Part I – Procurement financed by Public Fund including Donor Funds (collating all the instructions, strengthening procedures and assisting users by introducing features such as checklists, specimen forms and standard documents etc.); and Part II – Private Sector Financed Projects (comprehensive procedure to be followed in dealing with BOO, BOT Projects). The main objective of the Guidelines as observed by the President of Sri Lanka and Minister of Finance and Planning in the preface to the document and also stated in the Public Finance Circular No. FIN-350 of 1996.11.12 is to expedite procurements and reduce delays, especially in foreign funded projects while obtaining the maximum economic advantage to the nation keeping in line with the Government's policy of transparency.

Vide above Public Finance Circular No.FIN-350 addressed to all the Secretaries the Ministries, Heads of Departments, Heads of all Government Corporations, Statutory Bodies, fully owned Government Companies, Chief Secretaries of Government Councils and Heads of Local Authorities, the Government communicated the decision to implement these Guidelines in respect of procurement of works, services and supplies and disposal of public assets by all Government Agencies with effect from 01/12/1996 and further that the Government had also decided to direct all the Provincial Councils and Local Authorities to follow these Guidelines as a national Policy with effect from the same date.

The circular further added as follows:

“Corporations, Statutory Bodies and fully owned Government Companies which may have their own Financial Manuals duly adopted are requested to amend them accordingly in line with these Guidelines. Provincial Councils having their own Financial Regulations approved by respective Governors are also requested to amend their FRR accordingly or adopt these Guidelines. However, Provincial Councils may stipulate reduced financial limits for small Departments if they are of the view that these limits are excessive.

The Treasury has already taken steps to launch a series of seminars for the introduction of these Guidelines and a wide discussion thereon with the assistance of MOF/ADB Financial Management Project. The Department of Public Finance will organize these programs in collaboration with the Department of State Accounts and the Department of Public Enterprises. Please ensure that all senior officers involved in procurement participate in these seminars”

The introduction of the Guidelines was an epoch-making step and ushered in procurement reforms in the Country.

With the experience gained in implementing the Guidelines and with useful feedback from individuals and from seminars held on the subject, the Department of Public Finance, General Treasury issued Revised Guidelines vide Public Finance Circular No. Fin-352 dated September 25, 1997 to be implemented with effect from 1/11/1997 by all

Government institutions inclusive of Ministries, Departments, Public Corporations and Statutory Bodies, Government Companies (having more than 50% ownership by the government), Provincial Councils and Local Authorities including Pradeshiya Sabhas, for the procurement of works, services and supplies and disposal of government assets.

The circular cited the following specific changes in the revised Guidelines:

- Equal treatment for foreign as well as local tenderers in International Competitive Bidding;
- Mandatory ICTAD registration and NACCSL membership for works procurements beyond Rs.5M;
- Use of SBDD prepared by ICTAD for works procurement with necessary amendments to fall in line with the Guidelines;
- Establishment of Project Tender Boards;
- Introduction of Bid Opening Committees;
- Use of SBDD prepared by donor agencies for the projects funded by them;
- Allowances for members serving on Technical Evaluation Committees and Tender Boards;
- Acceptance of guarantees issued by authorized Insurance Companies; and
- Streamlining procedure relating to extra contractual payments.

The applicability of the Guidelines is the same as for the original Guidelines.

The circular added as follows:

- “8. Necessary amendments to Financial Regulations to fall in line with these Guidelines will be introduced early and until such time these Guidelines will supersede Chapter XIII of FR-1992
10. All the circulars issued hitherto by the Treasury and Department of Public Finance relating to the subjects of tender and procurement are hereby repealed. Even in situation involving hitherto issued by the Department of Public Enterprise on the subject, this book will prevail.
6. Part II of this book on ‘Private Sector Finance Projects – Revised Edition’ will be issued separately and until such time Part II of the earlier Guidelines will be in operation.”¹

The Ministry of Finance and Planning issued the Revised Guidelines on Government Tender Procedure for Projects assisted by Foreign Financing Agencies vide Public Finance Circular FIN 350(1) of December 6, 2000 (effective from December 15, 2000) repealing Chapter XIII of the Revised Guidelines, August 1997. With further experience gained in the implementation of the 1997 Guidelines, the Ministry of Finance has prepared a Second Revised Edition - February 2002 of Part I - incorporating the amendments and clarifications issued from time to time. This is still under review and yet to be issued.

¹ The revised Part II has been issued vide Finance Circular FIN 355 on January 23, 1998 with implementation effective from March 1, 1998.

1.1.3 Procurement Law

The basic contract law has no specific provision directly bearing on Public Procurement. Other than the Financial Regulations and the Guidelines, there is no separate body of laws that regulates Public Procurement. However other bodies of the law regulating the procurement related aspects are: Unfair Contract Terms Act, The Sale of Goods Ordinance, Labour, Taxes, Customs, Insurance, Banking, Export & Import and Foreign Exchange Control.

The system is reasonably clear and consistent. The source of the Financial Regulations is through the Allocation of Duties by the Minister of Finance acting under the powers vested on him/her by Article 44 (1) (A) of the Constitution. **The Financial Regulations and Guidelines are approved only by the Minister of Finance/Cabinet and not by the Parliament**². These Rules and Guidelines are applicable to the entire public sector procurement process with a proviso that the local councils could establish lower thresholds for the delegated authority for approval.

Discussion with the Secretary, Ministry of Justice revealed that the Courts have accepted that the provisions of the Guidelines have the force of Law on Procurement issues. In this connection, Supreme Court judgment in the case: SmithKline Beecham Biological S. A. and Another v. State Pharmaceutical Corporation of Sri Lanka and Others (April 16, 1997) is most relevant. Honorable Supreme Court Justice, Dr. Amerasinghe, while delivering judgment on a procurement related case drew attention to provisions of Article 12(1) of the Constitution, stating “With great respect, I am unable to accept the view that “law” in Article 12(1) is confined to the enactments of Parliament. In my view law includes regulations, rules, directions, instructions, guidelines and schemes that are designed to guide public authorities. If they contain provisions that are impermissible in terms of the provisions of Article 12 (1), or if in their application the guarantee of article 12(1) are violated, they must be declared unconstitutional”. Preceding this, his Honour made reference to the contents of Article 12(1) which states that “All persons are equal in the law and are entitled to the equal protection of the law”. The fifty-six page judgment published by Sri Lanka Law Reports makes references to the Guidelines and their provisions extensively. From the judgment, inference can easily be drawn that the Guidelines have the full force of law.

Several member countries of the Bank have Public Procurement Law enacted by Parliament, which alone can change it, dealing with public procurement of goods, works and services by governmental entities at all levels, and most often both for central authorities as well as for those at provincial or community level. Only very few countries today still follow a different approach, as the one used in Sri Lanka, represented by Financial Regulations and Guidelines. Rules of this nature (though having the force of Law), which govern the use of huge amounts of public funds, should be difficult rather than easy to change and they should be changed only in a public and transparent manner. For most developing countries, the United Nations Commission on International Trade Law (UNCITRAL) model on procurement of Works, Goods and Services has formed the basis for National Procurement Legislation. Nonetheless, since Sri Lanka’s Guidelines have been accepted as having the force of law, the continued use of the Guidelines, as strengthened based on the

² GOSL is processing the enactment of the Finance Act, which will stipulate that all contracts shall be awarded following the Procurement Rules and Regulations.

recommendations of this CPAR, would be deemed satisfactory, at least for the near term.

1.1.4 Conclusion

Though the Guidelines have prescribed the procedures which have the force of Law on Procurement Issues, the Guidelines are easily amenable for amendment by the Ministry of Finance without going through Parliament. The Guidelines have some inbuilt flexibility and discretionary provisions which may result in abuses. Introduction of a Procurement Act and Rules to govern public procurement and passed by the Country's Parliament will substantially improve transparency, reduce possible abuses, and malpractices and enhance public confidence in the system.

1.1.5 Recommendations

1. Considering the commitment of the State and level and ease of acceptability of the Guidelines, both by interested parties as well as the judiciary, the GOSL may consider enactment of a Procurement Law as deemed necessary in the long term. GOSL will be in a better position to decide whether the process, as set out under the Guidelines, should be endorsed through legal enactments, following experience with Guidelines revised to take into account recommendations of this report.
2. Though a commendable effort has gone into the drafting of the Guidelines, they need revision to include provisions that have not been covered and exclude those items which shall be covered by the Standard Tender Documents. To avoid duplication and possible inconsistencies, clear cut demarcation of provisions should be ensured in drafting the Act, Guidelines and SBDs. The Guidelines and SBDs currently in force, pending enactment of the Act, should be appropriately revised to remove ambiguities and inconsistencies.

1.2 Appeals/Challenges

Paragraph 19 of the August 1997 Guidelines reads as follows:

- “19. The Cabinet will also appoint a standing Appeal Board as a reviewing Body to entertain any complaints regarding the recommended award by a CATB on any Tender “

The procedure of Appeal and its disposal is prescribed in paragraphs 136 to 138, which reads as follows:

- “ 136. In the case of a CATB, the Secretary to the Ministry concerned will, within one week of the determination inform in writing, all tenderers who responded to the Tender Call, the intention to award the tender to the successful Tenderer and request that if there is any representation to be made against the determination, such appeals should be submitted in writing to the tender Appeal Board with a copy to the Secretary of the Ministry concerned. Simultaneously, a Cabinet Memorandum should be submitted under the hand of the Minister, forwarding the reports of the Tender Board and the TEC, with the recommendations of the Minister.

137. An appeal against an award should be lodged with the Appeal Board within one week of the intimation of the determination. The appeal should contain all material required to support the averments and should be self-contained for the Board to arrive at a conclusion. Oral submissions will be entertained only at the discretion of the Board.
- 138.1 The Appeal Board shall report to the Cabinet, through the Secretary to the Cabinet with a copy to the Secretary of the relevant Ministry within two weeks of an appeal being lodged. The appeal Board will determine its own procedures for expeditious inquiry and disposal of representations.
- 138.2 In the case of DTB and MTB the relevant Head of Department or Secretary to the Ministry shall take appropriate actions, if an appeal is voluntarily received.”

Para 223 of the December 2000 Guidelines (Foreign Assisted Projects) states that the procedure as given above for lodging appeals with the Appeal Board is applicable in respect of determination on procurement funded by Foreign Financing Agencies.

Though the Guidelines have provision to deal with appeals from unsuccessful tenderers, the Appeal Board is constituted by the same authority (Cabinet) which also approves the tenders above the prescribed threshold. To inculcate confidence in the minds of the contracting business community, and to create a perception of impartiality in the disposal of appeals, the Appeal Board should be an independent judiciary body/quasi judiciary or alternatively, a body outside the purview of the Tender Accepting Authority, located in the President’s Secretariat, manned by persons of high integrity, equipped with the requisite knowledge. In order to discourage frivolous challenges, a system of deposit (which could be forfeited, should the appeal be determined frivolous) could be introduced. A time frame of 30 days may be prescribed for disposal of the appeal/challenge. The Appeal procedure should be common for all complaints related to contract procurement, irrespective of which Tender Board it falls in the jurisdiction of. As provided in Para 136, the intention to award the contract to the successful tenderer should be made known to the unsuccessful tenders. This mechanism will help ensure that the procurement is fair, equitable, competitive and transparent.

1.2.1 Recommendations

To inculcate confidence in the minds of the contracting business community, and to create a perception of impartiality in the disposal of appeals, the Appeal Board should be an independent judiciary/quasi judiciary body or alternatively, a body outside the purview of the tender accepting authority, located in the President’s Secretariat, manned by persons of high integrity, equipped with the requisite knowledge. In order to discourage frivolous challenges, a system of deposit (which could be forfeited should the appeal be determined frivolous) could be introduced. A timeframe of 30 days may be prescribed for disposal of the appeal/challenge. The Appeal procedure should be common for all challenges related to contract procurement, irrespective of the jurisdiction of the various Tender Boards. This mechanism will help ensure that the procurement is fair, equitable, competitive and transparent.

1.3 Debriefing of unsuccessful tenderers

Paragraphs 218 to 221 – Chapter 13 (Procedure for Projects Funded by Foreign Financing Agencies) of the August 1997 Guidelines reads as follows:

- “218. Chairman CATB has the responsibility for the debriefing of unsuccessful tenderers following the determination. The Chairman CATB is empowered and encouraged to utilize the TEC and Executing Agency in this process.
219. The purpose of the debriefing is twofold:
- (i) to recognize the unsuccessful tenderers as prospective future tenderers and to give an opportunity to learn and improve understanding the importance of competition in maximizing economic benefits;
 - (ii) to minimize the level of complaints and to demonstrate clearly the principle and practice of probity and transparency.
220. All unsuccessful tenderers are to be offered, in writing the opportunity for a verbal debriefing on the reasons for non acceptance of their offer. The Secretary, Ministry concerned will, within one week of the determination of tender inform in writing all tenderers who responded to tender call, the intention to award the tender to the successful tenderer and offer the opportunity for a debriefing on why their tender response was unsuccessful.
221. The evaluation criteria should form the basis for any debriefing of unsuccessful tenderers. Judgement on technical, financial and other matters must be supported by relevant information and advice. It is essential to show how a decision was reached and justified and to inform unsuccessful tenderers why they were not selected, without compromising commercial confidentiality, especially of the winning tender, except for the price tendered which is a matter of public record.”

The same procedure exists in the Revised Edition of December 2000 in paragraph numbers 219 to 222.

The Guidelines provides for debriefing to the unsuccessful tenderers in respect of projects funded by foreign financing agencies only. There is a need to apply this procedure to all contracts irrespective of the source of funding.

1.3.1 Recommendations

Debriefing procedure should be introduced to all contracts irrespective of the source of funding.

1.4 Mediation, Dispute Resolution and Arbitration

1.4.1 Mediation and dispute resolution

The country has a Commercial Mediation Centre of Sri Lanka Act 2000, which was to come into operation with effect from the date to be appointed by the Minister by order published in the Gazette. The ICTAD Standard Bidding Document has provision for the appointment of an Adjudicator who is required to function as a Mediator and give the outcome of the mediation in writing to the parties within 28 days of the dispute being referred to him. Either dissatisfied party may refer the dispute to Arbitration

within 28 days of the Adjudicator's written communication. The proposed mechanism is a mix of an Adjudication and Mediation mechanism and needs to be modified to bring in the Mediation process after the Adjudicator's decision, and before referring to Arbitration. An Adjudicator may be appointed for all contracts above Rs.5 M and a Dispute Resolution Board or Dispute Resolution Expert appointed for contracts above Rs.500 M for settlement of disputes.

1.4.2 Arbitration

There are no Arbitration Rules but only an Act. Arbitration Act No.11 of 1995 of Sri Lanka is based on the UNCITRAL model law but with several changes. Paragraph 7 of the Act as in the case of UNCITRAL Model Law (Article 11.(3)), is clear about how the Arbitrators are to be appointed if one of the parties fails to appoint its arbitrator. However the time limit for appointing the second and third Arbitrators by the intervention of the court is twice the time permitted by the Model Law, which is 30 days. This is not in line with the spirit of Arbitration in respect of speed.

Paragraph 25 of the Arbitration Act, similar to UNCITRAL Model Law, in Article 29, provides that the majority shall decide, in case there is more than one arbitrator, leaving open the question as to what happens if there is no majority (e.g., if there are two arbitrators, and they are deadlocked, or if there are 3, and each has a different opinion). Here, the Act seems to provide for better answers: First, there can never be an even number of Arbitrators, because as provided for under sub-section 6(3), if the number of Arbitrators is even, they have to jointly appoint an additional Arbitrator who shall act as Chairman. Second, the sub-section 19(1) of the Act provides that, if there is no majority award, the decision of the Chairman shall be binding.

Sub-section 25(1) of the Arbitration Act, similar to UNCITRAL Model Law, in Article 29 however, provides that the signature of the majority of the members shall suffice in arbitral proceedings with more than one arbitrator. This is not consistent with the provision of sub-section 19(1) of the Act as mentioned above as it does not specify that the Chairman's signature would suffice if his decision were to be binding with the said sub-section 19(1) of the Act.. There is a need to frame and adopt Arbitration Rules in conformity with International practices.

1.4.3 Recommendations

The proposed mediation mechanism is a mix of an Adjudication and Mediation mechanism and should be modified to bring in the Mediation process following the Adjudicator's decision, and before referring to Arbitration. An Adjudicator may be appointed for all contracts above Rs.5 M and a Dispute Resolution Board or Dispute Resolution Expert appointed for contracts above Rs.500 M for settlement of disputes (Vol. II-A.2.31).

Arbitration Rules which are in conformity with International practices should be framed and issued.

1.5 Tenderer suspension/debarment/blacklisting

There is a provision in the Guidelines (paragraphs 157 to 161) for the suspension/blacklisting /debarment of tenderers. For the purpose of implementation of the

debarment/blacklisting, a defaulting contractor is required to be served with a written notice to show cause, within a specified time frame (2 weeks), as to why his name should not be included in the list of the defaulting contractors. If the explanation furnished is not satisfactory, his name shall be included in the list of the defaulting contractors by the Secretary of the Treasury after observing due process laid down under paragraphs 157 to 158 of the Guidelines. This is discussed further in Section A-2.30 of this report.

Sri Lanka is a member of World Trade Organization except for Procurement. There are no primary/secondary boycotts.

The Guidelines under paragraph 126 empowers the General Treasury to determine and notify quantum of preferences and its eligibility criteria. These are further discussed in Section A-2.21 of this report.

1.6 Entity with oversight responsibility for procurement policy

There is no independent entity to oversee policy related matters in Public Procurement, including policy formulation. The Ministry of Finance has assumed this responsibility. The Procurement Support Bureau (PSB) was created in the Ministry of Finance with the support of an ADB-financed Technical Assistance (TA) Project in 1999. The PSB, as established and functioning, is required to provide procurement implementation support including providing advice on evaluation of tenders and assessment of tender proposals. It also has a tender monitoring function. Therefore PSB is considered to be a specialized unit involved in implementation, including day to day activities, similar to an executive agency. Presently the policy aspects and functions of a regulatory nature, essentially to be carried out by an independent organization, are also under the purview of the PSB. The PSB organization and functions are discussed in detail in Section A.3.1 of this report.

There are different tiers of Tender Boards, namely Minor, Departmental, Ministry and Cabinet Appointed Tender Boards depending on the value of the tender amount and the delegated powers. The composition, powers, responsibilities, and fees payable to members are discussed in detail in paragraphs 15 to 18 and 130 to 135 of the 1997 Guidelines and 196 to 201 of the December 2000 Guidelines. The Tender Boards make decisions based on the evaluation and recommendations made by respective Tender Evaluation committees. They are discussed in detail in Section A-2.22 of this report.

1.6.1 Recommendations

A small high powered, professionally staffed, independent Procurement Regulatory Agency (PRA) should be established to develop the procurement legal framework, with functions which are confined mainly to policy, documentation, and development of rules. The exact modalities of the PRA/PSB arrangement should be developed by GOSL. The Regulatory/Policy Agency should be kept distinctly separate from the Agency carrying out line functions.

1.7 Framework for Anti-bribery and Anti-corruption measures

1.7.1 Acts

The Bribery Act of 1954 and the Commission to investigate Allegations of Bribery or Corruption Act of 1994 provide the legal frame work for anti-bribery and anti-corruption measures. The provisions to deal with bribery offences are adequate. However reportedly, the process for implementation of these laws is weak. These are further discussed in Section A-4.2 of this report.

1.7.2 Other anti-corruption measures

Public disclosure of procurement legal text in the form of Guidelines are published and available freely on payment. ICTAD SBD does not have anti-bribery and anti-corruption conditions.

The requirements for advertisement of contracting opportunities are adequate and addressed in Chapter VII of the 1997 Guidelines. These advertisements are also published in an abridged form in the Official National Gazette. These are further discussed in Section A-2.15 of this report.

The requirements regarding receipt and opening of tenders are specified in Chapter VIII of the Guidelines. These are further discussed in Section A-2.18 and 2.19 of this report.

Negotiations after bid opening or award selection are allowed as per paragraphs 127 and 128 of the 1997 Guidelines. Although the rules prescribe a procedure, it is ambiguous and cannot be termed as transparent. These are further discussed in Section A-2.23 of this report.

The various procurement methods applicable to contracts financed by the Consolidated Fund of GOSL are not specifically provided for in the Guidelines. However the methods of procurement are prescribed under paragraph 203 of the Revised Guidelines on Government tender procedure for projects assisted by Foreign Financing Agencies – December 2000. These are further discussed in Section A-2.5 of this report.

The public notice of contract awards is stipulated in paragraph 141 of the 1997 Guidelines. These are further discussed in Section A-2.24 of this report.

Para 46 of the 1997 Guidelines covers bid and contract securities. These are further discussed in Section A-2.8 of this report.

Fairly adequate qualification requirements only for works are stipulated in the ICTAD Standard Bidding Documents and in the pre-qualification document and also further prescribed in para 211-213 of Chapter 13 of the Revised Guidelines December 2000. These are further discussed in Section A-2.9 of this report.

The evaluation procedure is adequately addressed under Chapter IX of the 1997 Guidelines and proposed Guidelines of 2002.

There are Guidelines (Part II of 1996 Guidelines) for awarding contracts for private sector participation in development of infrastructure facilities (BOO, BOT, BOOT etc.). The Revised Guidelines have been issued in January 1998.

1.7.3 Accountability

There is no specific procurement-related code of ethics for government employees. However government employees are governed by the Public Servants Conduct Rules of GOSL.

There is an accessible and secure process for a tenderer or any other party to send a communication to the Bribery Commission.

Tenderers have adequate access to the administrative review/appeal Board of the proposed tender award.

1.7.4 Recommendations

The Bribery Commission should become pro-active in seeking active support of non-governmental (national and international) agencies such as Transparency International in making the public aware of the seriousness of the problem and prompting them to fight against Bribery and Corruption.

2. Procurement Procedures and Practices

Only some important aspects³ of procurement, the procurement management process and contract administration are discussed hereunder with reference to the existing Guidelines. Conclusions are drawn from these findings, and recommendations made on revisions.

2.1 Procurement planning including packaging and scheduling

2.1.1 Provisions in the Guidelines

There do not appear to be any specific instructions in Codes or any instructions in the Guidelines on Government Tender Procedures for procurement under Consolidated Fund.

The following provisions exist in the 1997 Guidelines for Foreign Assisted Projects:

“Pre-planning the Procurement:

203. Although it is the role of the Executing Agency to monitor the progress of each project and the relevant awards, it is essential that an overall time scale is determined and adhered to by the TB.
204. The Chairman TB should convene a meeting of the Chairman TEC and the Executing Agency to fix a detailed time schedule up to the award of tender. At

³ This should not be construed to mean that the other aspects are unimportant or the Guideline provisions in respect of them are in order. The discussion is restricted to minimize the report size.

this meeting all potential impediments such as the involvement of other agencies should be identified. In setting this time scale, the time frames specified in Guideline 8.1, Chapter 1 and the time scales required under the donor agency for ICB should be taken into account.

205. Details of the agreed time scale are to be submitted to the Secretary of the Ministry concerned for the information. The Executing Agency and Chairman TEC with other associated representatives must formulate a programme for monitoring the time scale. Any likely overruns are to be communicated to the Secretary of the Ministry and TB with an explanation for the possible delays.

The provisions in the Revised December 2000 Guidelines for Projects assisted by Foreign Financing Agencies are as follows:

“ Advance Procurement Action:

204. In cases where it is clearly shown that early contracting for goods, works or services would be an important factor in the timely completion of the project, issuance of invitations to bid or to pre-qualify may, with the prior approval of the Foreign Financing Agency, be allowed before the approval of the project to be financed. In such a case, the Foreign Financing Agency will require that the pre-qualification invitation documents and the draft bidding documents be approved by the Foreign Financing Agency before they are issued, and that the normal requirements for public advertisement and notification of the bid or pre-qualification invitation be followed. To facilitate Advance Procurement Action, the early establishment of a Project Directorate or early nomination of a Project Director and the identification of other relevant officers is essential. Appropriate resources should be allocated for this purpose.

Procurement Planning Meeting:

205. Although it is the responsibility of the Executing Agency to monitor the progress of each of its projects and the relevant awards, it is essential that an overall time scale is agreed at the very outset of the tender and contract award process. It is imperative that the TEC and TB adhere to the agreed time schedule. Where a delay occurs it is the responsibility of the Chairman of the TB to explain the cause of delay to the Procurement Support Bureau and the relevant Line Secretary and to take whatever action is necessary to recover any lost time. The conduct of a Procurement Planning Meeting is mandatory for all tenders handled by a MTB and a CATB.
206. The Procurement Planning Meeting should be convened and chaired by the Line Ministry Secretary and comprise:
- The Chairman of the TB;
 - The Chairman of the TEC;
 - Head of the Executing Agency;
 - The Project Director and, where appropriate;
 - A Treasury/PSB Representative.

The meeting will fix a detailed time schedule up to the award of tender. The meeting can be conducted as a separate meeting or else, a detailed time schedule can be set at the very first meeting of the TB. In setting this time schedule, the time frames and flow charts provided in Appendices 1-3 and 9 shall be used as a guide.

207. Following the meeting, the Project Director will produce a Procurement Activity Schedule (PAS) as a record of the agreed target time schedule for the completion of tender activities, prepared in a standardized format provided by the Procurement Support Bureau (PSB). A copy of the PAS form has been provided in these Guidelines as Appendix 13.”

The Public Finance Circular No. Fin 358(5) dated 6-9-2002 reiterates as follows:

“Procurement Planning Meeting:

8. In terms of paragraphs 205 and 206 in the Guidelines on Government Tender Procedure applicable to the foreign funded projects, the Line Ministry Secretary is responsible to conduct procurement planning meetings, prepare the Procurement Activity Schedule (PAS) for all MTB and CATBB tenders under foreign funded projects, provide it to all connected parties, monitor the progress against the set PAS and to report the progress to the PSB to prepare the monthly monitoring report identifying tenders that are failing to meet their agreed time schedule. This report will be brought to the attention of the committee of the Secretaries and placed before the Cabinet Sub-Committee on Budget and Tenders.

The Chairman of the CATB/MTB is responsible to keep the Cabinet Sub-Committee informed, if there is any delay in the tender process as measured against the PAS with the remedial actions to be taken to overcome such delays.”

2.1.2 *Current practices*

In the case of the Donor assisted Projects, the Procurement Planning including Packages and Scheduling are done as per guidelines of the Donor agencies. However the Guidelines (2000) is silent about the Packaging of contracts. It only specifies the need for the preparation of a Procurement Activity Schedule. In the case of projects funded by the Sri Lanka Consolidated fund, the Procurement entities determine the packages mostly by the sanctioning powers, readiness of the design and drawings, availability of the contractors, specialization of the contractors, fund availability etc which in most cases is not scientific and not based on sound rationale.

2.1.3 *Conclusions*

In the absence of any specific provisions in the Guidelines for procurement under Consolidated Fund financed contracts adequate thought is not given to the planning of packages and scheduling before taking up the project for implementation. The pros and cons of centralized and decentralized procurement, bulking of procurement, small versus big packages for works, do not seem to have been examined thoroughly. There is no approved Packaging Plan and Procurement Schedule, (which determines the timing for the invitation of tenders) for most of the projects. It is left to the field officers to decide on the packaging as the implementation of the project progresses and tenders are invited on that basis. All of this leads to uneconomic procurement, haphazard completion of works without proper sequencing of the components of the project and commitment of scarce financial resources without realizing the project objectives in a timely manner.

2.1.4 Recommendations

1. The Guidelines should stipulate that no tenders be invited for a project without preparation of a well thought out Packaging Plan and Procurement Schedule prepared with due consideration to the pros and cons of centralized versus decentralized procurement, bulking of procurement, small versus big packages for works etc. This should be for all projects irrespective of the source of funding.
2. After the packages are decided and approved, the method of procurement and procurement schedule (showing the timings of various procurement activities) should be framed depending on the value of the packages.
3. The Procurement Schedule so prepared should form the basis for the preparation of designs and specifications as well as making available the requisite funds.
4. The officers responsible for taking decisions on the planning and execution of the projects are to be adequately trained in Project Procurement Planning.

2.2 Preparation of estimates

2.2.1 Provisions in the Guidelines

Provisions in the Guidelines are given below:

“Sanctioning of Total Cost Estimates (TCE)

- 12.1 Total Cost Estimate (TCE) prepared and approved in accordance with FR20 should be sanctioned by the following authorities before commencing the procurement process:

Head of Department up to Rs.100 M
Secretary of the Ministry above Rs.100M

- 12.2 As far as possible, it is the responsibility of the Head of the Executing Agency to see that the realistic detailed cost estimate is prepared, approved by appropriate authority and kept under confidential cover in a safe place before calling for tenders.”
- 12.3 The total cost estimate in respect of work estimate should include a mandatory provision of 10% of the cost estimate as contingency provision. This allowance for contingencies, should be indicated separately in the TCE and not be disclosed at the time of calling tenders.”

“F.R.20. Total Cost Estimates

- (1) The Total Cost Estimate (if revised, the revised total cost estimate) of any capital work should be shown in a special column in the Annual Estimates. In addition, information should also be provided in separate columns as follows:
 - (a) Anticipated date of completion of work;
 - (b) Actual expenditure up to the end of the year prior to the year in which the draft estimates are being prepared;

- (c) The actual expenditure in the year prior to the year in which the draft Estimates are being prepared;
- (d) Estimate for the year in which the draft Estimates are being prepared;
- (e) Estimate for the budget year.

The total of (b) plus (d) plus (e) should not exceed the approved Total Cost Estimate

- (2) The Total Cost Estimate of each project should be determined on the basis of a carefully priced Bill of Quantities which is supported by detailed schedules showing requirements of material, labour, plant, and equipment utilization and schedule of prices on which the Bill of Quantity rates were arrived at. There should be supporting documents to monitor price changes and translate them to rate changes, as a matter of routine, for use if needed. The Total Cost estimate prepared for Examination of Works proposals in terms of Financial Regulations should be prepared on this basis adding 10 percent for Contingencies and a further 10% to allow for escalation of prices within that year. If the work has to be phased over more than one year, the allowance for price escalation should be 10 percent for the first year, 20 percent for the second year, 30 percent for the third year and so on, in respect of the work to be done in each year. The allowances for Contingencies and price escalation should be indicated separately in the preparation of Total Cost Estimates and should not be disclosed even at the time of calling for tenders or at negotiation with the contractors, when the exact approved Total Cost Estimated (excluding these percentages) should be used.
- (3) Authority for approving a Total Cost estimate will be either the Cabinet or Department of National Planning or the Department of National Budget.”

2.2.2 Current practices

In most of the cases adequate field survey and investigations (especially geological) and planning are not carried out before taking up the preparation of the detailed estimates. The estimates are prepared on the basis of tentative designs and geological data. These go into the preparation of the tender documents and contracts are concluded after inviting tenders. The inadequacies lead, during contract implementation, to large variations of quantities, extra items and finally could end up in claims and litigation. The estimates are prepared on the Schedule of Rates without taking into account the current cost of labour, material, equipment and the contractual obligations of the contractor i.e. providing on site camping facilities, amenities such as hutting, water supply, sanitation, lighting, medical facility, market facility, insurance of workers, insurance of work and equipment, preparation of as-built drawings etc. It also does not include the cost of mobilization and import of labour, establishment of site office, construction and maintenance of access roads for the camp site as well as for the work sites and quarries.

Estimates not prepared after thorough investigation have led to delay in finalization of tenders (as the powers of sanction are related to the percentage above the current Schedule of Rates), claims in respect of increase in quantities and fixation of rates thereof, extra items and their rates leading to stoppage of works and litigation. It has also led to cost and time overruns of the Projects.

2.2.3 Conclusions

Inadequate planning, field surveys and investigations before preparation of the detailed designs and estimates and inviting tenders for the works have resulted in avoidable claims, litigation, arbitration, consequent delay in the completion of works and cost overruns. The estimates are not realistic and are often prepared without taking into account all the contractual obligations, which have to be fulfilled by the contractor. Such cost and time overruns may jeopardize the economic viability of the project.

2.2.4 Recommendations

1. Projects are not to be approved for implementation without completing adequate investigation and preparation of realistic estimates based on detailed designs.
2. The economic viability requires to be checked, through risk analysis, by taking into consideration the escalation in the implementation period as well as providing for physical and price contingencies.
3. Tenders for the components of a project are to be invited only after making adequate investigations, preparation of realistic estimates and taking possession of land for the construction site, if required.
4. The Guidelines should provide the linkages to the Financial Regulations where the method of preparation has been discussed and specified.
5. The officers involved in the planning and execution of projects are to be adequately trained in preparation of realistic project estimates.

2.3 Data Book/Analysis of Rates

2.3.1 Provisions in the Guidelines

There do not appear to be any provisions in the Codes and Guidelines.

2.3.2 Current practices

The Data Book/Analysis of Rates being used by prominent procurement entities are outdated. The Schedule of Rates (SOR) are reported to be updated every year by applying the prevalent labour and materials rates. The method of construction, deployment of equipment and mechanization have undergone vast changes and the Data Book (Analysis of Rates) as being used would no longer be valid. Hence the rates as worked out on these vintage Data Books would be either too low or too high and do not reflect the actual cost of work.

No action appears to have been taken to update the Data Books.

2.3.3 Conclusions

Data Book/Analysis of Rates, which are in current use by prominent procuring entities are old and are not based on any scientific work-study keeping the method of construction etc. in view. The Schedule of Rates (the basis for preparation of estimates

and award decisions) based on these old Data Book/Analysis of Rates would not be realistic and may prove erroneous.

2.3.4 Recommendations

1. The Data Books/Analysis of Rates should be updated regularly. Since the Departmental Officers may not be able to give adequate time for this type of work (along with their current duties) it may be preferable to employ a reputed external consultant to make a thorough study and update the Data Books of the various Implementing Agencies periodically (say once in five years) by conducting actual work-study, and also keeping in view the following:
 - The construction methodology for the various items of work;
 - Deployment of equipment and machinery;
 - The size and nature of the work;
 - Contractual obligations in terms of the various statutory Acts and provisions in the tender document;
 - Royalty and other duties payable, if any, by the contractor for the various inputs that go into the items of work;
 - Insurance liability;
 - Reasonable contractor's profit taking into account tax structure and the opportunity costs of capital to be deployed by the contractor.
2. The Guidelines should provide linkages to the provisions in the Financial Regulations which contain the instruction for periodical updating of the Data Book as suggested above.

2.4 Preparation of Specifications

2.4.1 Provisions in the Guidelines

Provisions in the Guidelines on Government Tender Procedure are as given below:

“45.5 All the Specifications included in the tender documents should be tied up purely with the technical aspects and not to be related to the brand names or country of manufacture.

Technical Specifications should be prepared to achieve the objectives of the Project but as far as possible not to prohibit any potential bidder.”

2.4.2 Current practices

As regards to works, detailed specifications have been drafted by Implementing Agencies as well as ICTAD and these are usually included in the tender documents. The main problem is in respect of equipment and materials. Most of the procurement entities of Implementing Agencies who procure the equipment and materials, prepare incomplete specifications while inviting tenders or quotations for a particular brand and/or model. All these result in complaints or procurement of low quality material, since the tenders/ quotations are usually decided in favour of the lowest priced. In most of the cases reference to International/National standards are not given.

2.4.3 Conclusions

Ambiguous specifications in the tender documents for materials, goods and equipment lead to procurement of low quality goods. Mentioning of brand names or incorporating specifications which are tailored to suit one particular manufacturer leads to complaints and delays the procurement process. Similarly non-incorporation of detailed specifications in the works documents may lead to low quality work, claims, litigation and arbitration.

2.4.4 Recommendations

1. The Guidelines should stipulate that Specifications for the Goods/works to be procured should be incorporated in the Tender documents.
2. Complete and unambiguous specifications should be incorporated in the tender documents for works and goods.
3. Reference to the International/National Standards should be given where ever available.
4. Standard functional specifications, which are broad and non-discriminatory and evaluation criteria/methodology for comparative evaluation should be developed for goods that are commonly procured by the various Implementing Agencies.
5. The services of an expert consultant may be hired for standardizing the specifications for the materials, goods and equipment which are commonly procured by the Government Implementing Agencies and publishing in the form of a Book of Specifications for use by the various Procurement Entities. The Specifications may be put up on a web site and comments could be invited from the various manufacturers/suppliers. This will bring in uniformity, avoid duplication of work, ensure quality, enhance competition, reduce complaints and possible corrupt practices.

2.5 Methods of Procurement

2.5.1 Provisions in the Guidelines

The procurement of works, goods and services are, as provided for in the 1997 Guidelines, to be procured through competitive tender procedure. The Guidelines do not discuss the various methods of Procurement specifically. However the following provisions exist in the Guidelines.

“Restricted tenders:

67. A Tender Board may, in special cases where it is known that the number of available suppliers/contractors are limited, authorize the issue of tender forms only to those firms. After that the normal tender procedure will apply. e.g.: calling of tenders for purchasing of a vehicle only from the local agents

Restricted tenders for Minor Services:

68. In the case of purely local and minor services such as laundry, supply of cooked meals, road metal and firewood and tailoring etc., tenders and quotations may be restricted to those who are engaged in the trade or carrying out business in the area. However this provision should be used only for procurements of small value not exceeding Rs.100,000.

Limited Quotations:

- 69.1 If it is intended that works, services and supplies are to be awarded from a list of limited number of firms and no others, the authority of Secretary to the Treasury should be obtained giving the justification for such procedure for tenders exceeding the value of Rs.10 M and not exceeding Rs.20 M. In the case of tenders not exceeding the value of Rs.10 M, the approval of the Secretary to the Line Ministry should be obtained. Cabinet approval should be obtained for any tender exceeding Rs.20 M.

Quotation for Small Contracts:

- 69.2 In the case of works, services or supplies costing up to Rs 100,000 where following of open competitive tender procedure is not worthwhile and economical a Head of Department or his delegate may authorize obtaining of quotations from limited number of recognized parties (preferably 3 or more) and thereafter the procedure specified in the previous chapters should be followed.
- 69.3 The same procedure may be followed in the case of repairs to motor vehicles. Quotations can be obtained from registered garages.”

The following provisions exist in the December 2000 Guidelines for projects financed by Foreign Agencies.

“Types of Procurement Available under Projects Funded by Financing Agencies

- 203 Use of International Competitive Bidding (ICB) is required for large procurement unless, in special circumstances, another procedure has been agreed upon between Foreign Financing Agency and Government. In these circumstances, other methods of Procurement in accordance with the Procurement Guidelines of the relevant Foreign Financing Agency and/or the loan/credit agreement may be considered. These include but not limited to:

- International/National Shopping
- Local or National Competitive Bidding; and
- Limited International/National Bidding.”

2.5.2 *Current practices*

Various methods of procurement are discussed at different places in the Guidelines in different contexts (for example, for worldwide tenders, ICB has been discussed in paragraphs 60 and 61). In the absence of clear provisions at one location in the Guidelines, on the various methods of procurement and where they are to be used and steps to be followed, the Implementing Agencies often refer to the Line Ministry/PSB, which reviews and approves each case individually. The issue is aggravated by the

absence of an approved Procurement Plan showing the packages and the proposed method of procurement, which results in delays in procurement.

2.5.3 Conclusions

Absence of clear provisions in the Guidelines results in delays in procurement and consequent time and cost overrun of Projects.

2.5.4 Recommendations

1. Guidelines should describe at one place for easy understanding the various methods of procurement, the situations where they are to be followed, and the steps to be followed for each method of Procurement.
2. The Procurement Plan for each Project should, besides the Package, show the method of procurement to be adopted. The Procurement Plan once approved by the Competent Authority should be adopted and no other clearances and approval should be necessary.

2.6 Types of Contracts

2.6.1 Provisions in the Guidelines

There are no specific provisions in the 1997 Guidelines regarding the types of contracts except for the following:

“42.3 Standard Bidding Documents prepared by ICTAD may be used by the Executing Agencies for the procurement of works under Local Competitive Bidding (LCB) terms, using local funds, exceeding the value of Rs.5 M with appropriate amendments and modifications to suit the requirements of the project and falling in line with the provisions of these Guidelines.”

“Two Stage Bidding System:

- 72.1 For turnkey contracts and for other large and complex contracts, where the problem of technically unequal bids are likely to be encountered, a two stage bidding procedure may be adopted. Under this procedure, bidders are first invited to submit their technical proposals, in accordance with the technical specifications, without prices. All other bidding requirements, conforming to the manner and deadline for bid submission, the furnishing of bid bond etc., must however be complied with by the bidders.
- 72.3 Two Stage Bidding System should not be used without specific Cabinet Approval. When it is extremely necessary Cabinet Approval may be sought i.e. conditions of donors.

The December 2000 Guidelines for Projects assisted by Foreign Financing Agencies has the following provision.

“Bidding procedures:

216. There are a number of different bidding procedures available, including Single Stage/Single Envelope; Two Envelope/Single Stage; Two Envelope/Two Stage; and Two Stage. An overview of these is provided in Appendix 4 to 7.

In all circumstances the bidding procedure adopted for a particular tender must be in accordance with the procedure set out in the bidding documents and/or loan/credit/grant agreements.”

2.6.2 Current practices

The ICTAD tender document referred to in the Guidelines is for Item Rate contracts. However the Implementing Agencies use, besides Item Rate Contracts, Lump Sum Contracts, Percentage Rate Contracts, Design and Build Contracts, Material Supply Contracts, Labour Contracts. There is no mention of Management Contracts.

2.6.3 Conclusions

In the absence of clear cut instructions in the Guidelines, the Implementing Agencies use their own discretion in taking decisions on the type of contract to be used.

2.6.4 Recommendations

The Guidelines should specify the various types of contracts such as Item Rate, Lump Sum, Percentage Rate, Materials Supply, Labour, Design and Build (Turnkey), Management Contracts and the situations where they should be used and the tender documents to be used for each type.

2.7 Tender Documents for goods, works and services

2.7.1 Provisions in the Guidelines

Provisions in the Guidelines on Government Tender Procedure (1997) are as given below:⁴

- “ 42.2 Standard Bidding Documents shall be used where ever possible with appropriate amendments to suit the requirements of the project and falling in line with these Guidelines. Any amendments shall be included in a ‘Bid Data Sheet’/‘Contract Data Sheet’ or in ‘Special Conditions of Contract’.
- 42.3 Standard Bidding Documents (SBDD) prepared by ICTAD may be used by the Executing Agencies for the procurement of works under Local Competitive Bidding (LCB) terms, using local funds, exceeding the value of Rs.5 M with appropriate amendments and modifications to suit the requirements of the project and falling in line with the provisions of these Guidelines.
- 42.4 With regard to using SBDD for procurements funded by donor agencies please refer Chapter XIII.

⁴ The quotations are from the August 1997 Guidelines. The strikethroughs are the deletions and the underlined are the added provisions in the Proposed Revised 2002 Guidelines

- 43.1 It is the responsibility of executing agency to prepare the draft tender documents and submit them to TEC. TEC should scrutinize them and submit a complete set of tender documents to TB for approval.
- 44.1 **Tender Notice:** Tender Notice should be prepared in abridged form but with sufficient information to prospective tenderers. The specimen in appendix 1 may be used by all the agencies with suitable modification if so required.
- 44.2 **Instructions to Bidders (ITB):** ITB should be prepared to give sufficient information to tenderers. A specimen is given in Appendix II. Executing agencies may prepare ITB according to the specimen or with suitable modification.

If an alternative bid is to be accepted, the acceptability of such bids should be specifically stated in the tender documents.

- 44.2.1 **Alternate Bids:** If an alternate is to be accepted, the bidder should submit a separate bid bond in addition to the bid bond for the main offer, unless otherwise stated in the tender documents.
- 44.3 **Form of Tender (Bid Form):** Specimens of Bid forms for works and supplies are given separately in appendices 3 and 4, The bid form is an important tender document as the bidder by signing the form is legally bound to fulfill the requirements of the tender.
- 45.1 **General Conditions of Contract (GCOC):** GCOC apply to the contract implementation period. However these conditions, should be issued with the bid documents. The GCOC to be used should be in accordance with Guidelines 42.2, 42.3 and 42.4. However, GCOC should be used with the bid documents.
- 45.2 If International Competitive Bids are called, it is recommended to use FIDIC version IV (Federation International des Ingenieurs Conseils) or subsequently amended NEC (New Engineering Contracts) as appropriate with necessary amendments.
However, ICTAD document for works or World Bank document for large works may be used with appropriate amendments as general Condition of Contract for works procurement upto Rs.500 Mn.
- 45.3 **Special Conditions of Contract (Conditions of Particular Application):** Special Conditions of Contract should be prepared to suit the requirements of Agencies by amending, modifying or adding the General Conditions of Contract provided those cannot be included in Bid Data Sheet or Contract Data Sheet. However, if new GCOC prepared by ICTAD and NEC, Bid Data Sheet/Contract Data Sheet may be prepared instead of Special Conditions of Contract.
- 45.4 **Bid Data Sheet/Contract Data Sheet:** To reduce ambiguity, all necessary amendments and modifications to the general Conditions of Contract should be included in a Bid Data Sheet or Contract Data Sheet, instead of preparing a Special Conditions of Contract.

The December 2000 Guidelines for Projects assisted by the Foreign Financing Agencies has the following provision.

“Standard Bidding Documents:

- 209 In all ICB Procurement, use of the Foreign Financing Agency’s Standard Bidding Documents (SBDD) shall be mandatory. For other procurement, where bidding documents have been agreed by a Foreign Financing Agency, their use shall be mandatory also.”

2.7.2 *Current practices*

The Institute for Construction Training and Development (ICTAD) Sri Lanka (under the Ministry of Housing and Plantation Infrastructure) compile and publish model documents. The following documents have been issued:

Reference Number	Name of Publication
SCA/1	Conditions of Contract for Works of Building and Civil Engineering (English) – January 1989
ICTAD/SBD/01	Standard Bidding Document Procurement of Works – First Edition- January 2002 (Largely based on World Bank Standard Bidding Document for smaller contracts. Supersedes SCA/1 and is suitable for use by both ICB and NCB procedures financed by both consolidated fund and donor agencies. To be used for contracts between Rs.20 to Rs.800 M)
ICTAD/ID/08	Conditions of Contract for use in Provincial Councils (Recommended for projects upto value SLR 750,000) Date of issue not specified.
Not specified (Draft publication)	Conditions of Contract for Small Works (Recommended for projects up to a value of Rs.2 million) – Date of issue not specified.
SCA/ (Not specified) – Draft publication	Guidelines for pre-qualification of contractors.
ICTAD/CONSULT/01	Model Form of Agreement: Standard Conditions of Engagement Parts I and II- Year of publication not specified.
ICTAD/CONSUL/02	Client Guide – General – Year of publication not specified
ICTAD/CONSUL/03	Client Guide – Selection of Consultants – Year of publication not specified
ICTAD/ID/07	ICTAD Formula Method for determining the Adjustment to contract sum due to fluctuation in prices – September 1998.
ICTAD/ID/05	Bulletin of Construction Statistics – March 2002 –Giving the Indices.

The above documents are being largely used. However they are not being properly filled up. In one case it was seen that the agreement specified the use of conditions of contract as of ICTAD SCA/1 whereas the conditions of contract incorporated in the contract were of old form. Except for the January 2002 SBD none of the documents have ‘Instructions to Tenderers’. They also rarely disclose eligibility rules, evaluation

criteria, and methodology or qualification criteria to judge capability of the supplier/contractor to execute the contract as offered.

The Guidelines does not specifically state which documents are to be used and has left it to the implementing agencies to make appropriate amendments/ modifications.

There is no Standard Tender Document for the procurement of goods, equipment and industrial plant. Each procurement Agency frames its own, thus lacking consistency.

In the case of hiring consultants, there are no standard documents for invitation of proposals. ICTAD has only issued a model form of Agreement and Client Guides – General and Selection of Consultants.

2.7.3 Conclusions

The quality of the tender documents, which include contract format and conditions, decides the level of competition, the transparency of the process, the risks imposed on the tenderer and consequently the prices.

Except for some of the works documents and model form of Agreement for Consultants prepared by the ICTAD, there are no standard documents for Procurement of Works (Lump Sum), Procurement of Works (Percentage rate contract), Procurement of Goods, and Design and Build contracts as also Request for inviting proposals for consultancy assignments. Even the Works document which has been developed by ICTAD has some deficiencies. This document, though suggested for use by the Guidelines, is not always being used in the Provinces. Different procurement entities prepare their own documents, which result in a number of non-uniform contract documents, prepared with considerable, avoidable, un-productive labour. Further, there is a possible risk of claims and litigation as the documents are not conducive to transparency in tender receipt, and evaluation and award, as definite instructions to the tenderers are not incorporated in the tender documents.

In order to remedy this situation, PSB began in late 2003 preparing Sample/Trial documents for the Procurement of Goods, including for the health sector based on the donor-harmonized bidding documents available from the WB. PSB has sought WB assistance for this activity. Government will also use the Sample/Trial documents for Works (Major) and Design and Build contracts now under preparation by ICTAD.

2.7.4 Recommendations

1. The Government of Sri Lanka should standardize the tender documents for Works (Item rate, Lump sum – National and International Competitive Tendering), Goods (National and International Competitive Tendering), and Design and Build tender documents (National and International competitive tendering) with explicit Sections Instructions to tenderers, General Conditions of Contract and Special Conditions of Contract/Contract Data along with Schedule of Quantities/Schedule of Requirements, Specifications, and Drawings etc. These tender documents should be mandated for use by all public procuring entities and no changes should be allowed to be made in the General Conditions of Contract but any special requirements may be added or modified only through the Special Conditions of Contract/Contract Data. These

documents should be widely published and made available to the business community. The standard document shall be given a reference number by which it could be referred to in the tender invitation. The Business community would be greatly facilitated and in the course of time case law on the contract conditions could also be developed.

2. The set of standard documents issued by the Work Bank for Sri Lanka could form the basis for development of standard Tender Documents for Sri Lanka (Goods, Works and Services).

2.8 *Securities and Guarantees*

2.8.1 *Provisions in the Guidelines*

“46.1 Normally the following formats are required to be issued with tender documents in a large procurement:

1. Bid Bond Form
2. Performance Bond Form
3. Mobilization Advance Guarantee Form

Specimen of these formats are given in 5.6.and 7 respectively.

46.2 Securities and Guarantees issued by the following institutions are acceptable

1. A Bank operating in Sri Lanka approved by the Central bank of Sri Lanka
2. A Bank based in another country but the security or guarantee “confirmed” by a Bank operating in Sri Lanka
3. A reputed Insurance Company operating in Sri Lanka and registered by the Controller of Insurance Act for the acceptance of demand Guarantees (Please see Appendix 29)
4. A Letter of Credit issued by a foreign Bank but “confirmed” by a Bank operating in Sri Lanka
5. A fixed Deposit or a Pass Book of a Bank operating in Sri Lanka, deposits made in the name of the executing agency
6. Any other Agency approved by the Treasury from time to time.
7. Security and Guarantees issued by the Construction Guarantee Fund.

All Securities and Guarantees should be ‘on demand’ guarantees

46.2.1 Once a claim is made to forfeit a bond security by an Executing Agency, two weeks time should be given to the insurance company that has issued the bond to negotiate with the Executing Agency. After such negotiations, the damage claimed by the Executing Agency should be settled by the issuing Agency of securities and guarantees.

In case of contracts over a value of rs.100 M, this period should be determined by the Executing Agency in consultation with the issuing Agency of securities and guarantees.

46.2.2 The Head of the Department or the Executing Agency should ensure that the contract period is realistic and only if he is satisfied that the contractor had delayed the contract deliberately and perpetually, the performance bond should

be claimed. In this regard, the percentage of the progress of the contract should also be taken into consideration.

46.2.3 After considering the progress made in respect of the contract, as per Guideline 46.2.2, if the damage recovered from the insurance company is in excess of the damage actually caused by the contractor, the balance should be paid back to the issuing agency of securities and guarantees.

46.2.4 The issuing agency of securities and guarantees should be kept informed regularly about the part payments made to the contractors when they have submitted Advance Payment Guarantee Bonds.

46.2.5 The maintenance period of the work should not be covered with the performance bond and that period should be covered with a separate maintenance bond. Once the maintenance bond is submitted, the performance bond should be released.

46.2.6 The insurance premium with regard to issue of Securities and Guarantees for public contracts will be decided by the insurance companies taking the risk factor of the individual contractor into consideration. In this regard, the recommendations of the National Construction Contractors Association could be obtained on the reliability of the contractor for the purpose of issuing bonds.

46.2.7 All insurance companies which desire to issue Securities and Guarantees with regard to public contracts should have been registered with the Controller of Insurance.

46.3.1 **Unconditional Securities and Guarantees:** Securities and Guarantees should be unconditionally encashable on the receipt of first written request from the executing agency (on demand securities and guarantees). The format given appendixes have been designed to fulfill this requirements.

46.3 The following quantum are recommended for Securities and Guarantees:

- | | |
|--------------------------------|-----------------------------------|
| 1. Refundable Tender deposit | Up to 1% of Total Cost Estimate |
| or | |
| 2. Bid Bond | Up to 2% of Total Cost Estimate |
| 3. Performance Bond (Works) | Up to 5% of Contract Sum |
| 4. Performance Bond (Supplies) | Up to 10% of Contract Sum |
| 5. Mobilization Guarantee | To cover the full advance payment |

46.4 **Quantum of Tender Deposit or Bid Bond to be a fixed sum:** The quantum of Tender Deposit or Bid Bond should be a fixed sum not exceeding 1% or 2% of the TCE respectively, since fixing a percentage may lead to disclosure of the TCE.

The validity of the bid bond should be 30 days beyond validity of bid.

46.5 **Refundable Tender Deposit:** Refundable tender deposits may be accepted for the tenders of small value. Bid Bond instead of refundable tender deposit may be accepted for large or high value tenders since large tender deposits may discourage potential tenderers.

46.6 **Exemption from Refundable Tender Deposit or Bid Bond:** The following are exempted from refundable tender deposits or Bid Bonds provided they have not defaulted in entering into agreements in earlier occasions.

1. Approved Societies
2. State Corporations, Statutory Boards, and other State Institutions

3. State Trading Organizations of Foreign Governments
4. Representatives of Foreign Governments in Sri Lanka
5. 100% government owned companies registered under the Companies Ordinance.

However this exemption will not apply to non-refundable tender fee, which is charged to cover the cost of tender documents.

46.6 An unsuccessful bidder's tender deposit or bid bond should be refunded or returned as promptly as possible on award of contract. In any case, this refund or return should be effected not later than 30 days after signing of the contract.

47 **Performance Bond to be submitted by all contractors:** Performance bond should be submitted by all contractors including those who are exempted from Bid Bond as per Guideline within 30 days of notification of acceptance of bids.

However, Approved Societies need not furnish a performance bond in contracts up to the limit of Rs.1 Mn, provided they have not defaulted earlier.

47.1 The validity of the performance bond should cover the guarantee/warranty period unless otherwise specified (also see GL 46.2.5).

2.8.2 Current practices

There is inconsistency in references to the requisite Guarantees for submission along with the tender. It is termed as 'Bid Bond' 'Refundable Tender Deposit' 'Tender Security' in the Guidelines, whereas ICTAD SBD refers to it as 'Bid Security'. Also there is inconsistency in the list of acceptable securities and guarantees both in the Guidelines and ICTAD SBD.

The Guidelines treat all the three type of Securities at par, which is basically incorrect. Tender securities have to be separately treated and should be unconditional (payable on demand without raising any question whatsoever) in the form of Bank Guarantee, but not Bond. The Guarantees issued in any form, including LC by a bank based abroad has to be "confirmed" by a bank operating in Sri Lanka. This is restrictive and not conducive for competition particularly in respect of tender Security. The security issued by an Insurance Company is not unconditional in the sense that the payment is not made on demand and a period of two weeks is required for the Insurance Company to negotiate with the Executing Agency. Encashment of the tender securities is reported low presumably because of conditionality attached to the procedure of demand and payment particularly in respect of Guarantees issued by the insurance companies.

The words 'Bond' and 'Guarantee' used appear to have been interpreted as synonymous. It is preferable to use one term, Guarantee, to avoid any possible misinterpretation

The quantum of securities are different for refundable tender deposit and Bid Bond (presumably Bank Guarantee).

2.8.3 Conclusions

The purpose of taking Guarantees particularly in respect of tender deposit is not being served by the present arrangement prescribed in the Guidelines regarding the forms and sources of issuing the Guarantees.

2.8.4 Recommendations

1. The Guarantees for tender and performance securities should be unconditional and preferably in the form of bank Guarantees. This is reflected in the formats to the 1997 Guidelines.
2. Standardize and harmonize the terminology used within the Guidelines and between the Guidelines and SBDs.
3. The Acceptable forms of tender deposit as given in the guidelines should be incorporated in the SBD.
4. The Guidelines and the SBDs should be harmonized to remove all inconsistencies.

2.9 Pre-qualification

2.9.1 Provisions in the Guidelines

“Pre-qualification of Tenderers:

70.1 Where it is necessary to ensure that invitation of bids is confined only to those who have adequate capabilities and resources, pre-qualification procedure may be followed. Pre-qualification of tenderers is generally required for procurements involving:

- Large and complex works
- Custom designed equipment, industrial plants and specialized services
- Turnkey projects

However in all the projects exceeding Rs.1000 M., pre-qualification is mandatory.

Procedure for Pre-qualification:

70.2 Pre-qualification should be done giving wide publicity and calling for information on a give format. A clear statement of the scope of the contract and the criteria for selection should be sent to all firms wishing to be considered for pre-qualification. The criteria used are generally:

- Experience or past performance on similar contracts
- Capabilities with respect to personnel, equipment and plant
- Financial ability

Criteria for Determination:

- 70.3 Pre-qualification document prepared by the Executing Agency, scrutinized by TEC and approved by TB should be issued to potential tenderers. The criteria and document developed by ICTAD may be used with suitable amendments for pre-qualification of tenderers in works contract under the local funds.
- 70.4 Selection of qualified tenderers should be determined following the criteria stipulated in pre-qualification document. All bidders who meet the criteria should be allowed to bid. The bid document should be forwarded to qualified firms immediately the pre-qualification process has been completed.
- 70.5 The same Tender Board which will eventually handle the processing of bids should decide on the determination of the pre-qualification process. In the case of CATB there is a need to gain Cabinet Approval for the qualified firms if the request for appointment of CATB has not stated that pre-qualification procedures would be followed.

The provisions in the December 2000 Guidelines applicable for Projects assisted by Foreign Financing Agencies are as follows:

“Pre-qualification of Tenderers:

- 212 Pre-qualification of tenderers is generally recommended by Financing Agencies for procurement involving:
Large and complex civil works;
Custom designed equipment, industrial plant and specialized services (other than Consulting Services)

In such instances the procedures laid down by donor agencies should be followed including any use of standard pre-qualification proforma, if prescribed by Financing Agencies

Where appropriate a Foreign Financing Agency may provide a list of between three and eight appropriately qualified contractors or suppliers, in which case this list shall be accepted as the list of pre-qualified tenderers.

- 213 In those instances when pre-qualification of bidders is used, the procedures laid down by Financing Agencies should be followed and only pre-qualified bidders allowed to bid.

The bid documents should be forwarded to pre-qualified firms only after the pre-qualification process has been completed and, when required, Foreign Financing Agency approval of pre-qualification has been received.

The same TB should handle the pre-qualification and tendering process.

2.9.2 Current practices

In the absence of a standard pre-qualification document for projects financed from Consolidated Fund, the Implementing Agencies use their own documents with different qualification criteria. The mandatory limit for pre-qualification is rather high - Rs.1000M.

2.9.3 Conclusions

Pre-qualification should be made mandatory for all works costing more than Rs500 M and it may be made optional for works of value ranging from Rs.100 M to Rs.500 M.

2.9.4 Recommendations

1. Standardize the pre-qualification document and make it mandatory for use by all implementing agencies.
2. Review the threshold for pre-qualification, make it mandatory for works costing more than Rs.500 M and optional for complex works value ranging between Rs.100 to 500M.

2.10 Registration of Firms and Contractors

2.10.1 Provisions in the Guidelines

Registration of Suppliers:

- “ 64.1 A Head of Department may publish a notice for registration of Suppliers and prepare a list of firms to supply particular goods and services (stationery, electrical supplies, vehicle repairs etc) and confine the issue of tender notices to names appearing on the list. This procedure should be applied for procurement of items of small value or for purchases of items on continuous basis for which following of normal tender procedure may be uneconomical.
- 64.2 The registered list of suppliers should be updated periodically, at least once a year. When preparing and updating the list opportunity should be given to any person to apply for insertion of his name in the list under an accepted procedure.

Yellow pages:

- 64.3 When the appropriate authority is satisfied, in the case of supplies of goods that sufficient number of reputed vendors are registered in the Yellow pages, quotations may be called from that list, instead of the above procedure.

National Registration System and Membership of National Construction Contractors' Association of Sri Lanka (NCCASL)

65. For procurement of construction works exceeding the value of Rs.5 Mn., under the Consolidated Fund, issue of tender documents should be confined to those who have registered under the National Registration System of Institute for Construction Training and Development (ICTAD) and have the membership of NCCASL, provided the registration system has covered the relevant construction field.

When a contract is awarded to a contractor registered under the national registration system of ICTAD the relevant entries regarding the record of works in the contractors record book issued by the ICTAD should be entered by the executing agency at the time of signing of the contract agreement and after completing of the work on the contract.

Registration of Contractors for Construction Works:

- 66 For procurement of works not exceeding the value of Rs.5 M., issue of tender documents shall be done in the following ways:
- (a) A Head of department with the authority of Secretary of the Ministry concerned may publish a notice and prepare a register of construction contractors who are capable of construction works of specified description, magnitude or value and issue tender documents to names appearing on the register; and/or
 - (b) Issue tender documents to those who have registered under the National Registration System of ICTAD.

Registration of Tenderers and Approved Societies for consideration to award of construction contracts on competitive basis:

164.4 A Government Agent/District Secretary, giving wide publicity, may call for applications for registration of tenderers and approved societies for the selection of contractors on a competitive basis for award of construction contracts not exceeding Rs.10 Mn under the criteria stated in Guideline 164.5 and 164.6. On receipt of these applications the Government Agent/District Secretary may evaluate them through a Committee chaired by him with the participation of the respective Divisional Secretary and one other member qualified in civil construction works. The Government Agent/District Secretary should prepare a list of registered tenderers and Approved Societies not exceeding 10 in number per Divisional Secretary Division.

Criteria for registration of tenderers for District/Divisional Level Construction Contracts:

- 164.5 A Government Agent/District Secretary may call for applications from the tenderers who have the following qualifications, for registration for the purpose of Guideline 164.4:
1. The tenderer should be a permanent resident of the respective Divisional Secretary Division where he is applying to register. In case of company its registered office should be within the respective division.
 2. The tenderer/company should have a valid registration from the Institute of Construction training and Development (ICTAD), Grade M-VI, for civil works or registration in a Government department for the above value.
 3. Where the Government Agent/District Secretary is of the view that a sufficient number of eligible tenderers are not available in a division/district as stated above, they may call for applications for registration upto Rs.5 Mn and Rs.10 Mn separately with ICTAD registration of Grade M-VII or M-VI or departmental registration upto Rs.5 Mn or 10 Mn respectively.
 4. Evaluation criteria for application may be determined by the Government Agent/District Secretary on the basis of Guideline 70.2 with necessary amendments or improvements.
 5. Once the list is finalized, it should be circulated among all the Government Agencies within the district.
 6. The registration list should be revised periodically but at least once in two years.
 7. One tenderer can register in respect of one Divisional Secretary Division only.
 8. A tenderer registered in respect of one Divisional Secretary Division is eligible to compete for any construction tender within the district not exceeding Rs.10 M.

Criteria for Registration of Approved Societies for District/Divisional level construction contracts:

164.6 A Government Agent/District Secretary may call for applications from approved Societies specified in Guideline 164.2 and having following qualifications for registration for the purpose of Guideline 164.4.

1. The Approved Society specified as per Guideline 164.2 should have a valid registration issued by the approving authority and should operate within the relevant district.
2. The criteria stipulated from Guideline 164.5 (2) to (8) are also applicable to this category with necessary changes.

Clause 3 of the ICTAD SBD states as follows:

“All domestic bidders shall be registered with ICTAD under the Grade and Speciality given in Bidding Data.

All domestic bidders shall hold a valid regular membership of NCCASL at the time of collection of Bidding documents and at time of award as well.”

2.10.2 The National Grading and Registration System for Domestic Construction Contractors

The concept of a Central Registration and Grading System for construction contractors was implied in the Cabinet decisions of 14/6/88 on the ‘Development of Domestic Construction Contractors’. These directives themselves were based on the findings of a high level committee appointed by the State to examine and report on the industry concerns over the low level of efficiency and performance of the construction contracting sub-sector. ICTAD was assigned the responsibility of framing and issuing the Guidelines for Grading and Registration and to implement same. The original Central Registration System was put in place in June 1993 and was revised in September 1995. The revised system is effective from September 1, 1995.

This registration scheme is not intended to replace pre-qualification for major contracts or for any particular contract for which pre-qualification is required by the Client. Like the balance sheet of a business concern, the Grading gives a “snap shot” of the Contractor’s ability as judged by ICTAD at the time of processing of application.

The contracting organizations applying for registration with ICTAD shall:

- be registered in Sri Lanka for the purpose of carrying out the business of Building/Engineering construction either with the registrar of Companies under the Companies Act or with the Provincial Secretaries;
- have at least 60% ownership by nationals of Sri Lanka;
- not be in the current Government’s list of suspended or blacklisted contractors;
- not be legally insolvent or declared bankrupt at the time of application.

Construction contractors are considered for registration and grading under two main categories:

- Main construction contractors under 10 Grades (M1 to M 10) and seven fields namely, Building, Highway, Bridge, Water Supply and Drainage, irrigation and land Drainage, Dredging and Reclamation, Heavy Construction (to be specified); and
- Specialized construction contractors under three specializations: Electro Mechanical (EM1 to EM5), Finishing Trades (F1 to F4) and Piling (P1 to P3).

Grade Limits and annual subscriptions payable by Main construction Contractors:

Grade	Limit (Rs. Million)	Annual subscription fees (Rs.)
M 1	X greater than or equal to 300	7500
M 2	X less than 300 but more than or equal to 150	6500
M 3	X less than 150 but more than or equal to 50	5500
M 4	X less than 50 but more than or equal to 20	4500
M 5	X less than 20 but more than or equal to 10	3500
M 6	X less than 10 but more than or equal to 5	2500
M 7	X less than 5 but more than or equal to 2	1500
M 8	X less than 2 but more than or equal to 1	1000
M 9	X less than 1 but more than or equal to 0.5	500
M 10	X less than 0.5	200

Grade limits and annual subscriptions payable by Specialist construction contractors:

Grade	Limit (Rs. Million)	Annual subscription fees (Rs.)
EM 1	X greater than or equal to 10	4500
EM 2	X less than 10 but greater than or equal to 5	3500
EM 3	X less than 5 but greater than 3	2500
EM 4	X less than 33 but greater than or equal to 1	1500
EM 5	X less than 1	500
F 1	X greater than or equal to 3	2500
F 2	X less than 3 but greater than or equal to 1	1500
F 3	X less than 1 but greater than or equal to 0.5	1000
F 4	X less than 0.5	500
P 1	X greater than or equal to 10	4500
P 2	X less than 10 but greater than or equal to 5	3500
P 3	X less than 5	2500

ICTAD has devised an elaborate application to be filled and a system of awarding points for the various parameters and fixing the points to be obtained for each of the grades. It has devised an appeal system for deciding the representations if any on the grading.

It has also devised disciplinary procedures in case of defaults in payment of fees.

2.10.3 Current practices

It is observed that almost all the Implementing Agencies invite applications for registration of contractors/suppliers for civil works as well as goods which are required to be procured in a calendar year⁵.

The registrations once granted by ICTAD will be valid for two years. Contractors may apply for up-grading within this time period but not before expiry of six months of award of present grade. The Client agencies are to check the validity of the contractor's registration prior to issue of any tender documents. They are also to assess the work load presently being executed by the contractor prior to issue of tender document

Para 70.1 of the August 1997 Guidelines specifies that pre-qualification of tenders is generally required for large and complex works, which have been defined as those estimated to cost more than Rs.20 M and pre-qualification is mandatory for tenders of value more than Rs1000 M. Since pre-qualification is generally required for works of more than Rs.20M (this limit needs to be raised to Rs.500 M as suggested above), the need for Registration and Grading by ICTAD appears not relevant. Irrespective of the registration and grading, the criteria for qualification needs to be checked by the client at the time of evaluation of the tenders and before award of the contract. Registration and Grading by ICTAD and membership of the NCCASL does not serve any purpose.

As per Para 66 of the 1997 Guidelines, for works costing less than Rs.5 M the tender documents are to be issued to those contractors who have been registered either with the Head of Department and/or under the national registration system with ICTAD.

In respect of tenders of value between Rs 5 M and Rs.20 M the qualification criteria for tenderers as stipulated in the tender document has to be verified (post - qualification⁶) before award of the contract, irrespective of whether the tenderer is registered and graded by ICTAD and is a member of NCCASL. Hence in such cases too the registration and grading system is not relevant and does not serve any meaningful purpose.

2.10.4 Conclusions

From the above discussion it can be concluded that:

1. Insisting on mandatory registration of contractors for works of value more than Rs.5 M does not serve any purpose (as the contractors would be either post-qualified or pre-qualified⁷ for each contract). It would lead to discrimination and

⁵ The notices appeared in the newspapers for registration for the year 2003, while the Team was in Colombo from October 28 to November 2.

⁶ Paragraph 111.2 of the Guidelines states as follows: "Post qualification of bidders serves as a safety measure to make sure that the lowest evaluated bid has been submitted by a responsible and trust worthy bidder. It is therefore necessary, before the award is made, to determine that the bidder who has submitted the lowest evaluated bid price has the required capacity and resources to effectively carry out the contract". The Guidelines is silent on the minimum qualification criteria to be specified in the tender documents, in the absence of which, the determination would be subjective"

⁷ By specifying the minimum qualification criteria to be met to be eligible for award of the contract.

possible abusive practices and escalations of costs and delay in the procurement process.

2. For works of value less than Rs.5 M, which may be very large in number, going through the process of verification to meet the specified qualification criteria in each case may turn out to be cumbersome, lead to delays and hence determining the eligibility on the basis of simplified method of registration (either by the Heads of departments or ICTAD) would be preferable.

2.10.4 Recommendations

1. Insistence of Registration of Contractors to be eligible for tendering for works of value more than Rs.5 M should be discontinued.
2. In respect of works for which pre-qualification is not done (up to Rs.1000 M in value), the tender documents should contain contract-specific qualification criteria and the tenderers should be post-qualified before award of contract.
3. Registration of contractors may be done for taking up small works of value less than Rs.5M.
4. Registration of Suppliers/Vendors may be discontinued for materials, goods and equipment of value above the threshold limit for which open tenders are to be invited. Minimum post-qualification criteria to be met for award of the contract should be incorporated into the tender documents. Use of Registration should be restricted to procurement against limited tenders.

2.11 Two envelope, two stage tendering procedures

2.11.1 Provisions in the Guidelines:

“Two Envelope Bidding System:

- 73.1 For certain types of machinery or equipment or for certain type of equipment plants, where alternate types of technical proposals are possible, bidders may be required to submit their technical and financial proposals the same time, but in two separate envelopes. The technical proposals are opened first and reviewed to determine their responsiveness to the specifications.

Use of Two Envelope Bidding system:

- 73.2 Two envelop bidding system should not be used without specific Cabinet approval, except in the case of procurement of consultants. Cabinet approval may be sought when it is extremely necessary i.e. conditions of donors

Two Stage Bidding System:

- 72.1 For turnkey contracts and for other large and complex contracts, where the problem of technically unequal bids are likely to be encountered, a two stage bidding procedure may be adopted. Under this procedure, bidders are first invited to submit their technical proposals, in accordance with technical specifications without prices. All other bidding requirements, conforming to the

manner and deadline for bid submission, the furnishing of bid bond etc. must however be complied with by the bidders.

Use of Two Stage Bidding System:

72.3 Two stage Bidding System should not be used without specific Cabinet Approval. When it is extremely necessary Cabinet Approval may be sought i.e. conditions of donors.”

2.11.2 Current practices

In the two envelop system practiced by the Implementing Agencies, there is an inevitable delay in opening of the price envelopes which are retained by the procurement entity. Analysis of the data collected for a sample of contracts reveals that the delays are at unacceptable levels. The delay diminishes the tenderers' confidence in the integrity of the system. There are also possibilities of abuse which may go undetected.

2.11.3 Conclusions

The use of two envelope system should be generally prohibited. Where for compelling reasons a two envelop procedure is adopted, the first envelope should only have the eligibility, qualifications and other administrative requirements. The combined technical/price envelopes should be opened within a week of the deadline for submission of tenders

In the case of procurement of complex equipment, a two stage (the first stage is only for eligibility, qualifications and technical aspects of the tender. After review and possible discussions with the tenderers, amendments to the tender documents are issued inviting final technical and price tenders in one envelope and opened in one sitting) as opposed to the two envelope procedure should be adopted.

2.11.4 Recommendations

1. Prohibit use of two envelope system generally and use only with the approval of the Secretary of the concerned Ministry.
2. Prescribe use of Two Stage Tender system for procurement of complex equipment/plant and installation.

2.12 Tender Validity

2.12.1 Provisions in the Guidelines

There does not appear to be any specific provision prescribing the tender validity period and the procedure to be adopted for getting extension of tender validity period. However Specimen Instructions to Bidders (ITB) given in Appendix II of the 1997 Guidelines at Sl.No. 20 states against Period of bid validity: “ *Number of days to be determined by the employer, *Normally 120-150 days”.

Instructions to Tenderers Clause 15 of ICTAD SBD specifies as follows:

“15.1 Bids shall remain valid up to the date specified in the Bidding Data.

15.2 In exception circumstances, the Employer may request that the Bidders extend the period of validity for a specified additional period. The request and the bidder’s responses shall be made in writing (includes a telex and a signed facsimile). A bidder may refuse the request. A bidder agreeing to the request will not be required to or permitted to otherwise modify the Bid, but will be required to extend the validity of the Bid and Bid Security for the period of extension in compliance with Clause 16 in all respects. If a bidder does not agree for an unconditional extension of the validity of his Bid, his Bid should be rejected without forfeiting his Bid Security”

2.12.2 Current practices

In the absence of definite provisions in the Guidelines the procurement entities specify different periods of validity without any reference to the nature of procurement being made. Specifying a large tender validity period is uneconomical as the tenderer would most likely load his tender to allow for any uncertainties while the Purchaser/Employer wants to award the contract early. There is no provision for increase of rates in the case of fixed price contracts, when extension of bid validity is requested for a period more than two months from the date of expiry of the original validity period.

2.12.3 Conclusions

For small works, specifying a validity period of more than three months is not appropriate. The longer the validity period, the more likelihood of a delay in the decision on award of the contract towards the end of the tender validity period.

In the absence of a provision for increase of the rates for extension of bid validity beyond two months after the expiry of the tender validity, tenderers are likely to load the rates inappropriately.

2.12.4 Recommendations

1. The Guidelines should specify reasonable tender validity periods for different values and categories of works/supplies.
2. Standard Tender documents should incorporate a provision for the increase of prices at a pre-disclosed rate (linked to the country; inflation) for extension of tender validity period beyond say two months from the date of expiry of the original tender validity period.

2.13 Price Adjustment

2.13.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“155 Price Escalations in a works contract, for the works exceeding a period of twelve months as specified in the agreed work programme may be paid by the

executing agency under an accepted formula, provided the contract agreement itself provides for them.

However this should not be provided in the contract agreement unless it was not so stipulated in the tender documents.

Price Escalation Formula:

156.1 Any accepted Price Escalation Formula may be used by the Executive Agencies. However this formula should be specified in the tender documents. Price Escalation Formula developed by ICTAD or Foreign Financing Agencies are acceptable formulas.

156.2 Any extension granted for the convenience of the contractor in terms of Guideline 149.2 and 149.3 should not be considered for price escalation or be liable for any extra charges (i.e. idling of machinery, security costs etc.)

156.3 In fixing the time for construction works practically shortest possible time should be fixed to avoid unnecessary price escalation.

The Price Adjustment Clause in the ICTAD SBD reads as follows:

47.1 The amounts computed from the formula given under this sub-clause in respect of the rise or fall in the cost of labour, Materials, Plant and other inputs to the Works shall be added to or deducted from the payment to the Contractor.

(a) The adjustment to the payment certificates in respect of changes in Cost and Legislation shall be determined from following formula:

$$F=0.966 (V-Vna)/100 X (\text{Sigma all inputs}) (Ixc-Ixb)/Ixb \text{ where}$$

F=Price adjustment for the period concerned

V= Current valuation of the work done for the period

Vna= value of non-adjustable element or value of work not considered for price variation

Px=Input percentage of Input named X

Ixc=Current indices of input X

Ixb=base indices of input X

No other adjustment of the Contract Price on account of fluctuations of inputs shall be made, notwithstanding the fact that the contractor has to pay additional amount under special circumstances.

(b) The 'Input percentage' means the percentage proportionate contribution of any input in terms of the cost of construction based on the prices prevailing on one month prior to the submission of the tender and listed under clause 47 of the Contract data.

(c) The 'non-adjustable elements' means

- (i) The work done under the BOQ items that shall not be considered for valuation of price adjustment which are listed under Clause 47 of the Contract data;
- (ii) Extra works or additional works carried out by the Contractor on orders of the Engineer and are valued under Clause 40 based on the prices prevailing at the time of execution;
- (iii) Works done under Day Works rates;

- (iv) The 'Current valuation' means the gross value of work executed during the current valuation period and will include the cost of materials the contractor has purchased or delivered to site but were not consumed for the physical work done;
- (v) The 'Indices' means the monthly indices published by ICTAD for different inputs;
- (vi) 'Base Indices' means the indices for the input prevailing one month prior to the latest date for submission of tenders;
- (vii) In the case of first Interim bill, the current indices for the purpose of calculation of price adjustment shall be taken as the indices prevailing on first month after the commencement of the contract. For any other interim claim or for the final claim the current indices shall be taken as the indices prevailing for the calendar month, one month after the previous valuation was done.

If the contractor fails to complete the works within the time for completion prescribed under Clause 17 or 28 no adjustment of prices thereafter shall be made.

The weightings for each of the Inputs of cost given in this clause shall be adjusted if, in the opinion of the Engineer, they have been rendered unreasonable, unbalanced or inapplicable as a result of varied or additional work already executed or instructed under Clause 39 or for any other reason.

- 47.2 If, after the date 28 days prior to the latest date for submission of Bids for the Contract, there occur in the country in which the works are being or are to be executed changes to any Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law Regulation or by-law which causes additional or reduced cost to the Contractor other than under the preceding sub-clause of this Clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formula in accordance with the provisions of this Clause.

The Contract data shows that the total of the Input percentages shall be 90%.

2.13.2 Current practices

Guidelines use the words 'Price Escalation' and the ICTAD SBD uses the words 'Price Adjustment'. It would probably be appropriate to use the words 'Price Adjustment' in place of 'Price Escalation'. The Guidelines does not provide any guidance to the implementing agencies as to when the Price Adjustment is to be incorporated whether 6, 12 or 18 months of period of completion. Similarly guidance is also absent for fixing the optimum period of completion rather than suggesting shortest possible time

The Guidelines specify that any accepted Price Escalation Formula (such as WB,ADB, OECF, ICTAD or other Foreign Financing Agencies) may be used by the Implementing Agencies. Different Implementing Agencies use different Price

Adjustment Formulae. It is noted that the ICTAD SBD price adjustment formula has some indeterminates and the provision of changing the weightings for the various inputs during execution for the work leaves room for abuse.

2.13.3 Conclusions

The Guidelines do not provide adequate guidance to the implementing agencies on the incorporation of the Price Adjustment provision and leaves important decisions at the discretion of the Implementing Agencies. The ICTAD Formula has some shortcomings which need to be addressed.

2.13.4 Recommendations

1. Incorporate definite instructions as to when the price adjustment provisions are to be incorporated.
2. Mandate Price Adjustment in respect of all works contracts of value more than Rs.5 M and a completion period more than 12 months. Price Adjustment should be made applicable from the date of opening of tenders.
3. Incorporate a well thought out and workable formula for price adjustment which is fair and transparent.

2.14 Damages for Breach of Contracts, Liquidated damages

2.14.1 Provisions in the Guidelines

Extension of time and liquidated damages are covered under the 'Extension of Time' clause and the provision is as follows:

“149.1 Extension of time may be granted, when reasonable, and beyond the control of contractor, by the head of the department/Executing Agency or officer authorized to do so.

149.2 For any reason within the control of the contractor, the time period specified in the contract exceeds, then liquidated damages (LD) become operative. For any special reason LD can be waived by the secretary of the Ministry, provided it is so specified in the agreement. But claims on escalation as per Guideline 156.1 are not payable for this period.

149.3 Any extension granted purely for the convenience of the contractor should invariably be subject to a penalty by way of liquidated damages.

In case where procedural actions are taken to lodge claims arising from negligence or other failure of the contractor, any extension given should be without prejudice to interests of the client.

Paragraph 49 of the SBD reads as follows:

“49.1 The contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data. The Employer may deduct

liquidated damages from payments due to the contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.

- 49.2 If the intended Completion date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in Sub-Clause 43.1"

2.14.2 Current practices

Extension of time for any reason within the control of the contractor, should not be given without imposing liquidated damages. Provision for any waiver by any authority other than by Arbitrator or Court is susceptible to abuse.

The provision under paragraph 149.3 contradicts that given in paragraph 149.2 .

Penalty is different from LD. Contracting parties can recover damages but not impose a penalty.

The Guidelines need to be redrafted.

In one of the contracts reviewed in the North Western Province, extension of time was granted after recovery of liquidated damages. However repayment of liquidated damages in terms of the provision in GCC Clause 49.2 was not made despite several requests from the contractor.

2.14.3 Conclusions

The provisions in the Guidelines are not consistent and are not as per best international practices ensuring equality and transparency in contract implementation

2.14.4 Recommendations

Revise the Guidelines and provide additional guidance on contract administration including handling of variations, claims, obligation of parties, breach of contract and damages.

2.15 Notification, advertisement and publicity

2.15.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“ Publication of Tender Notice:

76. After the approval of the Tender Board is obtained for the tender documents, the head of the Client Department should ensure that the widest possible publicity is given to the tender.

77. The advertisement should specify that tender documents could be purchased by prospective tenderers who are eligible to tender to tender from a given address, giving the final date of issue.
78. The tender notice should be published in an abridged form in approved local newspapers and at least once in the Government Gazette where ever possible.
79. The Notice should contain the essential particulars and indicate how and where further and more detailed information may be obtained and what payments are involved for issue of Tender documents and what other conditions if any have to be satisfied.”

International Competitive Bidding:

79. In the case of worldwide tender, in addition to normal publication in Sri Lanka and also on the internet available abroad, the Client Department should send copies of tender documents to:
 - (a) the Commercial Sections of all Missions of Foreign Governments in Sri Lanka (including those accredited to Sri Lanka, but resident outside);
 - (b) Heads of Sri Lanka Missions abroad; and
 - (c) Approved Overseas Agents of the Government of Sri Lanka.”

2.15.2 Current practices

The requirement of giving widest possible publicity and publication in approved local news papers are not congruous.

The requirements of publication of the tender notice are envisaged to be the same for all values of contracts.

2.15.3 Conclusions

The provisions in the Guidelines are incongruous and do not detail the procedure for notification for different values of contracts.

The instructions regarding the publication of the tender notice in the Government Gazette is ambiguous. The Guidelines in respect of ICB does not sufficiently cover the requirements of the tender documents and what action is expected to be taken by the Foreign Missions.

2.15.4 Recommendations

1. The Guidelines should stipulate the scale of publicity for different methods of procurement and estimated amount of the procurement put to tender.
2. Guidelines should also specify the threshold value which requires publication in the Government Gazette.

3. Guidelines should specify the intended purpose of sending the tender documents to Foreign Missions, which is to generate wide publicity thereby reaching more prospective tenderers.
4. For large value or specialized contracts Guidelines should specify that the tender notice be also published in well known technical magazines.

2.16 Issue and sale of tender documents

2.16.1 Provisions in the Guidelines

Provisions in the Guidelines:

- “ 81. The Client Department should maintain an office where document can be inspected or issue to prospective tenderers.
83. No tender documents shall be issued unless the non-refundable tender fee and/or deposit stipulated in the Tender Notice has been paid and proof of qualifications if any is produced as required in the tender Notice.
84. The Tender fee/deposit receipt must be produced for examination to the officer issuing the tender documents.
85. The issuing officer shall write the following on the margin of the tender documents issued and initial the endorsement:
- (a) the number and date of the receipt produced;
 - (b) the full name and address of the person/firm to whom the tender documents are issued and particulars of registration;
 - (c) the date of issue of the documents.
- He shall endorse on the top or on the reverse of the receipt produced that documents have been issued, giving the serial numbers, if any, assigned to the Tender Documents.
86. No tender documents shall be issued to any person whose name appears on the list of defaulting contractors.
87. No tender document shall be issued to any person who is required to satisfy prior conditions until he has satisfied them.
88. A Tender Board at its discretion may require tenderers to produce a current certificate of worth and proof that they possess or could mobilize adequate equipment and competent staff before they are issued with the tender forms. Such requirements should have been included in the Press Notice relating the Tender.
65. For procurement of construction works exceeding the value of Rs.5 M under the Consolidated Fund, issue of tender documents should be confined to those who have registered under the National registration System of ICTAD and have the membership of NCCASL, provided the registration system has covered the relevant construction field.

66. For procurement of works not exceeding the value of Rs.5 M issue of tender documents shall be done in the following ways:
- (a) A Head of Department with the Authority of Secretary of the Ministry concerned may publish a notice and prepare a register of construction contractors who are capable of construction works of specified description, magnitude or value and issue tender documents to names appearing on the register; and/or
 - (b) Issue of tender documents to those who have registered under the national Registration System of ICTAD.
- 85.1 The issuing officer shall maintain a register giving the following particulars:
- 1. serial number of the tender document issued;
 - 2. date of issue
 - 3. name and address of person or persons to whom the tender document has been issued;
 - 4. tender fee, receipt number and date;
 - 5. name and designation and signature of the issuing officer.

2.16.2 Current practices

From the above it is seen that the tender document issuing official has to make many checks before issuing documents. Giving such discriminatory powers to the tender document issuing official could be abused and may lead to corrupt practices.

There are varying practices with respect to the last date up to which the tender documents are to be sold. In the absence of specific provisions in the Guidelines, the implementing agencies follow different practices. While some agencies sell the documents even on the last date for submission of tenders, others close the sale a week or so before the last date of submission, arguably to enable prospective tenderers to make a proper study of the tender documents. This procedure could prompt prospective tenderers to collude, adopt corrupt practices, as the list of prospective tenderers could be ascertained and enough time be available for possible manoeuvrings.

The tendering period (the period from the start of the sale of document to the stipulated date of submission) is a minimum of 21 days for contracts financed from CF and a minimum of 30 days for contracts financed by donor agencies.

2.16.3 Conclusions

The tender documents is like a stationary item and should be freely issued to all the applicants who furnish the stipulated non-refundable fee. All the checks regarding eligibility should be made by the Tender Evaluation Committee.

The sale of the tender documents should be made up to the close of office working hours or any other convenient time, not more than a day prior to the last date of submission of tenders. The last date of submission should be fixed such that there are no intervening holidays between the last date of sale and last date for submission of tender. The Guidelines does not specify whether the tender documents could be sent by mail, provided the applicant is prepared to pay the stipulated postal/courier charges.

Different tendering periods for CF and donor financed contracts are not desirable since both types follow Government Tender procedures.

2.16.4 Recommendations

1. The tender documents should be sold to all applicants who remit the prescribed non-refundable fee for the documents.
2. The tender documents should be sold up to a convenient pre-fixed time a day prior to the last date for submission of the tenders.
3. The Guidelines should provide for issuing tender document by post or courier if requested and on payment of the cost of tender document along with postal/courier charges.
4. The tendering period should be a minimum of 30 days irrespective of the source of funds.

2.17 Pre-tender conference

2.17.1 Provisions in the Guidelines

There is no provision for holding pre-bid meetings to clarify issues and to answer questions on any matter that may be raised by the potential bidders during the meeting

ICTAD SBD has the following provisions:

“ 17.1 The bidders designated representative is invited to attend a pre-bid meeting which, if convened and stated so in the Bidding Data, will take place at the venue and time specified in the Bidding Data.

17.2 The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. The bidder is requested to, as far as possible, to submit any questions in writing or by fax to reach the Employer not later than one week before the meeting. It may not be practicable at the meeting to answer questions received late.”

2.17.2 Current practices

The SBD is silent on the recording and issue of the minutes of the pre-bid meeting.

2.17.3 Conclusions

The Guidelines does not have any provision for organizing pre-bid meetings. The SBD provisions are incomplete in respect of the follow up action on the outcome of the meeting.

2.17.4 Recommendations

1. Guidelines should provide for holding pre-bid meetings and incorporate objectives and detailed procedures for conducting the pre-bid meeting as well as the follow up action on the outcome of the meeting.
2. SBD should contain a paragraph on the procedure of the recording and distribution of the minutes of the meeting; and issuance of addendum to the tender documents should it become necessary following the minutes.

2.18 Receipt of tenders and storage till opening

2.18.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“ Sealed Tenders to be accepted:

90.1 All the tenders should be accepted in sealed covers. Tender documents including the tender notice should stipulate a condition to this effect.

90.1.1 Sealed Quotations: All quotations exceeding the value of Rs.100,000 should be accepted in sealed covers and opened at the specified time.

Bids to be in duplicate:

90.2 Tenders shall be submitted in one original and such number of duplicates as stipulated in Instructions to Bidders, sealed separately and marked as original or Duplicate. All these envelopes shall together be enclosed in one envelope and delivered as per Clause 91.

Mode of Submission:

91. Tenders may be submitted:

- (a) By post, under registered cover;
- (b) By personal delivery to an officer authorized by the Tender Board to receive tenders;
- (c) By depositing in the sealed tender Boxes kept in the office of the tender Board as stipulated in the tender documents;
- (d) By fax or telex or e-mail when explicitly permitted by the notice of Tender. However this mode is permitted for the acceptance of quotations up to the value of Rs.100,000 under personal supervision of Head of Department. In all other cases ~~specific cabinet approval~~ Tender Board approval should be obtained to use this mode.

Place of Receipt of Tenders:

92.1 Tender notice should clearly specify the place of receipt of tenders.

Acknowledgement:

92.2 A person who delivers the tender by hand is entitled to a receipt

Safe deposit:

93. The officer who receives the tenders should deposit them immediately on receipt in the sealed tender box. If tenders are too large and such deposit is not possible they should be deposited in a secured cabinet/cupboard provided for the purpose.

Tender Box:

94. The Tender Box should be:
- (a) constructed so as not to permit tampering or retrieval;
 - (b) fastened with a good lock with the key being kept in the custody of a staff officer nominated by the Chairman of the Tender Board;
 - (c) sealed;
 - (d) kept in a room occupied by a staff officer.

Closing of Tenders:

95. Tenders should normally close at the date and time specified in the tender notice and as far as possible should be opened immediately afterwards. If for any reason, the Tenders are not opened immediately, the Tender Box or other receptacle shall be closed and sealed at the closing time. International tenders, as far as possible have the closing time adjusted to suit the convenience of foreign tenderers as well

Item 24 of the Specimen Instructions to Bidders (ITB) given in Appendix II of 1997 Guidelines permits Modifications, Substitution and Withdrawal of bids before the dead line for submission of bids. They should be sealed, marked and delivered according to prescribed provisions.

2.18.2 Current practices

Though there is a provision in the Guidelines for opening of 'Withdrawal' envelope first, there is no paragraph in the Guidelines explaining the provision for Withdrawal of tenders. Similarly there is no provision for modification of tenders.

ICTAD SBD has necessary provisions.

2.18.3 Conclusions

In the absence of clear provisions in the Guidelines regarding withdrawal and modifications to the already submitted tenders, disputes could arise, in case tender documents other than ICTAD documents are used or in the case where the Executive Agencies do not adopt the Specimen Instructions to Bidders.

2.18.4 Recommendations

Guidelines should stipulate the procedure for submission of 'Withdrawal' and 'Modifications' of tenders.

2.19 Opening of tenders

2.19.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“Opening of tenders:

97. The opening of tenders other than tenders handled by CATB is the responsibility of the respective Tender Board. However if the TB is unable to attend to the opening of the tenders they may delegate this authority to a Bid Opening Committee (BOC) consisting of at least two staff officers and one of whom shall be appointed as Chairman of BOC.

97.1 In respect of tenders handled by CATB the opening of tenders is the responsibility of the Secretary to the Line Ministry. However if the Secretary to the Line Ministry is unable to attend to the opening of tenders, he may delegate the authority to the BOC consisting of at least two senior staff officers one of whom should be appointed as Chairman of BOC

Right to be present at Bid Opening:

98. The tenderers or their authorized representatives should be allowed to be present when the tenders are opened. However the number of representatives per tender should be limited to two. The names of the tenderers present or represented should be recorded and their signatures obtained in a register before commencement of the opening.

Supervision of Opening:

99. The tenders, other than tenders handled by CATB, shall be opened by or under the immediate supervision of the Chairman TB/BOC.

99.1 Tenders handled by CATB shall be opened by , or under the immediate supervision of , the Secretary to Line Ministry or the Chairman BOC

Acceptance of Samples:

100. If samples are called as a pre-requisite tender condition, all the samples so received together with identification numbers should be submitted before the time of opening of tenders to the Tender Board/BOC. Records of the BOC shall include details of samples received. Samples received should be handed over to the TEC together with the tenders. If samples are handed over at a different place other than place of bid opening in terms of the tender document, then a receipt to that effect should be produced at the bid opening.

Opening Procedure:

101.1 Any tenderer may withdraw his tender before the closing, by submitting letter of withdrawal. The envelope marked “withdrawals” should be opened first. If the TB/BOC is satisfied with the contents of the letter inside, his original tender should not be opened. If a bidder has withdrawn his bid following the procedure

stipulated in the ITB and TB/BOC accepts it , the bid security of the relevant tenderer should be refunded.

- 101.2 If any tenderer submits modifications to his original tender before closing time of the tenders, The envelope marked “modifications” should be opened next and the contents of the letter therein will be valid over his original tender.
- 102.1 The envelope marked ‘original’ should be opened thereafter. The duplicate envelope should not be opened and kept in tact in safe custody for further reference.
- 102.2 Where there is no marking as ‘original’ or ‘duplicate’ the Tender Board/BOC should open one envelope and mark that as original and it will prevail as the original tender for all purposes.

Records of TB/BOC:

- 103.1 The TB/BOC should read out, or cause to be read out to those present the following details:
- (a) names of each tenderer and the amount in the form of tender and price schedule;
 - (b) whether or not a bid bond is submitted and the amount of bid bond, if submitted
 - (c) If discounts are declared in the bid form and price schedule , the amount of discount and any conditions attached to it.
 - (d) The amount of any alternative offer and whether a bid bond has been submitted for the alternative offer;
 - (e) If the tender consists of several items or lots or packages, which are treated separately, for evaluation and award, the amounts tendered for each item, lot or package should be read out separately
 - (f) Whether the form of tender has been duly validated by the signature of the tenderer or not.

However the details or make up of tender should not be read out.

- 103.2 The proceedings of the Bid opening should be recorded and the minutes shall be authenticated by the members of the TB/BOC

Numbering of Tenders:

104. On opening, the tenders shall be numbered consecutively and shall forthwith be authenticated by the initials of the officers opening them together with the date on which they were opened. A rubber stamp shall be used for the purpose. Pages consisting the summary of all data which are required as per evaluation criteria should be date stamped and initialled by TB/BOC

Scheduling of Tenders for Evaluation:

107. Immediately after the opening of the tenders, the Chairman of the TB/BOC should cause a schedule of the tenders received to be prepared in a suitably designed format. The scheduling may be done either by the TB/BOC or by the Head of the Client Department and original of the schedule should be submitted to the Tender Board promptly. This schedule may be initialled by the tenderers present if they so desire.

The Provisions in the ICTAD SBD are as follows:

“23 Bid opening:

- 23.1 The Employer will open the Bids, including modifications made pursuant to Clause 22, in the presence of the bidders’ authorized representatives who choose to attend at the time and in the place specified in the Bidding Data. The bidders representatives who are present shall sign their attendance.
- 23.2 Envelopes marked “WITHDRAWAL” shall be opened and read out first. Bids for which an acceptable notice of withdrawal has been submitted pursuant to Clause 22 shall not be opened.
- 23.3 The bidder’s names, the Bid prices or any discounts, Bid modifications and withdrawals, the presence or absence of Bid Security, and such other details as the Employer may consider appropriate, will be announced by the Employer at the opening. No Bid shall be rejected at Bid opening except for Late Bids.

2.19.2 Current practices

In the absence of consistency between the Guidelines and SBD, the Implementing Agencies follow different procedures.

2.19.3 Conclusions

There is inconsistency in the procedures laid down in the Guidelines and with the ICTAD SBD.

2.19.4 Recommendations

1. The inconsistencies within the Guidelines should be removed. The procedure should be simplified to avoid delay in processing of tenders.
2. The inconsistencies between the Guidelines and SBD should be removed and documents harmonized.
3. The Guidelines should be reviewed and redrafted.

2.20 Preliminary examination of tenders

2.20.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“124.1 Correction of Errors:

Errors should be corrected as follows:

- (a) Where there is a discrepancy between the amounts in figures and in words, the amounts in words will govern; and
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity,

- (i) The unit rate as quoted will govern;
- (ii) Unless in the opinion of the TB/TEC there is obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern and the unit rate will be corrected.
- (c) The amount stated in the form of bid adjusted in accordance with the above procedure with the concurrence of the bidder shall be considered as binding upon the bidder. If the bidder does not accept the corrected amount of bid, his bid should be rejected.

The procedure stipulated in (c) above should be followed for the foreign funded projects provided it is stipulated in loan agreements and/or Standard Bid Documents. However for the locally funded projects, if the total bid price increases due to corrections of above mistakes, the corrections should be readjusted within the tendered price in consultation with the tenderer.

Where the adjusted price is lower than the tendered price the adjusted figure will be the bid price. If the tenderer does not agree for such adjustments, his bid should be rejected without affecting his bid security.

The provisions in the ICTAD SBD are as follows:

“27. Correction of Errors:

27.1 Bids determined to be substantially responsive will be checked by the Employer for any arithmetical errors. Errors will be corrected by the Employer as follows:

- (a) Where there is a discrepancy between the amounts in figures and in words the amount in words will govern; and
- (b) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will govern, unless there is an obviously gross misplacement of the decimal point in the unit rate in which case the line item as quoted will govern, and the unit rate will be corrected.;
- (c) Unless this sub-clause is modified in the Bidding Data and if the bid price decreases by the above procedure, the amount stated in the Form of Bid shall be adjusted with the concurrence of the bidder and shall be considered as binding on the bidder;
- (d) Unless this sub-clause is deleted in Bidding Data and if the total bid price increases due to corrections made on above procedure, the bid price shall not be adjusted to the increased price and the corrections should be readjusted within the bid price in consultation with the bidder.

2.20.2 Current practices

The procedures stipulated for correction of errors both in the Guidelines and the SBD have different standards in respect of tenders for locally and externally funded projects. Irrespective of the source of fund, these are public projects executed by the Government of Sri Lanka and hence uniform procedures should be adopted. The procedure designed for consolidated fund tenders is one sided being solely in favour of the Employer and does not provide a level playing field.

2.20.3 Conclusions

The procedure adopted for correction of errors and establishing the bid price are different for donor and consolidated fund financed tenders. The one used for consolidated fund financing is not rational

2.20.4 Recommendations

The para dealing with the correction of errors both in the Guidelines and the ICTAD SBD should be modified to adjust the bid price after making the arithmetical corrections in accordance with Para 124.1 (a) to (c). The last two sub-paragraphs following Para 124.1 (c) should be deleted.

2.21 Purchase and price preference

2.21.1 Provisions in the Codes and Guidelines

Provisions in the Guidelines:

“126. The General Treasury from time to time will determine and notify quantum of preferences applicable and its eligibility criteria. The preferences presently valid and their eligibility criteria are as follows:

- 5% preference for Approved Societies
- 10% preference for works contracts (eligibility criteria is more than 50% Sri Lankan ownership of the Company).”

Eligibility Criteria for domestic Preference Consolidated Fund Projects – Locally Manufactured Goods:

126.1 When International Competitive bids are called and locally manufactured goods are offered in competition with imported goods domestic preference may be given to locally manufactured goods subject to the following:

- (viii) Locally manufactured Goods are eligible for domestic preference irrespective of any value added component.
- (ix) BOI projects registered under Section 16 of the Greater Colombo Economic Commission Law (including joint venture companies with majority ownership by Sri Lankans) are eligible for domestic preference. Other BOI projects should not be considered for this preference.

Application of Domestic Preference to determine respective bids under Consolidated Fund projects – Locally manufactured Goods:

126.2 In applying domestic preference the following procedure should be adopted for evaluation of tenders when comparing prices of locally manufactured goods with prices of foreign suppliers. The price of the locally manufactured goods should be ex-factory price

Step 1: Identify the relevant custom duty as Gazetted in the Revenue Protection Order.

Step 2: Following Application Levies should be identified.

- (1) National Security levy
- (2) Stamp Duty
- (3) Cess
- (4) Excise Duty
- (5) Surcharge on Custom Duty
- (6) Turnover Tax BTT

Step 3: Average percentage of 5% of CIF covering Vessel Charges, Bank Charges, charges to vessel agent, transport and detention should be added to the CIF value of the foreign supplier to bring local and foreign tenderers to a level playing field (This percentage will be reviewed annually by the Treasury).

Step 4: For the purpose of applying domestic preference, the Custom duty as in Step 1, additional levies as in Step 2 and average other charges as in Step 3 should be added to the foreign supplier's CIF price.

Step 5: (i) If the adjusted bid price of the foreign supplier as per Step 4 is more than the evaluated bid price of the local manufacturer, the contract should be awarded to the local manufacturer.

(ii) In respect of local suppliers who quote on an ex-stock basis the quoted price by foreign supplier should be adjusted as per Step 4 as ex-stock price includes all relevant taxes and duties and the evaluation of the relevant bid should be brought in line with a common basis.

The GST component should not be considered for evaluation of bids.

The Department of Public Finance vide its Circular No.352(21) dated 15-10-2002 has laid down new Guidelines with regard to Domestic Preference to Local Manufacturers. It reads as follows:

“All provisions, related to the application of domestic preference for procurement under the Consolidated Fund in the Guidelines on Government Tender Procedure (Revised Edition – August 1997) and in all subsequent circulars are hereby repealed.

New Guidelines on Application of Domestic Preference for procurement under Consolidated Fund will be as follows:

Application of preference:

126. The General treasury from time to time will determine and notify the quantum of preference applicable and its eligibility criteria. Reference should be made in the tender documents to the applicability of domestic preference and be considered when evaluating tenders. The preferences and their eligibility criteria are as follows:

- 5% preference to Approved Societies;
- 10% preference for domestic works contracts (eligibility criteria is more than 50% of Sri Lankan ownership of the Company);
- 20% preference for locally manufactured articles subject to eligibility criteria given in the Guidelines 126.1

Eligibility Criteria for Domestic Preference for Projects funded by Consolidated Fund – Locally Manufactured Articles.

126.1 When International or Local Competitive Bids are called and locally manufactured articles are offered in competition with imported articles, 20%

domestic preference should be given to locally manufactured articles subject to the following:

- (i) The input of local labour, local raw materials and local components in any locally manufactured article accounting for at least 30% of the ex-factory price. For this purpose any other components such as financing cost, factory overheads, depreciation of machines or profit margin should not be considered as apart of the ex-factory price;
- (ii) Production facility must be engaged in production of such articles at the time of bid submission;
- (iii) Other than the BOI projects registered under Section 16 of the Greater Colombo Economic Commission Law (including Joint Venture companies with majority ownership by Sri Lankans) articles manufactured under BOI projects are not eligible for this preference;
- (iv) It is the responsibility of the tenderer to provide acceptable evidence along with his tender for the satisfaction of the Tender Board on his eligibility. Tenderers who fail to comply with this condition should not be considered for domestic preference.

When evaluation of tenders, application of domestic preference should be done in accordance with the method, prescribed in the annexure attached to this circular

Applicability of domestic preference for procurement under the projects financed by foreign financing agencies will remain unchanged as in Guideline No.126 of the Government Tender Procedure, Revised Edition, August 1997 and Guideline No.126.2 as amended by the Public Finance Circular No. 352(4) dated 7-4-1998.

Application of Domestic Preference (DP) in the Evaluation of Tenders under Guideline No.126.1 of the Government Tender Procedure.

All offers received should be evaluated in terms of Chapter IX of Guidelines on Government Tender Procedure (Revised Edition – August 1997), related other circulars and the evaluation criteria given in the tender document and substantially responsive bids identified. Among those responsive bids, if there are any bids which are eligible for domestic preference in terms of Guideline 126.1 then the following method should be adopted.

In the first instance all the bidders should be divided into two groups i.e. preference entitled group and preference not entitled group;
At the next step an amount equal to 20% of CIF price of each bid should be added to the respective evaluated bid price of preference not entitled group, hypothetically for comparison purpose. In the case of locally manufactured articles which are not entitled for domestic preference, 20% of the lowest CIF price quoted, should be added;
Re-rank the bidders on the above basis.

Successful bidder should be decided according to the re-ranking order. However, award price should be the evaluated bid price of the tender and not the price computed for determination of domestic preference.

The Exceptions and Deviations from normal Tender Procedure are discussed in Chapter VII of the Guidelines. Some of the exceptions are given below:

“164.1 Entrusting of construction works to Approved Societies:

Entrusting of construction works to approved societies, deviating from competitive bidding may be authorized by the Head of Department/ Executive Agency on the recommendations of a committee comprising of the following:

- (a) Two nominees of the relevant Head of Department
- (b) The Divisional Secretary of the area or his nominee

Before recommending, the committee should ascertain that the award conforms to the following:

- (1) The works so entrusted should be within the area of authority of the approved society;
- (2) Total number of works in hand with the approved society at a given time should not exceed three;
- (3) Total value of works being performed by the approved society at a given time should not exceed Rs.1 M;
- (4) Approved society should have required capacity to handle the project which should be supported by the following: (a) Evidence to prove financial resources in the form of bank statements, letters from banks approving overdraft facility etc. (b) Evidence to prove past experience of the society on similar works;
- (5) The approved society should have been registered at least two years prior to the date of calling offers.

164.2 The approved societies as at present are:

1. Samurdhi Balakayas
2. Multipurpose Co-operative Societies
3. Co-operative Labour Societies (labour Services only)
4. Rural Development Societies
5. School Development Societies (The area of authority is the relevant school premises only);
6. Farmer Organizations approved by the appropriate authorities

The General treasury from time to time will determine the Approved Societies.

164.7 Direct Purchase of Articles of small value/Emergency purchases:

A Head of the Department may purchase articles directly from the open market up to a value of Rs.10,000 when it is uneconomical to follow normal tender procedure. However this authority should be used by the Head of department under his personal supervision only for exceptional cases and not on a regular basis. This authority may be delegated to one additional Secretary where the Secretary of a line ministry is the appropriate authority.

Preferences should be given to purchases from Government Institutions as indicated in Guideline 172.

165. Local Heads of departments or officers in charge of separate units of institutions of department may purchase essential utility articles of small value up to Rs.1500 per day when it is uneconomical to follow normal procedure to procure them. The total of such purchases during any calendar month should not exceed Rs.10,000. Preference should be given to purchases from Government Institutions as indicated in Guideline 172 in making direct purchases.

166. A Secretary may authorise any other emergency purchases of required stores in an emergency situation in the most advantageous manner possible. However such purchases should immediately be reported to the Auditor General with a copy to the Director general of Public Finance.
167. However in a case of major emergency (floods, fire, epidemics etc.) the purchase of immediate requirement of stores, irrespective of value may be authorized by the Head of Department or by a Deputy Head under delegated authority, in the most advantageous manner possible. Such purchases should be reported to Secretary to the Line Ministry concerned with copies to the Auditor general and Director General of Public Finance, as soon as possible.
172. Procurement of Supplies and Services from Government Institutions:

Procurement of Supplies and Services from Government Institutions as stated below may be authorized by appropriate authorities, without following tender procedure and in accordance with the provisions of this Chapter but not exceeding the financial limits stated in Guideline 179.

1. Government Departments i.e. Government Factory
2. Government Corporations i.e. CWE, State Printing Corporation
3. Government owned companies, provided appropriate authorities are satisfied that their prices are competitive and reasonable, i.e. purchasing of paper from National Paper Co. Ltd. (Government owned companies means the companies registered under the Companies Ordinance but having more than 50% ownership by the Government.)

179. Authority for deviating from tender procedure:

When owing to urgent and exceptional circumstances, it becomes necessary to deviate from prescribed tender procedure and General authority is not available, the authorities indicated below, may within the limits prescribed, authorize specific deviations for works, services or supplies

Head of Department/Line Ministry Secretary- His personal Approval	Up to Rs.100,000
DTB subject to personal approval of HOD	Up to Rs.5,000,000
MTB subject to personal approval of Secretary	Up to Rs.10 M
Cabinet Ministers	Above Rs.10 M

2.21.2 Conclusions

Providing price and/or purchase preferences, or providing exemptions for submission of tender deposit to a group of organizations (such as approved societies and parastatals) or placing orders to Government Institutions without inviting quotations/Tenders is not in public interest and is against the principles of competitive procurement and equality as it does not provide a level playing field for all as embodied in the preface to Guidelines signed by the President.

2.21.4 Recommendations

Guidelines should be amended to exclude all preferences except for domestic preference to local manufacturers in respect of International/ Worldwide tenders. The percentage of preference needs review.

2.22 Tender evaluation and approval for contract award

2.22.1 Provisions in the Codes and Guidelines

Provisions in the Guidelines are as follows:

- “ 14. The limits of Authority for tender awards for the projects funded by the Consolidated Fund are:

Head Of Department (HOD)	Up to Rs.100, 000
Departmental Tender Board(DTB)	Up to Rs. 10 M
Ministry Tender Board (MTB)	Up to Rs.20 M
Cabinet Appointed Tender Board	Above Rs.20 M

195. The authority limits to handle/recommend award of tenders under projects funded by Financing Agencies are as follows: (Except for special circumstances described in Guidelines 203, International Shopping etc.)

Head of department/P.D./ Project Manager	Up to Rs.200, 000
Project Tender Board (PTB)	Up to Rs.25 M
Departmental Tender Board (DTB)	Up to Rs.100 M
Ministerial Tender Boards (MTB)	Rs.100 to 250 M
Cabinet Appointed Tender Boards (CATB)	Above Rs.250 M

In the case of Provincial Councils and local authorities (MC, UC, and PS) MTB and CATB are to be equated respectively to the MTB of a Line Ministry and a CATB appointed by the Cabinet of Ministers.

The splitting of large works, supplies and services into small units to accommodate them within the limits of a tender Board should be avoided.

Minor Tender Boards

15. Heads of departments having Regional/District Offices or having large Divisions may set up Minor tender Boards with the approval of the Secretary to the Ministry concerned to deal with tenders not exceeding Rs.2 M. These Tender Boards should be chaired by a Staff Officer not below the rank of Assistant Head of Department.

Other members of Tender Board should be selected from senior officers of the regional/District office of the department and preferably one member from an outside Department.

Departmental Tender Boards (DTB):

- 16.1 The Secretary of a Ministry shall appoint in writing, Departmental Tender Boards in respect of each Department under his Ministry. Where the volume of work is large, more than one Departmental Board can be appointed.

Composition of Departmental Tender Boards:

16.2 Composition of DTB shall be as follows:

- Head of department as Chairman;
- A representative from the Ministry in charge – Member (in case where a Ministry representative could not participate due to practical reasons, a senior staff officer from an outside Department)
- A staff officer specialized or experienced in the relevant field from the Department or state agency – Member.

Ministry Tender Board (MTB):

17.1 The Secretary of the Ministry shall appoint the Chairman in the case where he is not the Chairman, and the other members of the MTB.

Composition of the Ministry Tender Board (MTB):

17.2 Composition of the MTB shall be as follows:

The Secretary to the Ministry or the Additional Secretary as Chairman
 The Head of the Client Department (in case where there is no Client Department a Senior staff officer from the Ministry or state agency)
 A Senior staff officer experienced or specialized in the relevant field, preferably from a Department outside the Ministry.

However, in a case where the Secretary of the Ministry concerned is not the Chairman of a Ministry tender Board, the decisions taken regarding the award should be approved by the Secretary personally.

In respect of Foreign Assisted Projects, as per December 2000 Guidelines the Composition of DTB/MTB shall be as follows:

“197. The Secretary of a Ministry shall appoint in writing Departmental tender Board in respect of each Department under his Ministry. The Composition of a DTB shall be as follows:

- Head of department as Chairman;
- A representative from the relevant Line Ministry as a Member (in a case where, for practical reasons, A Ministry Representative cannot participate, a senior officer from an outside Department should be nominated);
- A Staff Officer specialised or experienced in the relevant field from the Department or from an outside agency as a member.

The Composition of the Ministry Tender Board shall be as follows:

- The Secretary to the Ministry or the Additional Secretary as Chairman;
- The Head of the Client Department(in a case where there is no client Department, a Senior Staff Officer from the Ministry) as a Member;
- A Senior Staff Officer experienced or specialised in the relevant field who must come from an agency external to the Client Ministry as Member.

The Secretary of the Ministry shall appoint the Chairman in the case where he is not the Chairman, and the other Members of the MTB. However in the case where the Secretary of the Ministry is not the Chairman of a MTB, the Secretary should personally approve the decisions taken regarding the award.

Project Tender Board (PTB):

198. The composition of PTB shall be as follows:

- Project Director/Project Manger (Chairman);
- Representative from the Department or Ministry;
- Senior Staff Officer from the Project or from an outside Department

Project Tender Boards should be established by the Head of the Department with the approval of the secretary to the Ministry concerned.

Cabinet Appointed Tender Boards (CATB):

18.1 The CATB shall be appointed by the Cabinet of Ministers and Secretary to Treasury shall nominate CATBs to handle tenders as and when requests come from the Line Ministries

Composition of CATB:

18.2. The composition of the Permanent Cabinet Appointed Tender Boards shall be as determined by the Cabinet.

18.2.1 In a situation where the permanent Chairman of the CATB is unexpectedly absent or becomes unavailable for a meeting at short notice, the most senior attending member of the CATB shall act as Chairman so that the meeting can be concluded on the scheduled date.

Standing CATB:

18.1 In extraordinary situations, a Ministry may submit a cabinet memorandum specifying the special circumstances which require a deviation from the normal tender procedure in order to meet such circumstances, and seeking approval to appoint a Standing Tender Board, indicating the limits of tender and the composition of tender Board with a Treasury representative. TEC for Standing tender Boards shall be appointed by Secretary to the treasury taking into consideration the special nature of the Tender Board.

Justification for Standing CATB:

18.2 Standing CATB may be justified where:

- Expeditious processing of tender offers is necessary;
- Quick decisions have to be taken for procurement of works, supplies and services;
- Supplies immediately required to avoid acute shortage in the market;
- Tender offers have very short validity period;
- The prices of supply items fluctuate very quickly;
- The same procurement to continue repeatedly without significant changes in specifications;
- Security reasons;

- A project contains a large number of tender packages spread over a long time span.

Appointment of CATB:

20. In the case of a CATB the application for the appointment of the Tender Board should be made to the Secretary to the treasury by the Secretary to Line Ministry concerned, with a copy to the Department of Public Finance, General treasury. An application should also be made to the Secretary to treasury for the appointment of a TEC. For this purpose the names of not more than 10 suitable officers should be submitted.
21. The application for the appointment of a CATB should indicate the range of the Cost Estimate of the project proposal and whether provision is available to meet the expenditure during the full period of the project. The Secretary to the Ministry should not recommend the appointment of CATB if financial provision is not available. Each member of a Tender Board other than the members appointed by designation as members of a Tender Board should have a pre-designated alternate member to participate in the Tender in the event they are rendered unavailable on the scheduled date of a meeting.

It is the responsibility of the nominated member to instruct the alternate member to attend meetings when he/she is unavailable to attend.

The nominated member should brief the alternate member on the progress made and issues involved in the tender, before proceeding on leave or otherwise being unable to attend a Tender Board meeting. An alternate member may attend a tender Board meeting as an observer along with the nominated member whenever necessary. An alternate member may be delegated with the authority to participate in a Tender Board meeting for part of the proceedings pending the arrival or premature departure of the meeting of the nominated member.

- 22.1.1 When a Chairman or member of a CATB is rendered unavailable for a scheduled meeting he/she shall pre-designate an Additional Secretary as an alternate member and immediately inform Treasury and the meeting shall proceed on the scheduled date. It is the responsibility of the permanent member to instruct the pre-designated alternate member to attend meetings when he/she is unable to attend.
- 22.1.2 When the Treasury/PSB representative on the CATB is rendered unavailable for a scheduled meeting, the ST/DST/DGPF will nominate an alternate representative and the meeting shall proceed on the scheduled date.

Technical Evaluation Committees(TEC):

29. There should be a Committee of Experts on Finance and technical matters known as the Technical Evaluation Committee (TEC) in respect of each tender handled by a CATB as well as MTB/DTB which are handling tenders within the enhanced limits for Donor assisted projects. In other cases a tender Board may obtain the assistance of a TEC to examine the technical and financial aspects of the tender if they require so.

Examination of the Draft Documents:

30. The TEC should examine the draft tender documents Prepared by the Executing Agency and give its recommendations to the Tender Board for a decision.

Reports of TEC and attendance at TB meetings:

31. The TEC shall submit written reports to the tender Board and its members shall be present at tender Board meetings whenever required to clarify matters. The Tender Board may conduct its deliberations, as far as possible, without the presence of the TEC members after the TEC has submitted its written report.

Composition of TEC:

31. A variety of representative disciplines relevant to the subject matter should be covered in constituting the TEC. At least one member should be a representative of the client department and at least another one member who is specialized in finance and/or procurement of works, services or supplies should be included as a Treasury representative.

Membership of TEC:

- 33.1 Generally, the minimum number of members of a TEC shall be three and the maximum five. The appointing authority may however decide otherwise depending on the degree of simplicity or complexity of the Tender. No one from the private sector should be appointed to the TEC without the approval of the cabinet.

Assistance of Consultants:

- 33.2 The TEC may get assistance from a consultant who is appointed to the project. However preparation of bid documents as well as evaluation of bids may be done by the Consultants under the supervision and guidance of the TEC.

Appointment of TEC to assist CATB:

34. In the case of a CATB, the appointing authority of the TEC shall be the Secretary to the Treasury.
35. The Secretary to the Treasury will appoint the TEC members at his discretion giving due consideration to the recommendations received from the Secretary to the Ministry concerned. A list of names recommended for consideration to be appointed to the TEC should be forwarded to the Secretary to the Treasury at the time of seeking the setting up of a CATB. Secretary to the Treasury may appoint any specialist public servant to serve on the TEC on the request of the CATB. No private sector personnel should be appointed to serve on the TEC without Cabinet approval. The Secretary to the Ministry should refrain from nominating Chief Executive Officer, (Managing Director, General Manager, Chairman etc..) to serve in TEC as other members of the TEC drawn from the same organization should be free to express their independent views.

- 35.1 When the Treasury/PSB representative on TEC assisting CATB is rendered unavailable for a scheduled meeting, the ST?DST?DGPF will nominate an alternate representative and the meeting shall proceed on the scheduled date.

Appointment of other TECC:

36. The Secretary of the Ministry or the Head of the Department as the case may be will appoint the TECC to assist MTB/DTB respectively.

External Members:

37. At least one member of the TEC assisting DTB/MTB should be an official external to the client agency. A preponderance of members from the client department should be avoided in constituting the TEC.

Period of Evaluation:

38. The TEC should complete the evaluation of tenders as early as possible and in any case within a period not exceeding one month. The CATB may extend or shorten this period depending on the nature and complexity or simplicity of the tender and the extent of response to the bid invitation.

39.1 Deliberations of TEC:

The deliberations of the TEC should as far as possible reflect a consensus of opinion of the members and should be embodied in the recommendations submitted for the consideration of the Tender Board.

Expansion or dissolution of TEC:

40. The Tender Board or Ministry concerned, may request the appointing authority to expand composition of a TEC where any of the following criteria are satisfied:
- During tender document scrutiny or tender evaluation the assistance of additional specialist technical expertise is determined necessary by the TB Chairman in consultation with the TEC Chairman;
 - Where, after completion of the TEC tender evaluation report, Treasury and /or TB believe that there has been deviation from the tender guidelines;
 - There is evidence of disregard for the requirements and conditions of the tender document;
 - The recommended award does not represent the best value for money outcome; and
 - Clarification provided on the above by the TEC is unsatisfactory.

Once a TEC is appointed, it cannot be completely dissolved without specific approval of Cabinet.

Assignment of tender to appropriate Tender Board:

- 40.1 If after opening of a tender or thereafter at the evaluation of the tender it is realized that a tender should be handled by a Tender Boards at a different level of Authority, action should be taken to refer all tender documents to that Tender Board for evaluation and determination of the tender. The same offers may be evaluated and awarded instead of calling for fresh tenders. As far as CATB tenders are concerned a treasury representative should be appointed with the approval of the Secretary to treasury to the existing TEC.
- 8.1 The maximum time frame for large and complex tenders (value exceeding Rs.20 M) handled by a CATB should be:

Approval of documents	4 weeks
Submission of tenders	3 – 4 weeks
Evaluation	3 weeks
Tender Board determination	2 weeks
Appeal	2 weeks
Award	1 week.

International tenders should be given 6 – 8 weeks for bid submission. The Technical Evaluation and Determination stages should be shortened as far as possible.

Membership of TEC for Foreign Financing Agency Funded Projects.

200. The Membership of TECC appointed to assist specific TBB handling Foreign Financing Agency funded projects shall be as follows:

TEC assisting a CATB:

A TEC assisting a CATB on a Foreign Financing Agency funded project shall be appointed by the PSB with the approval of the ST/DST and comprise:

- A Chairman;
- The Project Director, who will act as Secretary/Member to the TEC;
- One to three technical specialists selected and appointed by the PSB on the basis of their technical knowledge and skills relevant to the particular project. At least one of these technical specialists will be external to the Client agency and will be selected and appointed by the PSB from a Register of technical Specialists that it maintains. Persons on the Register may come from the ranks of Public Service, semi-government organizations, professional associations such as the Institute of Engineers, academia and the private sector;
- A representative of the Treasury/PSB.

TEC assisting a MTB:

A TEC assisting an MTB on a Foreign Financing Agency Funded Project shall be appointed by the Secretary to the Ministry and comprise:

- ③ A Chairman;
- ③ The Project Director who will act as Secretary to the TEC;
- ③ One to three technical specialists selected and appointed on the basis of their technical knowledge and skills relevant to the particular project. At least one of these technical specialists will be external to the client agency.

TEC assisting a DTB:

A TEC assisting a DTB on a Foreign Financing Agency Funded Project shall be appointed by the Secretary to the Ministry or Head of the Department as the case may be and comprise:

- A Chairman;
- The Project Director, who will act Secretary to the TEC;
- Up to three technical specialists with technical knowledge and skills relevant to the particular project, one of whom will be specialized in finance and/or procurement of works, supplies or services.

Declarations by Members of TECC assisting CATBB on Foreign Financing Agency Funded Projects.

201. Concurrent with making their recommendations, all members of a TEC assisting a CATB on a Foreign Financing Agency Funded project will be required to sign a declaration at its first meeting affirming;
- Their respect for the commercial confidentiality of the proceedings of the TEC; and
 - Their impartiality and probity.

A proforma has been provided in these Guidelines as Appendix 10 for use by the TEC members in making this declaration.

Role and responsibilities of the Project Director in relation to Procurement:

202. For all tenders handled by the CATB, MTB and DTB except those handled by a Project Tender Board, the Project Director with the support of the project staff and when available project consultants will be responsible for :
- preparation and pre-qualification invitation and its submission to the TEC for review and approval;
 - preparation of Expression of Interest invitation, and its submission to the TEC for review and approval;
 - preparation of draft bid documents and their submission to the TEC for review and approval;
 - evaluating pre-qualification applications or in the case of consultancy contracts, Expression of Interest, and submitting the findings to the TEC and TB for review and approval;
 - evaluating bids and submitting the findings to the TEC and TB for review and approval;
 - issuing the invitations and otherwise facilitating the meetings of DTBs, MTBs and CATBs;
 - taking and circulating the minutes of the meeting of DTBs, MTBs, and CATBs; and
 - drafting all other documents necessary to complete the procurement including the first draft of the Cabinet Memoranda.

The Ministry of Finance vide its circular No.Fin 358 (5) dated 6-9-2002 entitled 'Enhancing the effectiveness of procedures to expedite the Implementation of Development Projects' has instructions as follows:

“Cabinet Appointed Tender Boards (CATBB):

1. The Secretary of the respective Line Ministry will chair, as a rule, the CATBB handling tenders under Foreign Funded Projects and the other members should be a representative of the treasury (A Senior Officer) and a Secretary or an Additional Secretary of another Ministry. Regarding projects funded by consolidated fund, the present arrangement will stand.
2. Appointment of such CATBB will be done by the Secretary to the Treasury with the concurrence of the Cabinet Sub-Committee on Budget and Tenders and the requests for such appointments should be directed to the Director General of

Public Finance along with the 'Request for Appointment of CATB and TEC' in Annexure I.

3. Line Ministry Secretary is fully responsible for coordination and ensuring timely implementation of projects under his/her purview.
4. With the view to ensure timely implementation of the project, the Line Ministry Secretary should delegate the authority to the Project Director as stipulated in the several Treasury Circulars, in order to make him accountable for the progress of the project and to provide a conducive environment to perform his responsibilities. A summary of responsibilities that should be delegated is attached in Annexure II.
5. The recruitment and performance monitoring of project managers should be done periodically in terms of Treasury Circulars. A summary of the procedure to be adopted is in Annexure III and the Department of Management Services will issue a revised circular with immediate effect.

Cabinet Approval:

6. In future, the recommendations of the CATBB, along with a briefing note will be submitted to the Cabinet Sub-Committee on Budget and Tenders by the Chairman of CATB with a copy to the Line Ministry. The Line Ministry observations, if any, should be submitted to the Cabinet Sub-Committee within one week of CATB recommendations. These documents should be submitted to the Secretary of the Sub-Committee Dr.R.M.K. Rathnayake, Additional Secretary to the Ministry of Finance. The Cabinet Sub-Committee will review the recommendations of CATB and make its observations to the Cabinet. In order to avoid unnecessary delays at the review stage, Treasury Representatives of TEC and CATB should consult the PSB of the Department of Public Finance before finalization of the Evaluation report and the CATB recommendations. The CATB also may consult the PSB, if any clarification regarding the tender process is required.

Authority limits for projects funded by Consolidated Fund:

9. The authority limits for projects funded by the CF are increased as per Annexure IV, with effect from 10th September 2002. Guideline No.14 of the Guidelines on Government Tender Procedure will be amended accordingly.
10. In terms of Guideline 196 of the Guidelines on Government Tender Procedure applicable to foreign funded projects, the decisions of the MTBB are subject to the approval of the Secretary to the treasury and the Secretary to the Line Ministry is entrusted with such approval, in future, as the financing agencies are required to give their concurrence for such decisions.

Annexure 1
Request for Appointment of CATB and TEC

For PSB Office only
MOFP File No.
Date File Open ed
Tender No.

1. Name of Project
2. Source of Funding
3. Ministry
4. Executing Agency
5. Description of Tender
6.
 - (i) Value of the Total Cost Estimate (Rs.M)
 - (ii) Whether the total cost estimate approved
 - (iii) Whether the draft TD are ready to be submitted to TEC
 - (iv) If the issues such as LA, payment of compensation resettlement of people etc. are involved with this project, give target date to be finalize them
 - (v) State whether all environmental factors effect to the project have been cleared. If answer is 'No' give target date to finalize them
 - (vi) What is the total number of days required for the completion of tender, according to the Procurement Activity Time Schedule (PATS) prepared by the Project Director (Please attach a copy)
7. Project Director and /or the Ministry or EA Liaison Officer:
 - (a) Name
 - (b) Post
 - (c) Address
 - (d) Telephone Number
 - (e) Fax No.
 - (f) E-mail address

8. Proposed Officers of TEC:

Name	Designation/Post	Institution	Expertise/Field
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Date:

Signature, Secretary to the Ministry

Annexure II
Summary of Responsibilities that should be Delegated to the Project Director by the Secretary:

- Authority to handle tenders up to Rs. 25 M to the Project Tender Board, in terms of the Guideline 195 of Government tender Procedure;
- To be the Secretary of the TECC assisting CATBB, MTBBB and DTBB in terms of Guideline 200 of the Government Tender Procedure
- Preparation of the Pre-qualification invitation and its submission to the TEC for review and approval;
- Preparation of the Expression of Interest invitation and its submission to the TEC for review and approval
- Preparation of the draft bid documents and their submission to the TEC for review and approval

- Evaluating pre-qualification applications or in the case of consultancy contracts Expressions of Interest and submitting the findings to the TEC and TB for review and approval;
- Evaluating bids and submitting the findings to the TEC and the TB for review and approval;
- Directly respond to requests for clarifications during the pre-qualification and bidding phase, and seek any necessary clarification from tenderers during the evaluation phase on behalf of the TEC, without referring to the TB, in terms of Guideline 210 of the Government Tender Procedure;
- Issuing the invitations and otherwise facilitating the meetings of DTBB, MTBB and CATBB;
- Taking and circulating the minutes of the meetings of DTBB, MTBB and CATBB; and
- Drafting all other documents necessary to complete the procurement including the first draft briefing note to be submitted to the Cabinet Sub-Committee.

Annexure IV

Authority Limits for Projects funded by CF:

Guideline No	Current Financial Authority Limits	Proposed Authority Limits
Guideline No.14 – Limits of Authority for Tender Awards 1. Head of Dept. 2. DTB 3. MTB 4. CATB	Up to Rs.100,000 Up to Rs.10 M Up to Rs.20 M Up to Rs.20 M	Up to Rs.200,000 Up to Rs.20 M Up to Rs.50 M Up to Rs.50 M
Guideline No.15 – Minor Tender Boards – Staff Officer not below the rank of Asst. Head of Dept. subject to approval of the head of department	Up to Rs. 2 M	Up to Rs. 3 M
Guideline No.45.2 – Use of ICTAD GCOC for works or World bank document for large works (General Conditions of Contract)	Up to Rs.500 M	Up to Rs.800 M
Guideline No.69.1 – Limited Quotations 1. Secretary of a Line Ministry 2. Secretary to the Treasury 3. Cabinet	Up to Rs.10 M Up to Rs.10-20 M Above Rs.20 M	Up to Rs.20 M Up to Rs.20-50 M Above Rs.50 M
Guideline No.165 – Emergency Purchases 1. Head of Dept.	Up to Rs.10,000	Up to Rs.20,000
Guideline No.176 – Exceptions relating to Works – Direct Purchases 1. Head of Department	Up to Rs.10,000	Up to Rs.20,000
Guideline No. 179 – Authority for deviating from the Tender Procedure 1. Head of Department 2. DTB 3. MTB 4. ST 5. Cabinet	Up to Rs.100,000 Up to Rs. 5 M Up to Rs.10 M None Above Rs.10 M	Up to Rs.200,000 No change No change Up to Rs.20 M Above Rs.20 M

2.22.2 Current practices

The procedure for the appointment of the multitude of Technical Evaluation Committees and Tender Boards appears fairly simple and feasible on paper. However in practice the procedure is cumbersome and contributes to large delays. The Asian Development Bank financed a Technical Assistance Project (TA No. 2950 –SRI) called Sri Lanka Procurement Support Bureau Project. The Project commenced in January 1999 with the fielding of Consultants-Overseas Projects Corporation of Victoria Ltd. in association with Resource Development Consultants Ltd. The Project under took a very detailed analysis of the tendering and awarding process in relation to a sample of 154 contracts awarded in the period 1994-2000. In the analysis, the procurement process was broken into five main phases as described below:

- *Phase 1: Tender Documentation Approval*
This Phase includes all activities from the request to the relevant Line Ministry to commence arrangements for the appointment of a TB and a TEC to the final concurrence of the relevant financing agency with the tender documentation.
- *Phase 2: Pre-Qualification or Short-Listing*
This Phase includes all activities from inviting Expression of Interest to the final concurrence of the relevant financing agency with the list of pre-qualified tenderers or the Tender short-list.
- *Phase 3: Invitation to Bid/Tendering*
This phase includes the time taken to inform tenderers that they have been pre-qualified or short-listed and provide them with the necessary tender documentation, and to prepare their formal submissions.
- *Phase 4: Evaluation of Bids*
This phase includes all activities from TEC evaluation recommendations to TB and financing agency concurrence.
- *Phase 5: Award of Contract*
This phase covers all remaining activities from invitation of the selected tenderer to financial negotiations; to TB, financing agency and (where required) Cabinet approval of the negotiations and contract award; to finally contract signing by the successful tenderer.

The Tables below give the result of the study and the analysis done by the Consultants.

Mean Duration of major Procurement Phases in Calendar days by Source of Funding (All tender Types)

Financing Agency	Phase 1	Phase 2*	Phase 3	Phase 4	Phase 5
Asian Development Bank	107	8	77	81	121
World Bank	58	23	59	89	24
Overseas Economic Cooperation Fund of Japan	172	64	58	99	100
Consolidated Fund of GOSL	89	5	92	83	69
Other Lenders	159	55	208	166	110

* Unreliable data, given the number of cases

Mean Duration of Major Procurement Phases by Types of tender (All funding Agencies)

Tender Types	Phase 1	Phase 2*	Phase 3	Phase 4	Phase 5
Goods/Supply (GS)	83	-	75	103	67
Civil Works (CW)	110	-	120	81	91
Consultancy Services	198	-	52	112	110

* Unreliable data, given the number of cases.

Mean Duration of Activities under Procurement Phase 5 by Type of Tender Board and broad source of Funding(All tender types)

	All CATBs	CATBs using Funding Agency assistance	All MTBs	MTBs utilizing Funding Agency assistance
Mean Duration in Days	98	85	45	58

2.22.3 Conclusions

There are multi-tiered TECs and TBs - Head of Department/Project Director/Minor Tender Board, Project Tender Board (PTB), Departmental Tender Board (DTB), Ministerial Tender Board (MTB) and Cabinet Appointed Tender Board (CATB) with their corresponding TECs. TECs and TBs are appointed for each tender. The procedure for the appointment of TECs and TBs appears fairly simple and feasible on paper. However, in practice the procedure is cumbersome and contributes to large delays. The Asian Development Bank financed a Technical Assistance Project (TA No. 2950-SRI) called Sri Lanka Procurement Support Bureau Project. The Project undertook a very detailed analysis of the tendering and awarding process in relation to a sample of 154 contracts awarded during the period 1994–2000. The conclusion from this analysis corroborated the fact that the process contributes to undue delays.

The team also collected procurement decision data through a local consultant covering 30 contracts and analysed them. Based on the team's analysis which is corroborated by the findings of the ADB financed TA consultants, and the World Bank FY 2002 Portfolio Review⁸, the findings of the team are:

- The existing process, involving multiple referrals, is unnecessarily lengthy, inefficient, and outdated in terms of its capacity to deal with the volume of public procurement. It has also not contributed to greater transparency; the two tiered TEC/CATB contract award process, involving a number of steps for large tenders, is a fundamental cause for delays;
- The delegation of approving authority is inadequate in spite of the recent enhancements;
- Despite constitution of 30 CATBs, cases referred to CATB are generally more protracted than those referred to lower levels, such as the MTB, the single most delaying factor being the requirement of Cabinet approval, which accounts for about 70% of the total period taken for award decision.

⁸ Sri Lanka Country Portfolio Performance Review FY 2002 – World Bank/GOSL.

- The recent constitution of a Cabinet Sub-Committee on Budget and Tenders may contribute to further delays.

2.22.4 Recommendations

1. Simplify and streamline Review and Approval process to ensure award of the contracts within the initial validity period. The procedure for the constitution of the TBs and TECs should be streamlined to cut down the processing period. The number of Standing Tender Boards and TECs should be increased, in particular if they need to meet at short notice. The multi layered review and approval process, particularly for large value contracts, should be simplified to expedite the process and minimize opportunities for malpractices and corruption. TBs should be empowered to make award decisions on the recommendations of TECs. The TB may seek clarification from the TEC or reject the recommendations giving its reasons for the TEC to re-evaluate, but should not itself re-evaluate the tenders. Tenders should be awarded within the initial validity period.

2.23 Negotiations

2.23.1 Provisions in the Guidelines

Provisions of Guidelines are as follows:

“127.1 Negotiations with tenderers:

Following the evaluation of tenders, but prior to selection of the successful tender there may be a need for negotiations on issues identified as having potential to improve outcome and benefits and reduce uncertainties.

For example negotiations can reduce cost, identify new alternatives and ensure agreements are reached which achieve results by giving improved value.

Another requirement for possible negotiations is where the lowest evaluated cost of a responsive bid exceeds the Total Cost Estimate and the intention is to seek a lower price from the bidder or where there are number of responsive bids all above the Total Cost Estimate.

All price negotiations must be undertaken by the TB with or without the assistance of the relevant TEC. Generally negotiations should be undertaken in writing. However at least an official from Treasury must be in attendance at negotiations on tenders handled by CATBB (CATB member or TEC member or any other representative)

A record of the negotiations will be maintained for contractual and accountability purposes. The record should clearly show:

- The aim of the negotiations
- The justification of the negotiations
- The plans followed
- A record of exchanges between the parties
- An evaluation of the effectiveness of the negotiations

At the end of the negotiations if a Memorandum of Understanding (MOU) is signed with the successful tenderer it shall form part of contract agreement.”

“ All negotiations should be recorded and signed by all the parties concerned.”

“If however after such negotiations it is decided by the Tender Board that all respective tenderers should submit fresh offers giving additional discounts or prices adjustments, then such offers or tenders should be submitted following the procedure for receipt and opening of tenders laid down in Chapter 8 of the guidelines.”

2.23.2 Current practices

In view of the provisions in the Guidelines, negotiations are being conducted by most of the Implementing Agencies mainly to reduce the tendered costs.

The ADB financed TA Consultants who analyzed the sample contracts made the following observation:

“3.24 Price however is rarely a negotiable factor in the award of CW and GS tenders. Nonetheless, a detailed examination of some of the CW and GS tenders in the survey sample has shown that some Executing Agencies do attempt to negotiate price with the preferred tenderer, despite the fact that the tendered price has already been factored into their selection as the preferred tenderer. This is clearly outside the GOSL’s own Guidelines on Government Tender Procedure and raises questions about the competence of those responsible for procurement in some Executing Agencies.... “

2.23.3 Conclusions

Negotiations are being conducted quite often. This practice is totally against the principles of competition and transparency. Further, with this practice, every bidder is likely to make a provision in his price for negotiations and, during negotiations, may give up less than what he provided for negotiating. The Purchaser/ Employer and his auditors may get a perception of savings in public expenditure but if negotiation is totally prohibited and the tenderers understand this, they would offer competitive and comparatively lower prices upfront. World Bank procedures prohibit routine negotiations to push down a competitively quoted price and there is overwhelming evidence to show that the procedure results in more competitive prices in the long run. Above all, it is common knowledge that negotiation opens up opportunities for corruption. In fact the tenderer can get away with less reduction in his price, if he agrees to give part of it as a bribe thus encouraging collusion between the two, at the cost of the public.

Negotiations would be appropriate in exceptional circumstances, such as lack of competition, single bid, lowest competitive bid substantially higher than available funds. Even in this case, re-invitation of tenders should be the first option after rectifying the causes for any of the above reasons and, only when this is not feasible, negotiations should be considered. Negotiations should be resorted to with the lowest tenderer only to try to obtain a satisfactory contract through a reduction in the scope and/or a reallocation of risk and responsibility which can be reflected in a reduction of the contract price (such cases are rare in the case of normal civil works). However a

substantial reduction in the scope or modification to the contract documents may require re-invitation of tenders. Negotiations should always be conducted by a Committee after prior approval by the Secretary of the concerned Ministry.

2.23.4 Recommendations

1. The Guidelines should be amended to mandate that all negotiations even with the lowest evaluated responsive tenderer are forbidden except in cases where it becomes necessary to change the scope of the contract and/or terms and conditions of contract and that too with the specific approval of the Secretary to the concerned Ministry.
2. Detailed guidelines on exceptional situations where negotiations are to be conducted and the procedures for conducting negotiations should be prescribed. In cases where the rates are considered substantially high, tenders should be reinvited. Prior to such reinvitation of tenders, causes for such high rates should be identified. Necessary review of designs, estimates, specifications, and conditions of contract should be carried out. Possibility of packaging and slicing should also be examined to encourage greater participation.
3. In the event the contractor(s), in collusion with each other, persist in quoting substantially high rates without valid justification, suitable deterrent administrative action should be taken

2.24 Award of Contracts

2.24.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“ Powers of the Tender Board:

131.1 The tender Board shall have the power to:

- (g) accept any tender, or portion of a tender
- (b) accept portions of more than one tender;
- (c) reject all or any tenders;
- (d) direct that fresh tenders be called for;
- (e) subject to the approval of the Secretary to the Ministry concerned direct, for departmental arrangements to carry out any works prescribed in the Tender where all tenders or any parts of a Tender have been rejected or excluded

131.2 However Tender Board should exercise these powers in accordance with (a) the Guidelines, and (b) Instructions and Conditions stipulated in the tender Documents.

196. The approving authorities for awards recommended by the Tender Boards on Projects funded by Financing Agencies are as designated below:

PTB	Head of the Department or Secretary of Ministry
DTB	Secretary of the Ministry
MTB	Secretary to the Treasury
CATB	Cabinet

For tenders handled by the Head of the department/Project Director/Project Manager up to Rs.200,000 no approval of a higher authority is required.

Final determination:

134. Only the bids which are substantially responsive and qualified substantially, and conforming to the tender conditions are considered for detailed evaluation. Having completed the detailed evaluation, the Tender Board should recommend the lowest (in the case of sale the highest) evaluated bid for acceptance.

Determination of Tender Award:

135. The determination of the Tender Award will be notified by the Chairman of the Tender Board to the Secretary of the Ministry concerned or the head of the department concerned, as the case may be, who will thereafter pursue residual action, within one week for the completion of the tender award

Publication of Award:

141. Department should publish monthly in local news papers and in the earliest possible issue of Government Gazette the following particulars in regard to tenders on which awards have been taken:
- (a) the description of items/works for which tenders were called;
 - (b) the total number of tenders received;
 - (c) the name of the successful tenderer;
 - (d) the amount at which the tender was awarded;
 - (e) In the case of a Tender awarded to a foreign principal who has a local agent, the name of the local agent.

In the case of tenders less than Rs.5 M in value the publication in newspapers/Gazette may be dispensed with.

2.24.2 Current practices

Though the Guidelines describes in detail the procedure for formation of TECs and TBs, it does not emphasize the need for the contract award to be made within the initial validity period. Contract awards are inordinately delayed. Most delays in project implementation are due to slow contract awards⁹ due to time consuming approval procedures (tender boards, technical evaluation committees etc.) The most serious shortfalls in contract awards and disbursement, as observed under ADB-financed projects, are in the roads, natural resources, and education sectors due to delay in contract awards resulting from delays in carrying out procurement actions according to Guidelines, lack of authority given by Executing Agencies to Project Directors, delays in approval procedures of TEC and CATB and unfamiliarity with ADB's Procurement Guidelines. The position is no different in World Bank assisted projects. The position is reported much worse in the case of projects financed from Consolidated Fund.. In Appendix 9 of the December 2000 Guidelines for Projects assisted by Foreign Financing Agencies a time period of 39 to 58 weeks has been stipulated for award of contract.

⁹ ADB: 2001 Sri Lanka Country Portfolio Review Mission Report of November 20, 2001

2.24.3 Conclusions

Delays in contract award occur due to cumbersome procedures specified in the Guidelines and also in the verification of the qualification information furnished by the various contractors.

2.24.4 Recommendations

1. The Procedure for formation, composition of various TBs and TECs should be reviewed and simplified to cut down the processing period.
2. A Computerized Monitoring system should be introduced in every organization to track the various procurement actions to ensure that the contracts are awarded within the initial validity period.
3. An up to date computerized contractor performance data base should be maintained (which may be displayed on the PSB web site) to elicit complaints/comments by other contractors/government officials, for reference prior to award of contract.

2.25 Performance Security/Security Deposit

Already covered in Paragraph 2.8

2.26 Insurance

2.26.1 Provisions in the Guidelines

Provisions in the Guidelines:

“187. Procurement of Insurance Services:

Procurement of Insurance services may be done from Government owned Insurance directly and should not be through their Insurance Agents.

Clause 13 of the General Conditions of Contract of ICTAD SBD deals with Insurance The provisions are as follows:

- “13.1 The contractor shall provide, in the joint names of the Employer and the contractor, insurance cover from the start date to the end of the Defects Liability Period, in the amounts and deductibles stated in the Contract Data for the following events which are due to the Contractor’s risks:
- (a) loss of or damage to the Works, Plant, and Materials;
 - (b) loss of or damage to the Equipment;
 - (c) loss of or damage to property (except to Works, Plant, Materials and Equipment) in connection with the Contract; and
 - (d) personal injury or death to any person including employees of the Employer and other persons engaged by the Employer in connection with the contract and loss of or damage to property of third parties including that of the Employer.

- (e) Liability for personnel injury or death of workmen or other employees of the Contractor. The Contractor's liability for personal injury or death of workmen shall be as provided for in the Workmen's Compensation Act and any other statutory modifications or amendments thereto.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Engineer for the Engineer's approval before the start date. All such insurance shall provide for compensation to be payable in the types and proportion of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide for any of the policies and certificates required, the Employer may effect the insurance which the Contractor should have provided and recover the premiums the Employer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Engineer.
- 13.5 Both parties shall comply with any conditions of the insurance policies."

2.26.2 Current practices

In the absence of any stipulations in the Guidelines regarding the Insurance requirements, the Implementing Agencies who are not using ICTAD SBD make their own assessment of the insurance requirements and adopt same. Para 187 of the Guidelines stipulating that all insurance should be done from Government Owned insurance companies is inappropriate and has some element of conflict of interest.

2.26.3 Conclusions

Guidelines are silent on the Insurance requirement. In the absence of such provisions the entire responsibility/risk for any eventuality will be that of the Employer/Purchaser. The existing provisions are discriminatory .

2.26.4 Recommendations

1. Guidelines should specify the insurance requirements in respect of Works, Goods and Services Procurement.
2. Insurance should be allowed from all reputed Insurance Companies.

2.27 Inspection

2.27.1 Provisions in the Guidelines

There does not appear to be any provision in the Guidelines.

ICTAD SBD has the following provisions:

- "33. Identifying Defects:
 - 33.1 The Engineer shall check the Contractor's work and notify the Contractor of any Defects that are found and shall specify a time within which the defects are to be rectified. Such checking shall not affect the Contractor's responsibilities. The

Engineer may instruct the Contractor to search for a defect and to uncover and test any work that the Engineer considers may have a defect.

- 34.1 **Tests:** If the Engineer instructs the Contractor to carry out a test which is not specified in the Specification or Bill of Quantities in sufficient detail to enable the Contractor to have priced or allowed for the same in the tender and the test shows that the workmanship or material is defective then the Contractor shall pay for the tests and Samples. If there is no defect the tests shall be a Compensation event.
35. Correction of Defects:
- 35.1 The Engineer shall give notice to the Contractor of any defects before the end of the Defects Liability Period, which begins at completion and is defined in the Contract Data.
- 35.2 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Engineer's notice.
- 35.3 On completion of the Defects Liability Period and correction of defects in accordance with sub-clause 35.2 or 36.1, and on certification of the final payment, the Engineer shall issue the Final Certificate to the Contractor.
36. Uncorrected Defects:
- 36.1 If the Contractor has not corrected a defect within the time specified in the Engineer's notice, the Engineer will assess the cost of having the defect corrected, and the Contractor will pay this amount."

2.27.2 Current practices

In respect of works of small value, the major construction organizations such as Departments of Buildings, Irrigation, Road Development Authority, National Water Supply and Drainage Board conduct inspection and testing by their in-house Engineering organizations. In respect of works of large value Supervision Consultants are employed to do the inspection. There is no specified procedure for inspection and testing for Goods procurement.

2.27.3 Conclusions

In the absence of clear cut provisions in the Guidelines, separate procedures are being adopted by different procurement entities. In-house quality control by Construction Organizations or Purchasing Organizations does not improve the quality to a substantial extent, since the quality control unit would also be under the administrative control of the Project Implementing Authority /Purchaser. There is a need to standardize the procedures for independent inspection and testing for works and goods.

2.27.4 Recommendations

Third Party Inspection both for Works as well as Goods would enhance the quality and hence needs to be enforced by all Implementing Agencies. As an initial step, third party inspection in respect of all contracts of value more than Rs 100 M should be mandated.

2.28 Performance Monitoring

2.28.1 Provisions in the Guidelines

There are no specific provisions in the Guidelines for performance Monitoring of Contractors. Paragraph 148 of the Guidelines states that the Head of the Client Department/Executing Agency will be responsible for ensuring that the work, supply and service is properly supervised and assessed for the purpose of making part and final payments.

The following provisions exist in the ICTAD SBD:

“ 27 Program:

- 27.1 Within the time stated in the Contract Data, the Contractor shall submit to the Engineer for approval a program showing the general methods, arrangements, order and timing for all activities in the Works.
- 27.2 An update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- 27.3 The Contractor shall submit to the Engineer for approval an updated program at intervals no longer than the period stated in the Contract data. If the Contractor does not submit an updated program within this period, the Engineer may withhold the amount stated in the Contract Data from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted.
- 27.4 The Engineer’s approval of the program shall not alter the Contractor’s obligations. The Contractor may revise the program and submit it to the Engineer again at any time. A revised program shall show the effect of variations and compensation events.”

2.28.2 Current practices

In the absence of specific provision in the Guidelines and in cases where ICTAD SBD is not used, program of work, incorporation of milestones are not insisted upon. Hence there is no effective monitoring of the performance of the Contract.

2.28.3 Conclusions

In the absence of detailed program of works with PERT (Program Evaluation and review technique) and CPM (Critical Path Method) charts along with the milestones (physical quantity to be achieved or completion of any event, or component at intermediate periods) to be achieved in the performance of the contract it would be very difficult to monitor and pin point responsibility. Inadequate objective monitoring of the contracts leads to time and cost overruns.

2.28.4 Recommendations

1. Incorporate appropriate milestones in contracts of value more than Rs.5 M and insist on detailed programme of works (supported by PERT and CPM Charts) along with work methodology in all contracts of value more than Rs.20 M.
2. Computerized performance monitoring of all contracts of value more than Rs.20 M and all critical contracts even if the value is less than Rs.20 M.
3. Hold Management meetings with the Contractor at regular intervals as considered appropriate and issue review letters to enable the Contractor to take corrective actions.

2.29 Repeat Orders

2.29.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“185. Repeat orders:

Repeat orders for procurement of goods may be authorized not exceeding 15% of Contract value, provided Appropriate Authorities are satisfied;

- (d) The necessity for additional requirement was not identified at the time of original tenders were called;
- (e) It is not economical to follow the tender procedure.

However, if appropriate Authority is of the view the price of particular items are in a downward trend repeat orders should not be authorized.

As far as possible repeat orders should be based on negotiations to get more favourable results.

2.29.2 Current practices

Allowing the system of repeat orders is a high risk method. The prices offered by the Suppliers are usually a function of quantity and hence may lead to uneconomical procurement. To find out whether the prices have come down or not one has to call quotations or make verbal enquiry, which is subjective and could lead to corrupt practices. Even in most of the so-called “Emergency Cases” there could be enough time to follow the procedure of calling quotations and making purchases. The period of offering quotation could be cut down depending on the urgency.

2.29.3 Conclusions

The system of placing repeat orders could lead to unhealthy and corrupt practices and should not be resorted to. There should not be any extension of an order or repeat order or increasing of the quantity of an order once the Purchase order has been issued.

2.29.4 Recommendations

Repeat orders should be prohibited in the Guidelines. In case of emergency requirements, the procuring entity could be permitted by the Competent Authority to procure the materials by inviting short period quotations including from the firm against whom the original order was placed. The conditions of supply should be made the same as of the original tender/quotation to enable the original firm to confirm its previous prices or quote reduced prices.

2.30 Suspension and Blacklisting of Contractors/Suppliers

2.30.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“Defaulting Contractor:

157. In every case involving a contract exceeding the value of Rs.1 M in which a successful tenderer:
- (a) fails to carry out his contract in a satisfactory manner, or
 - (b) is guilty of improper conduct.

The Head of the Department concerned shall serve on him a written notice requiring him to show cause in writing, within two weeks, why his name should not be included in the list of defaulting contractors. If the Head of the department is not satisfied with the explanation furnished, he should report the full particulars to the Ministry with his own recommendations.

158. On receipt of such report on default or improper conduct, the Ministry Tender Board shall enquire into the reasons for the decision. If the MTB decides to treat the party concerned as a defaulting contractor, the Secretary concerned will report all the facts of the case to the Secretary to the Treasury seeking his approval to treat the party concerned as a defaulting contractor. If the Secretary to the Treasury gives his approval, the party concerned will be treated as a defaulter.
159. The Director General of Public Finance , will issue half yearly, a list of defaulting contractors to all Ministries and Departments. Heads of Departments should be careful that no tender forms are issued to a person or firm whose name appears on the list.
160. The Treasury may for good reasons stated in writing remove a name from a defaulter’s list. The appropriate notifications should be made of such removal.
161. Defaulters who are concerned with smaller tenders or contracts less than (Rs.1 M) may be placed on a departmental defaulter’s list by the Head of the Department concerned. This need not be communicated to other departments except on enquiry.

Note: The blacklisting or placing a person’s name in the list of defaulting contractors merely means that the Government does not wish to do business with that contractor and does not necessarily imply any moral delinquency attached to the person blacklisted.

2.30.2 Conclusions

The provisions of the Guidelines appear somewhat stringent. To deny issue of the tender document for the reason that a contractor is in the list of defaulting Contractors may not be fair. Though the word 'Blacklist' is used, rules for blacklisting have not been framed except for defaulting contractors.

2.30.4 Recommendations

1. Comprehensive rules for 'Blacklisting' of contractors/suppliers/firms for a specified period or permanently should be framed to include all offences such as furnishing of false information, default, submission of false Bid Bonds or Guarantees, moral turpitude, conviction by court, inability to justify high rates quoted, collusion, assignment of contract, non-payment of government dues.

2.31 Dispute Resolution

2.31.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“Arbitration:

- 48.1 All disputes arising out of contract agreements should be dealt in accordance with the Provisions of the Arbitration Act 11 of 1995. A separate clause to this effect should be included in the tender documents as well as in the contract agreement.

Procedural Rules:

- 48.2 Subject to the provisions of this Act the parties involved are free to decide on the procedural rules. Accordingly International Chamber of Commerce (ICC) or United Nations Conference for International Trade Law (UNCITRAL) or any other acceptable set of rules may be used subject to provisions of the Act.

Place of Arbitration:

- 49 The place of Arbitration should be in Sri Lanka.”

The provisions in the ICTAD SBD for resolution of Disputes is as follows:

“24. Disputes:

- 24.1 If the Employer and the Contractor have not agreed on the appointment of the Adjudicator prior to the signing of the agreement, the Adjudicator shall be appointed by the appointing authority designated in the Contract Data.
- 24.2 If the Contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.

25. Procedure for Disputes:
 - 25.1 The Adjudicator shall give the outcome of the mediation in writing to the parties within 28 days of the dispute being informed to them.
 - 25.2 The Adjudicator shall be paid by the hour at the rate specified in the Bidding Data and Contract Data, together with reimbursable expenses of the types specified in the Contract Data, and the cost shall be divided equally between the Employer and Contractor. Either party may refer the dispute to an Arbitrator/Arbitrators within 28 days of the Adjudicator's written communication. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's written communication shall be final and binding. The Adjudicator is not required or bound to appear or justify the outcome of the mediation before an arbitral tribunal or a court of justice. His findings may however be produced by any of the parties at such arbitral or judicial sittings.
 - 25.3 The arbitration shall be conducted in accordance with the Arbitration Act 11 of 1995 and in accordance with the composition of arbitral tribunal defined in the Contract Data.
26. Replacement of Adjudicator:
 - 26.1 Should the Adjudicator resign or die or should the Employer and the Contractor agree that the Adjudicator should be removed as he is not functioning in a satisfactory manner, a new Adjudicator shall be jointly approved by the Employer and Contractor. Such appointment shall be made within 28 days, after the resignation, death or removal of the Adjudicator. In case the Employer and Contractor fail to agree for initial appointment or replacement of the Adjudicator as above, within 28 days, the Adjudicator shall be designated by the Appointing Authority designated in the Contract Data at the request of either party, within 14 days of the receipt of such request.

2.31.2 Current practices

The Arbitration Act No 11 of 1995 is generally based on the UNCITRAL Model Law. However no rules have been framed. The Guidelines however provide that the parties are free to decide on the procedural Rules either ICC or UNCITRAL or any other acceptable set of Rules. Paragraph 7 of the Act as in the case of UNCITRAL Model law (Article 11(3)) is clear about how the Arbitrators are to be appointed if one of the parties fails to appoint its Arbitrator. However the time limit for appointing the second and third Arbitrators by the intervention of the Court is twice (60 days) that recommended by the Model Law. This is not in line with the spirit of Arbitration in respect of speed.

Paragraph 25 of the Arbitration Act, similar to the UNCITRAL Model Law in Article 29 provides that the majority shall decide, in case there is more than one Arbitrator, leaving open the question as to what happens if there is no majority (e.g. if there are two Arbitrators and they are deadlocked or if there are three, and each has a different opinion). Here the Act seems to provide for better answers: First there can never be an even number of Arbitrators because, as provided for under sub-section 6(3), if the number of Arbitrators is even, they have to jointly appoint an additional Arbitrator who shall act as Chairman. Second, the sub-section 19(1) of the Act provides that if there is no majority award, the decision of the Chairman shall be binding.

Sub-section 25(1) of the Arbitration Act, similar to the UNCITRAL Model Law in Article 29, however provides that the signature of the majority of the Members in arbitral proceedings with more than one Arbitrator shall suffice. This is not consistent with the provision of sub-section 19(1) of the Act as mentioned above as it does not specify that the Chairman's signature would suffice if his decision were to be binding with the said sub-section 19(1) of the Act.

Adjudication is very rarely used in case of contracts funded by CF. Though the ICTAD SBD provides for the appointment of Adjudicator, there are no threshold limits of contract value prescribed for appointment of Adjudicators. The constitution of a Dispute Resolution Board is envisaged for Major Works.

2.31.3 Conclusions

Though the Arbitration Act is based on the UNCITRAL Model Law there are a few inadequacies that need to be addressed. In the absence of specific Rules the parties could choose different Rules that could lead to inconsistencies. Threshold limits for appointment of an Adjudicator and a Dispute Resolution Board need to be specified in the Guidelines.

2.31.4 Recommendations

1. Introduce the system of appointment of Adjudicator for settlement of disputes in respect of contracts more than Rs.5 M and for a Dispute Resolution Board or Dispute Resolution Expert in respect of all contracts of value more than Rs.500 M.
2. Review the Arbitration Act and rectify the few inadequacies.
3. Frame the Rules under the Arbitration Act to be in conformity with the international practices and enforce same.

2.32 Consulting Services

2.32.1 Provisions in the Codes and Guidelines

Chapter VI of the Guidelines on Tender Procedure (August 1997) describes the procedure to be adopted for the use of Consultants. The Guidelines explains the procedure under the following headings:

1. Use of Consultants
2. Scope of Consultancy
3. Authority for Determination
4. Preparation of long list of Consultants
5. Short listing of Consultants
6. Short listing criteria
7. Disqualifications
8. Terms of Reference
9. Components of TOR
10. Budget estimates on Consultancy
11. Letter of Invitation

12. Selection Procedure- two Envelope System
13. Time frame for submission of Proposals
14. Evaluation of Technical Proposals
15. Evaluation Criteria for Technical Proposal
16. Evaluation of Technical Proposal
17. Ratings of Major Groups of Technical proposal
18. Financial Analysis
19. Negotiations
20. Parameters in negotiating Financial Terms
21. Project Implementation Payment of Mobilization Advance
22. Part payments
23. Reports to be submitted by Consultants
24. Regular Periodic Meetings
25. Treatment of Contract Variation
26. Deviations from TOR
27. Typical reasons for Deviation from TOR
28. Replacement of personnel
29. Individual Consultants.

The draft Revised Guidelines (2002) has the same contents and description except for some minor modifications/additions.

December 2000 Guidelines for Projects assisted by Foreign Financing Agencies has the following provisions:

“Consultancy:

217. Consultants may be engaged to handle the tasks below among others. Selection of Consultants should be made in accordance with the relevant Foreign Financing Agency procedures stipulated in the loan/credit agreement.
 1. Pre-investment studies/Feasibility studies;
 2. Detailed engineering and design, including preparation of detailed designs, specifications, cost estimates and tender documents;
 3. To assist the Project Director/TEC in the evaluation of pre-qualification application and bids; and
 4. To assist Project Implementation (including supervision) and monitoring.
218. Shortlisting of consulting firms is generally required by Financing Agencies for procurement of consultancy services.

In such instances the procedures, proforma documents and evaluation criteria prescribed by the Financing Agencies should be used. Where no Foreign Financing Agency proforma Expression of Interest application is available then the standard proforma specimen provided in the Appendix 8 should be used.

Where appropriate a Foreign Financing Agency may provide a list between three and eight suitable consulting firms, in which case this list shall be accepted as the shortlist of tenderers.”

2.32.2 Current practices

In the Donor assisted projects, Consultants are hired in accordance with the respective Consultant Guidelines (containing the Letter of Invitation, Instructions to the Consultants, Data sheet, Formats for submission of the Technical and Financial Proposals and Contract Format) as prescribed by the Donor Agencies.

However there are no prescribed documents to be used for consultancy assignments to be financed by the Consolidated Fund of GOSL. The Guidelines do not make any mention of the RFP document to be used.

ICTAD has published the following documents pertaining to Consultancy Services:

1. Model Form of Agreement (ICTAD/CONSULT/01)
2. Client Guide - General (ICTAD/CONSULT/02)
3. Client Guide – Selection of Consultants (ICTAD/CONSULT/03)
4. Scope of Consultancy Services – (ICTAD/CONSULT/04)
5. Client Guide – Computation of Fees and Expenses (ICTAD/CONSULT/05)

All the above publications treat the subject in part and do not provide a comprehensive document for invitation of proposals.

Chapter VI of the Guidelines (1997) does not treat the subject cohesively, though the contents in general appear to have been based on the Guidelines of the Donor Agencies. It provides the procedure for Quality Based selection but does not prescribe the procedures in respect of other methods of Selection such as Quality cum Cost-Based Selection (QCBS), Least Cost Method of Selections, Single Source Selection, Selection Based on Consultants Qualification, Fixed-Budget Selection etc.

The Guidelines in respect of procedure to be followed for hiring of Individual Consultants is also not clear.

The Guidelines also does not discuss the types of Contracts such as Lump Sum, Time based, Percentage, Cost plus etc. and their applicability.

2.32.3 Conclusions

The procedures to be followed for hiring of Consultants is neither fully covered in the 1997 Guidelines nor in the draft 2002 Guidelines. Guidelines need to be drafted in detail covering all aspects. The RFP documents to be used for inviting proposals for various methods of selection have to be standardized and mandated to be used appropriately.

2.32.4 Recommendations:

1. Chapter VI of the Guidelines need to be comprehensively redrafted to give clear and precise procedures for the hiring of Consultants.
2. Standard RFP Documents should be prepared for various methods of selection and various types of Contracts. The models as approved by the World Bank for

use in Sri Lanka can form a basis for preparation of the Sri Lanka specific Standard RFPs.

2.33 Unbalanced bids

2.33.1 Provisions in the Guidelines

The provisions in the Guidelines are as follows:

“124.2 Unrealistic Rates:

If unrealistically low rates quoted by a tenderer is found on critical or very important items he should be requested to prove to the satisfaction of the TB/TEC how he could perform the particular items within that rate, if relevant with a rate analysis also.

If the TB/TEC is of the view the clarification given are unacceptable and tenderer would fail in performing on those rates the bid may be rejected. If clarifications are acceptable and TEC is satisfied on that , evaluation should be continued.

124.3 Unbalanced bids:

Bids for civil works and supply-install contracts may be “unbalanced” in several ways:

- (a) Unit price for those work elements to be performed early during contract performance can be priced relatively high, thus requiring higher payments to the contractor in the early phases of the contract period than justified by the value of the work performed (Front Loading)
- (b) Bidders who have reasons to believe that the quantities given in the bid documents for one or more work items are underestimated, will quote unduly high prices for these items. Since payments in unit price contracts are based on actual quantities of work performed they would attempt to obtain higher payments than justified by the value of the work performed. The same situation can exist in supply-and-install contracts if a bidder believes that the quantity in certain materials in the bid document is considerably underestimated but payments are to be based on quantities actually installed.

124.4 Evaluation of unbalanced bids:

In the case of over pricing early work items, the present value of all payments (using the work schedule as a basis for timing of payments) can be computed for the unbalanced bid and separately for all other bids, using average unit costs. The difference between the two sets of present values so computed could be added to the unbalanced bid, making it comparable to all other bids.

In the other case of unbalancing mentioned above, not the timing of payments but the reliability of estimate of quantities for the overpriced items is involved, the first step would, therefore, be to verify the estimate. If it is found that the estimates were, in fact, considerably lower than the quantity likely to be corrected, the difference between the unit price quoted in the unbalanced bid and the average quoted on other bids, multiplied by the revised estimate of quantities, could be added to the unbalanced bid for comparative purposes.

Since other items may have been underpriced by the bidder to maintain his competitive position, an adjustment would also have to be made for under priced items by deducting from the total price of the unbalanced bid the difference between unit prices quoted in the unbalanced bid and the average of unit prices in other bids, multiplied by the quantities for each unit involved. However it is clear that such calculations should not be undertaken unless the unbalanced bid is the lowest evaluated bid and unless the amounts are substantial.

124.5 Precautionary steps:

Adjustment of unbalanced bids for evaluation purposes:

- (a) an attempt should be made to renegotiate unit prices to be used in the contract if the bid is the lowest; or
- (b) If the project is foreign funded one, in the case of overpricing early work items, fixing a higher performance security, should be considered to reduce the chances that the contractor will not complete the work;
- (c) If project is funded from local funds, inserting an additional clause in the agreement to the effect that actual payments are made on estimate rates and difference will be paid upon successful completion of the job, could be considered, instead of applying the provisions of (b) above.

However to justify the unbalanced bid price, if a bidder has quoted unrealistically low rates for last items it should be dealt with the Guideline 124.1 i.e. request for clarifications on low rates.

2.33.2 Current Practices

The provisions in the Guidelines for the treatment of Unrealistic Rates as well as Unbalanced Bids is not incorporated in the ICTAD SBD and hence the enforcement of the procedure as given in the Guidelines may give rise to disputes.

Different provisions for treatment of unbalanced bids, which depend on the source of funding, is not correct as all are government contracts, irrespective of the source of funds.

The provision in the Guidelines is cumbersome and is wrought with subjective decisions. It should be made simple as provided in (b) of paragraph 124.5.

If a contractor cannot substantiate unrealistically low rates, the Guidelines provides for rejection of bids. Further action to be taken against the contractor is not detailed. He is not penalised in any way after vitiating the tendering process.

2.33.3 Conclusions

The provisions for the evaluation of unbalanced bids are cumbersome and need to be simplified to make it rational and the same, irrespective of the source of Funding. Mere rejection of tenders in the case of the tenderer not being able to justify his rates will not be sufficient.

2.33.4 Recommendations

1. Make the procedure uniform for all contracts regardless of the source of funding.
2. Make the procedure simple and workable.

2.34 'Tender Capacity' as an evaluation criterion for award of contract

2.34.1 Provisions in the Guidelines

There do not appear to be any provisions in the Guidelines nor in the ICTAD SBD.

2.24.2 Current practices

In the absence of any specific provision in the Guidelines and the SBD, the qualification criteria, if any, specified in the tender document is checked before award of the contract. If no qualification criteria are specified the requirement for Registration is checked.

It may so happen that a tenderer is awarded multiple contracts by satisfying the stipulated qualification criteria/or registration requirements, each work being taken individually. However, if multiple contracts are awarded to the tenderer, it may be beyond his capacity to satisfactorily perform all the contracts simultaneously. Subjective decisions are taken by Tender Boards which may not stand in a court of law. Hence, the concept of 'Tender Capacity' needs to be introduced in the tender documents to avoid subsequent implementation capacity constraints. Specific requirements in this respect need to be pre-disclosed in the tender documents. The contracts on hand need to be assessed to determine available capacity net of current commitments and ability of the tenderer to perform the new contract satisfactorily, if awarded. Additionally, where the tenderer is lowest in more than one tender or slice of a package, the qualification requirements to be satisfied by the lowest tenderer need to be the aggregate of the individual tenders or slices of a package. Otherwise the contract award needs to be made only for the tender(s) for which the tenderer satisfies the stipulated criteria.

2.34.3 Conclusions

In the absence of any stipulations in the tender document to check the tender capacity before award of the contract, contracts may be awarded to a contractor who cannot satisfactorily perform the contract or, in the alternative, tender boards make subjective decisions, which may not stand in a Court of Law.

2.34.4 Recommendations

Tender capacity should be made a mandatory criterion for award of contract. The Guidelines should provide for the:

- (i) checking of aggregate qualification criteria where the tenderer is lowest in more than one tender under consideration, and

(ii) checking of available tender capacity in respect of the lowest tenderer having many other contract commitments.

2.35 *Electronic tendering*

2.35.1 *Current practice*

One of the major steps towards promoting Electronic-Governance is Electronic-Tendering. Systems are now available to introduce electronic tendering in Public Agencies. This will substantially increase transparency, efficiency and reduce scope for malpractice and corruption.

2.35.2 *Recommendations*

Electronic tendering procedures should be introduced progressively. Systems could be piloted initially in selected Implementing Agencies, for example in the Railways and Electricity Departments. This will substantially increase transparency, efficiency and reduce scope for malpractices and corruption. In the mean time GOSL should encourage the use of documents and forms downloaded from the web for various transactions. Apart from reducing printing costs, it will reduce problems associated with timely availability of the documents and forms.

3. *Organization and Resources*

3.1 *Procurement Support Bureau*

The Government of Sri Lanka has been concerned for some time about the extent to which its development projects were being delayed, particularly before implementation even begins, by lengthy internal approval procedures for procurement of civil works, goods and services and also due to paucity of trained staff. The Government's concern is shared by foreign financing agencies which are assisting projects where pre-implementation delays and consequently lengthy delays in the completion dates are occurring. The situation has led to considerable increases in project costs, loss of project benefits and an overall slowdown in delivery of the Government's program.

In 1997 GOSL requested a TA from the ADB to establish and make operational the Sri Lanka Tender Support Bureau (SLTSB) within the Ministry of Finance and Planning. Over the next 18 months several modifications were made to the concept originally proposed and approved for the SLTSB including a name change to the Sri Lanka Procurement Support Bureau (PSB). Finally in January 1999, TA No.2950-SRI: Establishing the Sri Lanka Procurement Support Bureau Project commenced with the fielding of Consultants. In April 1999, PSB became operational with principal counterpart staffing and its office was located in the Treasury Secretariat.

Procurement Support Bureau Staffing

No	Unit	Title	Acronym	Classification	Status of placement
1	Executive	Chief Executive Officer	CEO	Additional Director General	In position
2	Generalist	Procurement Specialist	PS	Director	New position
3	Procurement and Policy Unit	Director	DPSP	Director	In position
4	-Do-	Senior Procurement Officer	SPO	Deputy Director	New position
5	-Do-	Procurement Officer	PO	Public Financial Analyst	In position
6	Procurement Monitoring Unit	Director	DPM	Director	In position
7	-Do-	Senior Monitoring officer	SMO	Deputy Director	New position
8	-Do-	Monitoring Support Officer	MSC	Public Financial Analyst	In position
9	Training Unit	Director	DTU	Director	In position
10	-Do-	Training Delivery and Promotion Officer	TDPO	Deputy Director	Vacant
11	-Do-	Training Material Development Officer	TMDO	Deputy Director	Vacant
12	-Do-	Training Officer	TP	Public Financial Analyst	In position

The Procurement Support Bureau (PSB) was established with the vision to improve Sri Lanka's public procurement performance and with the mission to improve the efficiency of public procurement practice in order to expedite economic and social development for the betterment of the people of Sri Lanka. The objectives of PSB are:

- *Providing support for public procurement:* To operate as a client oriented organization that provides, as the key procurement reference point, quality support and expertise to all government agencies to enable efficient and effective public procurement;
- *Monitoring the performance and progress of tenders:* To operate a systematic and effective method of monitoring procurement performance and processes;

- *Developing policy initiatives to improve performance:* To formulate, in consultation with donors, industry groups and client agencies, policy recommendations and guideline refinements to provide the necessary regulatory framework to support procedural reform initiatives and ensure effective implementation;
- *Procurement Training:* To develop and facilitate implementation of procurement training programs to improve the competency level of procurement officers and promote procedural reforms; and
- *Project management:* To provide appropriate project management tools and skills to allow PSB to properly plan, implement and monitor its tasks.

The PSB has prepared its Corporate Plan 2001-2003 detailing the Operations Plan, Staff Position Description, and Resource requirements. The Asian Development Bank is assisting GOSL through a Technical Assistance (TA No 2950-SRI) to establish the various functions of the PSB. ADB assisted in the hiring of Procurement training Specialists, who prepared the manuals on various topics and also financed the printing of these manuals.

The PSB has several independent responsibilities. It also acts as a support office for the Ministry of Finance for preparation of briefs for the CATB sub-committee as well as for the CATB and the Cabinet. It is involved in the appointment of members for TBs and TECs. PSB therefore needs to be strengthened and manned by competent officers, technical experts, and should deal with planning, setting of standards and monitoring of outcomes, and capacity building including training. PSB should also be entrusted with the responsibility for implementation of the Agreed Action Plan based on the CPAR recommendations.

3.1.1 Conclusion

The Procurement Support Bureau, as established and working, provides procurement implementation support including advice on evaluation of tenders and assessment of tender proposals. It also has a tender monitoring function. PSB is a specialized unit also involved in implementation including day to day activities, similar to an executive agency. Presently the policy aspects, functions of regulatory nature, essentially to be carried out by an independent organization, is also being carried out by PSB.

3.1.2 Recommendation

1. The PSB needs to be strengthened and manned by competent officers, technical experts, and should deal with planning, setting of standards and monitoring of outcomes, and capacity building including training. PSB should also be entrusted with the responsibility for implementation of the Action Plan agreed in accordance with the CPAR recommendations. This should be consistent with the recommendation to create a separate Regulatory authority.
2. With the move to decentralize procurement fully to the line Ministries, steps should be taken to build a critical mass of procurement proficient staff, through the introduction of an accreditation scheme. In the interim, a Procurement Core Group should be formed, with commensurate rewards, to be in charge of Public Procurement and provide specialized inputs to the various organizations.

3.2 Procurement capacity building

The PSB has a Training Unit which is headed by a Director. The Director of Training is responsible for the development, implementation and management of a Training Program for public officers directly involved with procurement activities. He/She is also responsible for implementation of a PSB staff development program. Due to the magnitude of the tasks and the large number of public officers requiring training in the area of procurement procedures, a Train the Trainer type approach has been adopted by PSB with selected senior officers in the key sector agencies being trained and supported to conduct training within their agencies.

The specific objectives of the Training Unit are to:

- Identify procurement training needs;
- Develop and disseminate information and training materials on procurement procedures across all ministries and executing agencies;
- Ensure that training and human resource development is targeted to provide maximum benefit and improvement of procurement skills among public officers;
- Effectively support reform of procurement activities that will result in improved performance;
- Develop a critical mass of skills in procedures for timely procurement of goods and services;
- Ensure selection of candidates for training is transparent and focused on longer term sustainability of the necessary spread of skill levels;
- Develop a pool of resource persons for training; and
- Establish a network of partner training agencies for outsourcing delivery.

The Unit has two sub units: Training Delivery and Promotion and Material Development, each of these subunits being headed by Deputy Directors. The responsibilities of the subunits are as follows:

Training Delivery and Promotion	Material Development
- Manage Training Programs	- Formulate Training Policies
- Support Agency Training Committees	- Update/improve material quality
- Identify Training Needs	- Prepare new materials
- Promote Training Services	- Maintain Training Database
- Establish New partners	- Maintain Website
- Promote competency based accreditation	- Prepare Specialised Procurement training

The Manuals produced by the Training Unit with the assistance of the ADB financed TA Consultants¹⁰ are as follows:

1. Fundamentals of Procurement (PSB - 001)
2. Methods of Procurement (PSB - 002)
3. Procurement Planning (PSB - 003)

¹⁰ Overseas Projects Corporation of Victoria Ltd. in association with Resource Development Consultants Ltd.

4. Preparing the Bidding Document (PSB – 004)
5. Pre-qualification of Bidders (PSB - 005)
6. Bid Opening (PSB- 006)
7. Writing Evaluation Reports (PSB – 008)
8. Award of Contracts (PSB – 009)
9. Goods Procurement (PSB – 011)
10. Works Procurement (PSB – 012)

The ADB financed TA Consultants have conducted a detailed Training Needs Analysis for Training in Public Procurement (November 1999) - the report is attached as Appendix 14 to the Final report of TA. Some of the salient observations of the Study are as follows:

“ **The Training Needs Analysis (TNA):** The TNA has focussed on the issue related to procurement performance and the consequent training needs, thus the training needs are a direct reflection of the current operating environment and the procurement expertise of public agencies

The training Needs Analysis Outcomes: The study attempts to link the performance issues with training needs, enabling the development of problem focussed training courses for various target groups

Participants to the Procurement Process: The procurement award process is implemented in association with two groups who are involved directly and peripherally. The groups identified as the key target groups for training are TEC Members, PSB representatives, Senior EA officials, Junior Potential TEC Members, and Contractors, Suppliers in the order of priority in terms of training needs. The CATB members, being the senior most government officials, will be invited for the sharing of experience and good practices, at information dissemination conferences.

Procurement Competence: A skills Register of Procurement Competencies (34 personnel listed in Appendix 13) has been developed to enable the formulation of generic training courses on procurement.

Training Delivery Strategy: The Training delivery strategy proposed has short and long term perspectives. The short term perspective is intended to service the current skill gaps through a broad educational program for young officials of EAs and problem focussed training courses for TEC Members, Senior Officials of EAs and PSB representatives to TEC. The long term perspective may be achieved by building up of a critical mass of procurement specialists through local and foreign training and capacity building by continued institutionalised training delivery.

The ADB financed TA Consultants have also prepared a Training Master Plan (November 1999) which is at Appendix 15 of the TA Final Report of December 2000. The Executive Summary of the Training Master Plan is as follows:

“1. The Training Master Plan was developed in five stages. These stages are:

- Identify the target groups to which the training is directed;
- Identify the training needs;
- Develop an appropriate training strategy for each target group;
- Develop the training programs/modules and resource materials;
- Identify suitable training venues and resource staff/facilitators;
- Prepare a Training Schedule

- Determine the cost estimate for the training plan
2. Target Groups. The six target groups identified are:
 - Cabinet Appointed Tender Board (CATB) Members;
 - Treasury/Procurement Support Bureau (PSB) representatives serving on TECs and CATBs;
 - Executive Agency Officers (Senior Management/Engineers) – Experienced TEC Members
 - Executive Agency Officers (Middle-Management/Engineers- Potential TEC Members currently involved in tender preparation
 - Procurement trainers and Suppliers.
 3. Training Needs were identified by a number of methods. These are:
 - Questionnaires- completed by Agency Officers involved in procurement;
 - Formal interview of agency personnel;
 - Informal discussions with experienced Procurement Officers and loan agency staff;
 - Attendance at Seminars, and by participating in the conducting of a workshop on procurement coordinated by the Institute of Government Accounts and Finance(InGAF);
 - Review of previous reports by donor agencies and consultants.
 4. Training Strategies. The four proposed modes of delivery for the six target groups are:

Seminars – Executive Agency Officers, PSB representatives, Contractors and Suppliers

Short Training Programs – Executive Agency Officers and PSB representatives

General Workshops – Procurement Trainers and PSB representatives

Special Workshops – CATB, Senior Officers of Executive Agencies
 5. Training Programs/Modules: Some 22 training modules and 19 seminar topics for seminars have been identified. The learning resources for the modules will consist, as a minimum, Facilitators Guide; Participant’s Guide, Activity/Exercise Guide/s (including case studies and frequently occurring problems and solutions)
 6. Training Venues and Resource Staff: The Institute of Government Accounts and Finance (InGAF) has been identified as the most appropriate venue in terms of the age of the establishment, general cleanliness, air-conditioning, cost of hire, teaching resources, location and car parking,. In terms of all these criteria, InGAF, not only is the lowest cost but also superior in all other respects. InGAF was established by the MOF/ADB Financial Management Project, ADB Loan No.1275-SRI. In February 1999 InGAF came under the supervision of the Department of State Accounts, responsible to the Deputy Secretary to the Treasury. Some 14 Private and Public Sector Organizations have been identified as being capable of providing resource persons to conduct the training activities in either general procurement training or the more specific areas, for example Contract Law, Financial Instruments and Negotiation

7. Training Schedule. The Training Schedule proposed is listed below:

Period from October 1999 to December 2000.

	No from TA	No from CF
Number of Seminars	19	10
Number of Training Programs	35	43
Number of General Workshops	10	10
Number of Special Workshops	10	12

8. Estimated cost of Implementing the Training Schedule: The estimated cost of implementing the Training Schedule listed in 7 above for the TA component amounted to rs.1,976,010 or US\$ 28229¹¹ The Training Budget for the TA is US\$28,000. The contribution by the Government Consolidated Fund will be Rs.1, 995, 790 or US\$28,511.
9. Number of Participants: It is estimated that up to 2884 participants may be involved in the training activities for a total of 3884 person –days.
10. Summary: The Training Master Plan has been prepared to meet the following criteria: Effectiveness; Efficiency; Sustainability; Impact and relevance. The TA Training Specialists are confident that the Training Master Plan will meet these criteria outlined above. Although the training activities will be , in the short term, directed at selected key agencies, the increase in the procurement skills of these officers should greatly improve the over all effectiveness of foreign-funded loan disbursements. The expertise gained in this first phase will be used to expand the training activities into the other agencies of GOSL impacting on all procurement activities, regardless of the funding source.

The Training unit of PSB has conducted 81 Procurement training events covering 2,248 participant days up to August 2001, which has reportedly improved the quality of procurement marginally. Sixty five Training programs were planned for 2002.

3.2.1 Conclusion

The Training effort is inadequate and has to be increased manifold to cover all the officers and staff involved in the procurement activities of all the Implementing Agencies. It should also include the officers and staff from the Audit and Bribery Commission. The Training should cover Public Procurement Policies, Rules, Good Practices, Standard Tender Documents, Evaluation of Tenders, Contract Management etc.

3.2.2 Recommendations

Training courses should be developed for various levels of staff (administrative and policy making, senior managers, professionals in procurement, law, audit and the bribery commission) on Public Procurement Policies, Rules, Good Practices, Standard Tender Documents, Evaluation of Tenders, and Contract Management. The Training

¹¹ Based on an exchange rate of Rs.70 to the Us Dollar.

Master Plan as prepared by the ADB financed TA Consultants needs to be reviewed, updated and implemented effectively. Universities should be encouraged to include Public Procurement and Contract Administration topics in Engineering, Commerce, Law and Business Management Courses.

3.3 Institute for Construction Training and Development

The Institute for Construction Training and Development (ICTAD) is an organization which was set up by the Government of Sri Lanka to develop the Domestic Construction Industry. Established in 1986, it drew upon the experience of its predecessor, the Construction Industry Training Project (CITP) to carry forward the training activities for the Construction Industry. ICTAD was created as a unit under the Urban Development Authority (UDA) of the then Ministry of Local Government, Housing and Construction. ICTAD now functions under the Ministry of Housing and Plantation Infrastructure and enjoys the status of a para-statal body.

With its Headquarters in Colombo, it acts as a co-ordinator, facilitator and enabler to develop the construction industry in Sri Lanka by mobilizing the efforts and resources of the Government and Private Sector. Its main objectives are:

- To improve training capacities of vocational training institutions and facilitate the qualitative improvement of vocational training programs to meet the needs of semiskilled, skilled and managerial personnel in the construction industry;
- To improve the quality and efficiency of the construction industry by encouraging innovative approaches in technology and industrial development activities and in achieving economy in construction works.

IDA of the World Bank gave financial assistance to ICTAD for a period of 9 years (closing year 1994); ILO and UNDP financed a Technical Assistance Component.

ICTAD has three functional Divisions in its organization structure:

Training: To act as the Coordinating Agency for man power training in the Construction Industry and to produce well trained personnel in construction trades;

Construction Industry Development: To improve the efficiency and productivity of the Domestic Construction Industry; and

Resource management: To mobilize manpower, financial and physical infrastructure resources and manage them in conformity with the statutory administrative and financial stipulations of ICTAD and to provide support services to the other two functional divisions of ICTAD.

These divisions function under three Directors. The Director-General is the Chief Executive of the Institute.

ICTAD has been compiling, preparing and publishing model contract documents including Standard Bidding Documents for procurement of works. It has not started any training regarding public procurement. ICTAD proposes to devolve some selected functions as follows:

- Instructor training to the proposed National Technical Teacher Training College to be established under the Ministry of Higher Education;

- Grading and registration of contractors and the promotion of private sector of the Construction Industry to the Association of Construction Contractors of Sri Lanka.

4. Audit and Anti-corruption measures

4.1 Audit

4.1.1 Articles in the Constitution

Article 153 of the Constitution provides for the appointment of the Auditor General by the President. Article 154 details the duties and functions of the Auditor General. The Auditor General shall audit the accounts of all the departments of Government, offices of the Cabinet Ministers, the Judicial Service Commission, the Public Service Commission, the Parliamentary Commissioner for Administration, the Secretary General and the Commissioner of Elections, local authorities, public corporations and businesses or other undertakings vested in the Government by law.

The Minister in Charge of any such public corporation or business or other undertakings may with the concurrence of the Minister in charge of the subject of Finance and in consultation with the Auditor General appoint a qualified auditor or auditors to audit the accounts of such public corporation or business or other undertakings.

4.1.2 Auditor General

The Auditor General may, for the performance and discharge of his duties and functions, engage the services of a qualified auditor or auditors who shall act under his direction and control.

The Auditor General or any persons authorized by him shall in the performance and discharge of his duties and functions be entitled:

- (i) to have access to all books, records, returns, and other documents;
- (ii) to have access to stores, and other property;
- (iii) to be furnished with such information and explanations as may be necessary for the performance of such duties and functions.

The Auditor General shall within ten months after the close of each financial year and, as and when he deems it necessary, report to Parliament on the performance and discharge of his duties and functions under the Constitution.

The Auditor General reports on unauthorized expenditures, waste of public funds, abuse of procedures resulting in loss to the public exchequer, among other things. The institution is generally well respected for its independence and even feared. However the audit staff tend to take a clerical approach demanding strict compliance with procedures, often missing the objective. Minor aberrations and misuse of funds are highlighted, missing major systemic failures resulting in big losses to the public exchequer. Audit staff sometimes question why negotiations were not conducted to

reduce contract price. Procurement Audit is not conducted in the strict sense. Audit officers and staff need the same training as for other GOSL officers on public procurement concepts, objectives, processes and their rationale.

There are no specific provisions in the Constitution for conducting regular Technical and performance audits of public financed projects. However paragraph 154 (4) 154 (4)(b) has the following provision:

- “(b) If the Auditor – General is of the opinion that it is necessary to obtain assistance in the examination of any technical, professional or scientific problems, relevant to the audit, he may engage the services of:
- (ii) a person not being an employee of the department, body or authority the accounts of which are being audited;
 - (iii) any technical or professional or scientific institution not being an institution which has any interest in the management of the affairs of such department, body or authority, and such person or institution shall act under his direction and control”

Though Technical auditing is not included in the purview of the Auditor General’s functions, the above constitutional provision may give an impression that the Auditor General has authority to conduct technical audits including verification of assets (Refer Para 154 (5) (a) (ii)) through an expert in the relevant field. However reportedly this does not appear to have been exercised.

There is a need to institutionalise both Technical Auditing and Performance Auditing Systems by creation of an independent organization or at least strengthening the Auditor General’s Department to conduct Technical and Performance Audits by hiring the services of Technical expertise as and when needed. This mechanism will improve quality and help minimize corrupt practices.

4.1.3 Recommendations

Institutionalize both Technical Auditing and Performance Auditing Systems by creation of an independent organization or at least strengthen the Auditor General’s Department to conduct Technical and Performance Audits, hiring the services of Technical expertise as and when needed. This mechanism will improve quality and help minimize corrupt practices.

4.2 Anti-corruption measures

4.2.1 Bribery Act

Transparency International in its latest Report has assigned a Corruption Index of 3.7 as against 3.5 for China, 2.7 for India, 2.6 for Pakistan, and 1.2 for Bangladesh. However there has been an increasing public discussion over the issue recently, especially with regard to government transactions and procurement. The Annual Report of the Bribery Commission however states that the country is faced with a serious problem of Bribery and Corruption. The report also states that the Public response to minimize corruption is lukewarm. Bribery is an offence punishable under the Penal Code, introduced in as

far back as 1883. It was during the British Rule that Bribery was introduced as a criminal offence in to the Statute Book.

An Act to provide for the prevention and punishment of Bribery and to make consequential provisions relating to the operation of other written law was enacted on March 1, 1954. The Act has undergone several amendments and the current reprint of the Bribery Act incorporates all amendments issued up to December 31, 1995. The Act has the following Parts:

- Part I: Investigation of Allegations of and Prosecution for Bribery (Sections 1 to 12);
- Part II: Offences of Bribery (Sections 13 to 30);
- Part III: Commissions of Inquiry (Sections 31 to 39);
- Part IV: Repealed (Sections 40 to 69);
- Part V: Offences other than Bribery (Sections 70 to 77);
- Part VI: General (Sections 78 to 85);
- Part VII: Interpretation (Sections 86 to 90).

Schedule as per Sections 84 and 90.

4.2.2 Bribery Commission

An independent Bribery Commission was established under a Parliamentary Act in 1994 (Commission to investigate Allegations of Bribery or Corruption Act, No.19 of 1994 – Certified on October 27, 1994). This Act provides for the establishment of a permanent Commission to Investigate Allegations of Bribery Or Corruption (CIABOC) and to direct the institution of prosecution for offences under the Bribery Act and the declaration of Assets and Liabilities Law No.1 of 1975 and for matters connected therewith or incidental thereto. Unfortunately the Commission has been mostly inoperative. The Commission has recently received a fresh lease of life with the appointment of a new Bribery Commissioner to investigate allegations of corruption, fraud, and financial mismanagement in state transactions and activities. All Public Sector institutions such as Ministries, Departments, statutory authorities, local councils and public officials including politicians and the judiciary are subject to the Charter of the Commission to investigate Allegations of Bribery or Corruption. The Commission operates as an independent body and is accountable only to the Parliament. The Corporate Mission of the Commission is:

The Mission of the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) is to prevent the commission of offences of bribery, corruption and illegal accumulation of assets by public servants and to detect and/or otherwise investigate such persons who commit such offences and to prosecute them against whom sufficient material is available.

The Commission consists of three members. Two of the members are retired Judges, one from the Supreme Court and the other from the Court of Appeal. The third member is a person with wide experience relating to the investigation of crime and law enforcement. The appointment of the members of the Commission is made by the President in terms of Section 2(b) of the Act No, 19 of 1994. The Act stipulates that the Chairman shall always be either of the two retired Judges. The Commission will generally hold office for a period of five years. Although the Commission is appointed by the President, the Commissioners cannot be removed except on the grounds of proved misconduct or incapacity and that by resolution of Parliament adopting the procedure laid down in the Act that is similar to the procedure adopted in the case of removal of Supreme Court Judges.

The Director General and other officers are appointed in terms of Section 16(1) and 16 (4) of Act No.19 of 1994 to assist the Commissioner in the discharge of the functions assigned to the Commission by the Act. The Director General is appointed by the President. He is the Chief Accounting Officer of the Commission. In addition he is also the Chief Executive Officer and the officer authorized by the Act to sign indictments and charge sheets. As such he plays a key administrative, financial and legal role in running the day-to-day affairs of the Commission. The Commission is organized into five main Divisions:

1. Secretarial Division;
2. Investigation Division;
3. Legal Division;
4. Administration Division and
5. Finance Division

The Annual Report of the CIABOC for the year 2000 was submitted to the President on January 24, 2002. The following Table gives the status in respect of cases received by the Investigation Division.

Status of cases in Investigation Division.

Category	Total No. of cases received	Pending Investigations	Investigations Completed.
Raids	36	23	13
Corruption investigations	64	59	05
Open Inquires	86	78	08
Asset Inquiries	21	19	2
General Inquires	417	371	46
TOTAL	624	550	74

From the above it may be seen that the disposals are only about 12% which is dismally low. The observations of the Commission are given hereunder.

“General:

In spite of efforts the Commission has not been able to achieve much. There is much more to be done. The Commission is genuinely concerned that the country is faced with a serious problem of bribery and corruption. It is equally concerned that the response from the general public in our efforts at least to minimize the effects, if not to eradicate the problem is lukewarm. There are many reasons for this attitude. Most victims are reluctant to come forward with their complaints mainly due to fear of

victimization. Others fear that they will lose business or will not be able to carry on with their professional work. There are yet others who would suffer in silence as long as they are able to get things done. Social values seem to have radically changed over the years. Giving and taking bribes seem to be the accepted norm. Besides, there are yet others who will not want to complain because both parties stand to benefit. There are only a few who feel outraged at the idea of soliciting a bribe or its acceptance. It is the public who offer bribes in the first instance as an incentive to get things done. Once tempted this way the tendency later on for the public officer is to ask for bribes. Bribe giving and bribe taking get into a vicious circle eating finally into the social fabric like a malignant cancer. The vicious circle has to be broken at some place. It can be done only if we can change the attitude of the public towards offering bribes. The negative social norms and values have to be changed. The Commission cannot achieve this goal all by itself. The Society at large must rise to the challenge and support the Commission in this arduous task

The Commission to Investigate Allegations of Bribery and Corruption is responsible for promoting integrity in the public Sector. While the Commission's role is to lead the way, the community, the Public Sector and those who transact with it must share a desire to achieve a high standard of honesty, impartiality and accountability. It is then that the Commission will be able to achieve its desired objective of promoting integrity in the Public Sector."

Status of cases referred to the Legal Division is as follows:

(a) Number of complaints referred by the Commission for legal opinion:

Received	1135
Reported	935

(b) Number of files referred after completion of investigations for legal opinion:

Received	88
Prosecution launched	12
Not ending in prosecution	12
Reports to be submitted	64

Status of the progress of cases in the Courts is given in the following Table:

Status of progress of cases in Courts

Details	Magistrate's Court	High Court	Appellate Court
Cases pending as on 1/1/2000	60	82	14
Number of cases filed during the year 2000	7	5	0
Number of cases concluded during the period	16*	18 **	7
Number of cases pending as on 31/12/2000	51	69	7

* Of the 16 cases concluded in the Magistrate's Court, accused were convicted in 3, acquitted in 10 and discharged in 3

** Of the 18 cases concluded in High Court, 11 ended in convictions, acquitted in 2 and discharged in 5.

The staff position of the Commission is shown in the following Table:

Staff Position of the Commission

Division	Approved Cadre	Vacancies as on 1/1/2000	Vacancies as on 31/12/2000
Commission all divisions excluding Investigation	143	20	33
Investigation Division	103	103	44

The vacancies should be filled up immediately and the commission should be strengthened to be made more effective.

The Bribery Act is pervasive and includes all types of offences, including procurement/contract related offences. The specific paragraphs 17 and 18 are reproduced below:

- “17. Bribery for giving assistance or using influence in regards to contracts: A person-
- (a) who offers any gratification to a public servant as an inducement for a reward for such public servant’s giving assistance or using influence in the promotion of the procuring of any contract with the Government for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance, or in the execution of any such contract, or in the payment of the price or consideration stipulated therein or of any subsidy payable in respect thereof, or
 - (b) who, being a public servant, solicits or accepts any gratification as an inducement or a reward for his giving assistance or using influence in the promotion of the procuring of any such contract as is referred to in paragraph (a) of this Section, or in the execution of any such contract, or in the payment of the price or consideration stipulated therein or any subsidy payable in respect thereof, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.
18. Bribery for procuring withdrawal of tenders. A person-
- (h) who, with intent to obtain from the Government a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance offers any gratification to any person who has made a tender for such contract, as an inducement or a reward for his withdrawing such tender, or
 - (i) who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for such contract, shall be guilty of an offence punishable with rigorous imprisonment for a term of not more than seven years and a fine not exceeding five thousand rupees.”

The Bribery Commission should be strengthened to exercise its authority. The Commission should become pro-active in seeking active support of non-governmental (national and international) agencies such as Transparency International in making the

public aware of the seriousness of the problem and prompt them to fight against Bribery and Corruption.

4.2.3 Recommendations

Institutionalize both Technical Auditing and Performance Auditing Systems by creation of an independent organization or at least strengthen the Auditor General's Department to conduct Technical and Performance Audits, hiring the services of Technical expertise as and when needed. This mechanism will improve quality and help minimize corrupt practices.

5. Public Sector Procurement Management Performance

The 1997 Guidelines under Chapter XI, Implementation of Tender Award discusses, among other things, forms of contract agreement, client's obligations, contract management, extension of time, payment, completion report, extra contractual payments, revision of cost estimate, price escalation formula, defaulting contractors, and district price fixing committee. Many of the provisions are out of context and are in conflict with the provisions of the SBD and/or covered elsewhere. The Guidelines need to be amended accordingly.

5.1 Handing over the site to the Contractor

ICTAD SBD provides an adequate mechanism for remedy if the site is not handed over in full or part as may be specified in the program. However during implementation, the Employer rarely observes the provision of this clause to compensate the contractor for losses that he suffered due to delay in handing over the site.

5.2 Delay and/or non-payment of advances

The advances as provided in the contract are not paid on time as per contract conditions arguably due to non-availability of adequate funds for the work. The Contractors Association however reported that such delays are not common in the case of Donor financed contracts

5.3 Payments for work done

Payments in respect of contracts financed from the Consolidated fund are usually delayed because of paucity of funds for the work. The Contractors Association reported that the cumulative outstanding contract payments is currently in the order of Sri Lanka Rs 2 billion. The contract provides for payment of interest for delayed payments, which is usually not paid. However it is reported to have been paid in some cases.

5.4 Variations

Variation orders are also referred to as extra contractual payments in paragraph 153. Para 153.3 stipulates that if the extra contractual payments exceeds contingency provision, the head of the department should take steps to revise the Total Cost Estimate in accordance with Financial Regulation (FR) 72 and thereafter the appropriate Tender Board may approve extra contractual payment including the award of change order. FR 72 refers to the Total Cost of a Project (which may have many contracts) and fixes the authority for approval by various

authorities. The provisions of the Guidelines and the FR are conflicting and need to be harmonized by amending either one or both. The provisions for payment are different in the Guidelines and the SBD (Clause 38 and 40.3) and agreements for extra contractual payments are, by and large, not issued in writing. The rates for variations beyond the stipulated limit are not decided in time as per the conditions of the contract although the contractor is asked to continue the work. This leads to arguments and disputes between the parties. Even for Donor Financed projects, despite delegation of enhanced powers as per the 2000 Guidelines paragraphs 226.1 and 226.2, delays persist as observed in the GOSL Public Finance Circular of November 27,2001.

5.5 Compensation events

The compensations for the events listed in Clause 44 of the ICTAD SBD are not generally assessed nor adjustment made in the contract price. The contractors do not appear to be diligent in giving early warning and providing necessary information to the Engineer for the determination of entitlement and quantum of compensation.

5.6 Extension of Time

Applications for extension of time as received from the contractors are not processed expeditiously and decisions are not communicated to the contractor in time. Pending decision, it is not uncommon that liquidated damages are recovered which may not be required. Following receipt of the decision on the time extension, the return of the already deducted liquidated damages is also delayed. Though the tender documents do not equate liquidated damages with penalty, yet the Guidelines imply it, and hence there is a possibility of the Employer's representative mistakenly communicating to the contractor that liquidated damages are being deducted as penalty, which will weaken the case of the Employer, should there be any litigation.

5.7 Monitoring System

The computerized procurement monitoring system has been introduced on November 29, 1999 with the establishment of the Procurement Support Bureau in the Ministry of Finance, and with the assistance of ADB. Under the project, PSB has formulated and documented a systematic procedure for monitoring the progress of tenders. Described as Tender Monitoring System (TMS) the procedure in its current form, essentially requires that for all relevant¹² tenders a target time schedule be established and subsequently used as the basis for future monitoring of a tender's progress. The monitoring is carried out by measuring the actual milestone activity achievement dates reported against those originally scheduled.

A study of the latest Monitoring report indicates that the Monitoring is done only on CATB tenders. The data in respect of other Tender Boards are not received in time by the PSB and no monitoring is possible. The Monitoring should be made more effective. There is no monitoring of Consultancy and Goods contracts

5.8 Supervision of contracts and quality control

On donor funded large contracts, independent consulting Engineers are appointed to supervise the contracts and to ensure quality control. In the contracts funded by Consolidated

¹² Tenders handled by CATB and those utilizing Foreign Financing Agency Funding.

Funds, except for any supervision and quality control exercised by the implementing agencies themselves, there are no laid out rules for conducting technical audits including quality control audits.

5.9 Dispute resolution

Both the Public Sector Managers and the Contractors' Association have stated that by and large all disputes are settled amicably. Reference to Arbitration is not very common, since the contractors perceive it to be costly, time consuming and may strain the good relationship between the parties concerned.

5.10 Capacity of Project Administrators/Managers to resolve problems

Barring a few exceptions, the Project Administrators/Managers lack the skill and expertise for resolving contract management problems in a timely and orderly manner.

5.11 Timely completion of contracts

By and large there are delays in the completion of contracts, due to paucity of funds and consequent delayed payments to contractors/suppliers. The time overruns are also partially due to inappropriate and inadequate time periods given for completion of work/supplies. Cost overruns also occur due to incomplete investigations and designs which result in variations.

5.12 Maintenance of records of the procurement process

The records are fairly well maintained particularly in respect of donor assisted projects.

5.13 Maintenance of records of contract administration

The records are fairly well maintained particularly in respect of donor funded contracts.

5.14 Maintenance of data base for goods procured on shopping procedure

No such database is maintained.

5.15 Procurement reports

PSB prepares periodic reports on procurement activities only for donor funded projects and contracts which come under the purview of the CATB.

5.16 Delegation of approval powers

The Delegation of Powers for award of contracts financed by donor-funded projects is generally set at higher limits than those in respect of contracts funded by the Consolidated Fund. The disparities of approval power between consolidated fund and donor financed projects are very high (about ten times for DTB and above). The details are given in Section A-2.22 of this report.

6. Performance on Donor-Financed Projects

6.1 World Bank financed projects

The World Bank's portfolio as of September 30, 2002 includes 13 projects with commitments totalling US \$465.2 million and several economic and sector work activities focussing on poverty alleviation, institutional development and governance. Seven new projects have been identified with an estimated commitment of about \$350 M. The World Bank and the Government of Sri Lanka conducted a joint Country Portfolio Performance Review in FY2002 and issued a joint Report in July 2002. The Report identifies the Systemic Issues affecting the portfolio. The Report reads as follows:

“During the January 2002 phase of the Portfolio Review, the Government and IDA were concerned with the low level of disbursements (only US\$12 million or 5% of the opening balance had been disbursed, which at that time was the lowest ratio in South Asia). In reviewing the reasons for the low level of disbursement and the overall poor quality of the portfolio, systemic issues, which adversely affect the overall performance, have been identified. These included:

Weak and Inadequate Management : Many factors affect the quality of project management. However one overriding concern raised by line Secretaries dealt with the structural issue of Project Management Units (PMUs) In practice most projects are managed through the creation of a PMU, often at the insistence of the donor. Frequently, PMUs are managed by Project Directors who are recruited from outside the line ministry. This disconnect and limited decision making does impact on timely implementation. To improve implementation, line Secretaries agreed to take steps to incorporate project management duties into their respective line ministry.

Inadequate Commitment/Ownership: One contributing reason for slow implementation is a lack of commitment/ownership to development objectives and project activities. Many staff within a line ministry are less integrated in the day to day management of a project executed outside of the respective ministry. As a result, some key governmental officials may not take direct responsibility for project implementation and may not have a clear understanding of project development outcomes. Also, frequent changes at senior levels within a line ministry often result in key staff not being aware of the relationship between project and policies being supported by the investment. Where there is a perceived lack of ownership or commitment, steps need to be taken to ensure senior staff have a better understanding of project objectives. As commitment is vital to achieve the project objectives, the projects will otherwise need to be restructured or cancelled.

Slow Procurement: Lengthy time lags in assigning and appointing members of tender committees and competing demands of committee members result in long delays in award of contracts. Political interference in contract awards also cause delays. To address these issues, ERD will chair a small task force of senior line Secretaries to recommend ways to make the tender committees more efficient. The Bank Country Procurement Assessment Review will also work with the Task Force in identifying ways to strengthen management of the Procurement Cycle.

Inadequate Flow of Funds: Poor annual budgeting and timely release of counterpart funds has resulted in slow implementation of low disbursements. As part of this portfolio review, task teams have prepared disbursement and procurement schedules, which indicate the requirements of counterpart funding for the Calendar Year. ERD will work closely with the line ministries and the State Accounts Department to ensure timely flow of funds.

Complex Project Design: Given capacity constraints, many projects remain too complex for successful implementation and can result in a lack of commitment and ownership. Special

consideration will be given to a number of operations to consider restructuring and/or cancellation of components. These include: Mahaweli Restructuring: Teacher Education and Teacher Deployment; and General Education II.

Lack of Consistent Policy and Policy Continuity: Due to low commitment/ownership to policy reforms and frequent changes of key officials there is a lack of continuity in carrying out reforms needed to achieve development outcomes. Projects with a large reform content, such as Mahaweli Restructuring, Legal and Judicial Reforms, and land Titling will require close supervision to ensure institutional reforms are carried out.

Governance: There are a number of long term governance issues which will need to be addressed to improve the overall performance of the portfolio on a sustainable basis.

- Weak Financial Management and Accountability;
- Weak Procurement Management;
- Weak Public Sector Auditing;
- Lack of a Project/Program Monitoring System for all foreign aided projects.

Civil Service and Administrative Reform: The inability of the public sector to attract the best candidates and provide the right set of incentives is a major constraint to successful portfolio implementation.

Based on the discussion held on January 24, 2002 with Secretaries from the key ministries, a number of agreements and recommendations were made to improve the overall portfolio and to address systemic issues.

Regarding the systemic issue of Delays in Procurement, Actions proposed is ‘Review procedures for appointing Chair and Members of TC; Focus on Management of Procurement. ‘ The indicators are Revised Tender Procedures/Complete CPAR.’”

6.2 Asian Development Bank financed projects

ADB commenced operations in Sri Lanka in 1968. As of September 2002, ADB has approved 96 Public Sector Loans amounting to US\$2.67 billion. The overall performance of the portfolio has been rated as satisfactory although there has been a decline in disbursement over the last few years. Sri Lanka graduated to the B1 country status, (which allows borrowing on Asian Development Fund terms with limited access to Ordinary Capital Resources). Important characteristics of ADB’s country strategy for Sri Lanka are the increased emphasis on sectoral policy reform, public sector capacity building, private participation in the economy, institutional reforms, good governance, and natural resource management.

6.2.1 Performance of on-going projects

As of September 30, 2002, there were 27 on-going loan projects with a total loan commitment of US\$1033 M of which net disbursed funds amounted to US\$688 M(67%). The analysis has been made in the Country Portfolio Review Mission 2002 of October 22, 2002:

“The major shortfalls in disbursement in disbursement for 2002 to date have been in the road, education, natural resources and financial sectors, the latter reflecting the delayed tranche release for Loan 1800. Other than the financial sector, poor disbursement performance is due to: (i) slow progress on contract awards; (ii) absorptive capacity constraints of the

implementing Agencies; (iii) inadequate monitoring systems of EAs; (iv) non-compliance with the new government tender procedure; (v) resettlement and compensation issues; and (vi) delay in, or uncertainty about release of counterpart funds.”

As regards procurement performance, the following are the observations of ADB in the background note (Annex 2) of the 2002 Portfolio Review. (Only excerpts are given below)

B. Procurement Performance	Issues	Possible corrective measures
<p>Contract Awards</p> <p>As of 30 September 2002 contract awards reached \$78 M, about 48% of annual projection of \$160 M with a contract awards ratio (with program loans) of 11.9 which is below the ADB average of 18.6. The contracts ratio without program loans in 2001 was 15.1 which was same as the ADB wide average. The average time elapsed before the first contract awarded was about 9 months.</p>	<ul style="list-style-type: none"> • Delays in carrying out procurement actions according to new Guidelines; • Lack of authority given by EAs to the Project Directors; • Delay in approval procedure of TECs and CATBs; • Delay in loan effectiveness. • Inadequate budget allocation for some projects 	<ul style="list-style-type: none"> • Line Ministries to continue to closely monitor contract awards with EAs; • PSB should monitor all procurement plans submitted by PMUs; • EAs to implement the new procurement guidelines; • MOF to provide sufficient budget and counterpart funds for implementation • SLRM to organize Project Administration and Implementation (PIA) seminars

C. Procurement Performance

Contract Awards:

- 20 Contract awards over the last few years have fluctuated, reflecting a lag with the fluctuation in lending levels. In 2001 the achievement of \$100 M was below the year's predictions of \$181 M. The contract award ratio, with program loans, in 2001 was 15.1 % which was slightly above the ADB wide average of 14.9 %.
21. As of 30 September 2002, actual contract awards amounted to \$78 M which is 48% of the annual projection of \$160 M. **This is not satisfactory.** Current ratio of contract award (without program loans) is about 12.1%, which is below the ADB wide average of 16.5%. Contract award ratio (with program loans) is 11.9% which is also below the ADB average of 18.6%. The Table below the sectoral performance of contract awards of on-going projects. Contract awards in the road, education and natural resources sectors were very slow during the first half of 2002 due to the delay in appointment of TECs, slow submission of TEC reports, delay in finalization of documents and delayed approval by CATBs/MTBs. The unsatisfactory achievements of large contracts of these sectors have already affected disbursement. Continuing close monitoring by EAs through out he year will be required to ensure that projections are fully met.

Sectoral Performance of Contract Awards

Sector	Loan Amount \$ M	Projection for 2002 \$M	Actual as of September 2002 (\$M)	%
Agriculture	152.8	16.4	7.9	48
Forestry and Natural resources	113.1	26.4	3.2	12
Urban Development and Water Supply	141.4	17.0	22.8	134
Education and Health	87.7	9	12	133
Energy	71.7	1.0	1.6	158
Transport and Communications	251.5	49.6	19.9	40
Industry and Finance	188.4	37.1	10.0	27
Multisector	26.1	3.9	0.3	8
Total	1032.7	160.4	77.8	48

- 22 Although the Government has introduced new and streamlined tender procedures there are still delays in approval of contracts. Three projects in the social infrastructure, two projects in the agriculture and natural resources, and one project in the road sector have been delayed more than 12 months in the award of contracts. Progress of contract award for the first seven months in 2002 has deteriorated compared with 2001 due to delays in awarding of large contracts in the road, port, education and natural resource sectors. **Attention is required to improve the progress of contract awards, which will improve utilization of project funds**

7. General Risk Assessment

7.1 Compliance with Legal Agreements

The Donor Agencies finance a substantial portion of public sector procurement in Sri Lanka. GOSL follows the procurement procedures as stipulated by the Donor Agencies in the Legal Agreements. Prior review thresholds are generally low¹³ and hence most of the procurement is prior reviewed by the donor agencies and the risk is minimal, except that the contract awards are delayed because of cumbersome procedures for the appointment of Members of TBs and TECs and delays in finalising the tender documents, tender evaluation reports, and acceptance of recommendations for award. Procurement under post review is also supposed to be done as per the prescribed procedures. In the absence of third party independent post review audits, the exact position is not known. However, from a review made by the ADB-financed TA Consultants of a sample number of projects which included post review contracts; expost review carried out by IDA mission; and field inspection (Northwestern and Southern Provinces) undertaken by the CPAR Consultants, it was found that the procedures as laid down in the Legal Agreements of Donor Agencies are generally being followed.

¹³ The new Loan/Credit Agreements will have higher review thresholds depending on the risk assignment of the country concerned.

7.2 Adherence to rules and procedures

GOSL issued the Guidelines for Government Tender Procedure in 1996 which was revised in August 1997 and in December 2000 (Chapter relating to Foreign Financing Agencies). These Guidelines have established the procedures (in some areas cumbersome such as constitution of TB and TEC) which are generally being followed for contracts financed from Consolidated Fund. The implementation part of the contracts lacks efficiency and needs improvement.

The Guidelines have promoted a culture of accountability. There are practically no officials charged with specific procurement responsibilities, no procurement cadre or at least Core Group of Procurement Professionals with good salary structure - officials charged with the responsibility of implementation are also in charge of Procurement. The Members of the Tender Boards and Technical Evaluation Committees are compensated by extra payments. There does not appear to be much political interference (although it is not ruled out) in the preparation of evaluation reports and recommendations for award of normal sized contracts.

There is scope for improvement in the Guidelines and SBDs as discussed in Section A.2 of this report. Public Procurement would improve considerably if the recommendations made in this report are fully implemented. This may take some time. However, with the introduction of SBDs and marginal improvements in Guidelines, better implementation monitoring by PSB and greater capacity building efforts, Sri Lanka could be rated as a medium risk country in its Public Procurement System as well as in the assessment of Risk to Donor-Financed Projects.

8. Supervision and Practices for Donor-Financed Projects

Project Supervision Missions fielded by the Donors should include a Procurement Specialist, who should review the implementation of the contracts in the field. In addition, the Procurement Specialist should make a half yearly review of the procurement progress and carry out ex-post reviews of contracts (not subject to prior review) selected on a random basis.

NCB contracts under donor financed projects follow the procedures as specified in the Legal Agreements. The checklist in Vol. I-Annex 4 compares practices in NCB contracts financed by the Consolidated Fund of Sri Lanka with those acceptable under WB procurement guidelines (as reviewed by the WB). The conditions in Annex 4 are those agreed with IDA for application in IDA-financed contracts awarded following NCB procedures in Sri Lanka.

B. Private Sector

1. Competitiveness and Participation in Public Procurement

1.1 Construction Industry

The private sector needs to be equally efficient, competent, flourishing, honest and vigilant if public procurement is to function effectively. The Construction Industry in Sri Lanka has yet to reach full potential to meet the required capacity for the country's development programs. Until recently all the large contracts were awarded to foreign contractors. The Institution for Construction Training and Development (ICTAD) has been conducting training courses for the construction industry in the recent past. This training has enabled domestic contractors to improve their efficiency and capability and win some large tenders in recent years.

1.2 Consultant Services

The Consultant Services profession in comparison, has not developed sufficiently in Sri Lanka. Consultants are usually hired from outside the country. However local consulting firms and/or individuals often associate with foreign firms, working as sub-consultants or providing individual experts.

1.3 Overdue Payments

It is reported that current outstanding payments to the contractors involved in public sector contracts is of the order of Rs.2 billion and there is a perceived uncertainty in the minds of the contractors as regards timely payments. This will reduce competitiveness and increase the cost of tenders. The National Contractors Association has recently put forward a proposal for Letters of Credit to be issued for the full contract amounts and payments be released against the payment certificates as the work progresses. This has not been agreed to so far.

2. Performance on Public Procurement Contracts

Overall, the performance of the private sector in public procurement is not encouraging. In the absence of a technical auditing mechanism, quality of construction is not adequately checked and has scope for improvement. Further, contracts are not completed in time, leading to cost and time overruns.

Disputes sometimes arise but they are reported to be settled amicably without going to litigation. Mediation and Arbitration are not very common.

With an almost negligible manufacturing industry in the country, most of the goods and supplies are procured from outside the country.

Consultants are usually hired from outside the country as there is a dearth of local consultants. However foreign consultants often associate with local experts generally appointing them as sub-consultants.

3. Commercial Practices as they Relate to the Public Procurement System

International commercial practices - ICC INCOTERMS - are being followed for all procurement from abroad. There is no customs duty on importation of construction and transport equipment.

Letters of Credit, Securities and Guarantees, are easily obtainable on payment of fees. A Construction Guarantee Fund established under the Ministry of Urban Development, Housing and Construction facilitates the issue of Bonds and Guarantees to domestic contractors (for contracts up to Rs.20 M) without collateral, but on payment of a levy which ranges from 1.0 to 1.75% .

C. Recommendations

1. Major Recommendations

1.1 Public Procurement Law

Enactment of a Procurement Law - in the form of an Act based on UNCITRAL Model Law - to govern public procurement, will establish a sound legal frame work, not amenable for change by administrative actions. It will substantially improve transparency, reduce abuses and malpractices, bring in accountability and enhance public confidence in the system. However, considering the commitment of the State and level and ease of acceptability of the Guidelines, both by interested parties as well as the judiciary, the GOSL may consider enactment of a Procurement Law as deemed necessary, in the long term. GOSL will be in a better position to decide whether the process, as set out under the Guidelines, should be endorsed through legal enactments, following experience with Guidelines revised to take into account recommendations of this report (Section A.1.1).

If GOSL chooses to enact a Procurement Law it should as a minimum include the substantive procedural requirements compatible with established international practices in the following areas: an appeal/challenge mechanism (preferably judicial/quasi judicial), debriefing to unsuccessful bidders, dealing with delays and claims, dispute resolution mechanisms, suspension and blacklisting of firms/contractors and publication of awards. The law should be complemented by detailed Guidelines. This combination of Act and Guidelines should be made applicable to all Ministries, Departments, Public Corporations, Statutory Bodies and Government owned Companies, be widely published and made available to the business community and public.

In the interim, Guidelines should be revised to include provisions that have not been covered and exclude those items which shall be covered by the Standard Tender Documents. To avoid duplication and possible inconsistencies, clear cut demarcation of provisions should be ensured in drafting the Act, Guidelines and SBDs. The Guidelines and SBDs currently in force, pending enactment of the Act, should be appropriately revised to remove ambiguities and inconsistencies.

1.2 Procurement policy oversight

A small high powered, professionally staffed, independent Procurement Regulatory Agency (PRA) should be established to develop, review and revise the procurement legal framework. Its functions should be confined mainly to policy, documentation, development of rules. The exact modalities of the PRA/PSB arrangement should be developed by GOSL. The Regulatory/Policy Agency should be kept distinctly separate from the Agency carrying out line functions (Section A.1.2).

1.3 Procurement Support Bureau strengthening

The Procurement Support Bureau should be strengthened and manned by competent staff to deal with planning, setting of standards, monitoring of outcomes, and capacity building including training. PSB should also be entrusted with the responsibility for implementation of the Agreed Action Plan based on the CPAR recommendations (Sections A1.2 and A.3.1).

1.4 Procurement accreditation

With the move to decentralize procurement accountability fully to the line Ministries, steps should be taken to build a critical mass of procurement proficient staff, through the introduction of an accreditation scheme. In the interim, a Procurement Core Group should be formed, with commensurate rewards, to be in charge of Public Procurement and provide specialized inputs to the various organizations.

1.5 Standard Functional Specifications for Goods

Standard Functional specifications, which are broad and non-discriminatory and evaluation criteria/methodology for comparative evaluation should be developed for goods that are commonly procured by the various implementing agencies. Draft specifications and evaluation criteria/ methodology should be placed on the PSB website, inviting comments from manufacturers, suppliers and users. After review and refinement, the Specifications should be circulated to all the implementing agencies for adoption and adherence (Section A.2.4).

1.6 Standardization of Tender and Contract documents

Standard tender and contract documents for Works, Goods, Industrial Plant and Professional Services should be developed, widely published and made easily available to the business community. They should be mandated for use by all public procurement entities. The Standard Documents should be given reference numbers. User entities should not be allowed to change any clause in the Standard General Conditions but may add any unique requirements or modifications only through Special Conditions/Contract Data. The set of tender documents standardized by the World Bank and accepted by the Government of Sri Lanka for Works, Goods, Industrial Plants and Services could form a basis to start with and appropriately modified to suit country specific requirements, wherever needed. This step is of the highest priority and would greatly improve the quality of procurement, save time, minimize abuses and enhance transparency. The SBDs should be placed on the PSB website for reference by the business community (Section A.2.7).

1.7 Revision of Guidelines

1.7.1 Restricted negotiations

Guidelines should mandate that negotiations are not permitted except in cases where it becomes necessary to change the scope of the contract and/or terms and conditions of contract, with the specific approval of the Secretary of the concerned Ministry. Detailed guidelines on exceptional situations where negotiations are to be conducted and the procedures for conducting negotiations should be prescribed (Section A.2.23).

1.7.2 Comprehensive guidelines on procurement of consultant services

Chapter VI of the Guidelines should be extensively redrafted to give clear and precise procedures for the hiring of Consultants. Standard RFP Documents should be prepared for various methods of selection and various types of contracts (Section A.2.32).

1.7.3 'Tender Capacity' as criterion for award of contract

Tender capacity should be made a mandatory criterion for award of contracts. Specific requirements in this respect should be pre-disclosed in the tender documents. The contracts on hand must be assessed to determine available capacity net of current commitments and ability of the tenderer to perform the new contract satisfactorily if awarded. Additionally, where the tenderer is lowest in more than one tender or slice of a package, the qualification requirements to be satisfied by the lowest tenderer should be the aggregate of the individual tenders or slices of a package. Otherwise the contract award should be made only for the tender(s) for which the tenderer satisfies the criteria (Section A.2.34).

1.8 Simplification of review and approval process

The review and approval process should be simplified and streamlined to ensure award of contracts within the initial validity periods. The procedure for the constitution of the Tender Boards and Tender Evaluation Committees should be streamlined to cut down the processing period. The number of Standing Tender Boards and TECs should be increased, in particular if they need to meet at short notice. The multi layered review and approval process, particularly for large value contracts, should be simplified to expedite the process and minimize opportunities for malpractices and corruption (Section A.2.22).

1.9 Electronic tendering

Electronic tendering procedures should be introduced progressively. Systems could be piloted initially in selected Implementing Agencies, for example in the Railways and Electricity Departments. This will substantially increase transparency, efficiency and reduce scope for malpractices and corruption. GOSL should also encourage the use of documents and forms downloaded from the web for various transactions (Section A.2.35).

1.10 Procurement training Master Plan

Training courses should be developed for various levels of staff (administrative and policy making, senior managers, professionals in procurement, law, audit and Bribery Commission) on Public Procurement Policies, Rules, Good practices, Standard tender Documents, Evaluation of Tenders, Contract Management etc. The Training Master Plan prepared by the ADB financed TA Consultants should be reviewed, updated and implemented. Universities should be encouraged to include 'Public Procurement', 'Contract Administration' topics in Engineering, Commerce, Law and Business Management courses (Section A.3.2 and 3.4).

1.11 Technical and Performance Auditing

Technical and Performance Auditing should be institutionalised by the creation of an independent organization or at least strengthening the Auditor General's Department to conduct such Audits. Technical expertise could be hired as and when needed. This mechanism will improve quality and help minimize corrupt practices (Section A.4.1).

1.12 Registration for contracts of high value

Discontinue the requirement of registration for: Contractors tendering for works of value more than Rs.5 M; and Suppliers/Vendors for materials, goods and equipment of value above

the threshold limit for which open tenders are invited. Minimum post-qualification criteria for award of contract should be incorporated in the tender documents (Section A.2.10).

1.13 Maintenance of Data Book/Schedule of Rates

Guidelines should specify procedures for review and revision of the Data Book - which forms the basis for the preparation of the Schedule of Rates - to reflect new materials, works methods, definition of overheads etc. Guidelines should include linkages to the Financial Regulations relating to updating of the Data Book (Section A.2.3).

2. Minor Recommendations

2.1 Revision of Guidelines

2.1.1 Procurement planning

Guidelines should specify procedures for detailed procurement and logistics planning, contract packaging, and scheduling of funding for all development projects. Procurement planning should be done well before implementation commences (Section A.2.1).

2.1.2 Preparation of estimates

Guidelines should include linkages to the Financial Regulations relating to preparation of estimates (Section A.2.2).

2.1.3 Methods of procurement

Guidelines should specify the various methods of procurement, the situations where they are to be followed, and the steps to be followed for each method of Procurement (Section A.2.5).

2.1.4 Types of contracts

Guidelines should specify the various types of contracts such as Item Rate, Lump Sum, Percentage Rate, Materials Supply, Labour, Design and Build (Turnkey), Management Contracts, the situations where they should be used and the tender documents to be used for each type (Section A.2.6).

2.1.5 Securities and guarantees

Formats for securities and guarantees should be standardized and harmonized, removing all inconsistencies within and between Guidelines and SBDs. They should be unconditional and preferably in the form of bank guarantees (Section A.2.8).

2.1.6 Pre-qualification

Mandatory limit for pre-qualification (Rs.1000 M) should be reduced to Rs.500 M and adopt post - qualification from Rs.5 M to Rs.500 M with optional pre-qualification from Rs.100 M to Rs.500 M (Section A.2.9).

2.1.7 Two-envelope, two-stage systems

Use of the two envelope system should be prohibited, except for special cases approved by the Secretary of the concerned Ministry. Use of the two stage tender system should be prescribed for procurement of complex equipment/plant and installation (Section A.2.11).

2.1.8 Tender validity

Guidelines should specify reasonable tender validity periods for different values and categories of works/supplies. SBDs should incorporate a provision for the increase of prices at a pre-disclosed rate (linked to the country; inflation) for extension of tender validity period beyond a specified period (eg. two months) from the date of expiry of the original tender validity period (Section A.2.12).

2.1.9 Price adjustment

Price Adjustment should be mandated for all works contracts of value more than Rs.5 M and completion period of more than 12 months. Price Adjustment should be made applicable from the date of opening of tenders (Section A.2.13).

2.1.10 Contract administration

Guidelines should provide additional guidance on contract administration including handling of variations, claims, obligation of parties, breach of contract and damages (Section A.2.14).

2.1.11 Scale of publicity

Guidelines should specify the scale of publicity for different methods of procurement, based on cost estimate, and threshold value for publication in the Government Gazette (Section A.2.15).

2.1.12 Sale of tender documents

Guidelines should specify procedures for sale of tender documents. Documents should be made available for sale (including by mail), up to a day prior to the deadline date of submission and opening of tenders, to avoid the chances for collusion (Section A.2.16).

2.1.13 Pre-tender meetings

Guidelines should specify procedures for conducting pre-tender meetings and follow up action (Section A.2.18).

2.1.14 Tender withdrawals and modifications

Guidelines should specify procedures for submission of 'Withdrawal of' and 'Modifications to' tenders (Section A.2.18).

2.1.15 Tender opening

Procedures should be harmonized for opening of tenders, removing all inconsistencies within and between Guidelines and SBDs (Section A.2.19).

2.1.16 Preliminary examination of tenders

Procedures for dealing with correction of errors during preliminary examination of tenders should be reviewed and revised, removing all inconsistencies within and between Guidelines and SBDs (Section A.2.20).

2.1.17 Preferences

Guidelines should be amended to exclude all preferences except for domestic preference to local manufacturers in respect of International/ Worldwide tenders (Section A.2.21).

2.1.18 Insurance

Guidelines should specify the insurance requirements in respect of Works, Goods and Services Procurement and these should not be restrictive (Section A.2.26).

2.1.19 Inspection

Guidelines should specify requirements for third party inspection in respect of all contracts costing above Rs.100M (Section A.2.27).

2.1.20 Repeat orders

Guidelines should prohibit repeat orders (Section A.2.29).

2.1.21 Adjudication/Dispute resolution

Guidelines should provide for appointment of an Adjudicator (for all contracts above Rs.5 M) and Dispute Resolution Board/or Dispute Resolution Expert (for contracts above Rs.500 M) for settlement of dispute. The Arbitration Act should be reviewed and inadequacies rectified, in conformity with international practices (Section A2.31).

2.1.22 Unbalanced tenders

Guidelines should specify procedures for treatment of unbalanced bids and unrealistic rates. The procedures should be uniform, simple and workable, regardless of source of funding (Section A.2.33).

2.2 Procurement monitoring and contractor performance database

An up to date computerized monitoring system for procurement tracking and a contractor performance database (published on the PSB web site) should be maintained (Section A.2.24 and A.2.28).

2.3 Blacklisting

Comprehensive rules for 'Blacklisting' of contractors/suppliers/firms for a specified period or permanently should be framed to include all offences such as furnishing of false information, default, submission of false Bid Bonds or Guarantees, moral turpitude, conviction by court, inability to justify high rates quoted, collusion, assignment of contract, non-payment of government dues (Section A.2.30).

3. General Recommendations

3.1 Bribery Commission and Auditor General's Department

Strengthen the institution of the Bribery Commission and the Auditor General's Department (Section A.4).

3.2 Seminars and workshops

Conduct Seminars and Workshops for the business community to explain the Act and Guidelines (even during formulation) for Public Procurement, Standard Tender Documents, and other new initiatives and to obtain feed back. Sponsor and encourage training classes for construction contractors on types of contracts, tender preparation, Financial management, contract administration, related law etc.

3.3 Code of Conduct

Prescribe a 'Code of Conduct' for procurement professionals and the business community who wish to participate in public procurement.

D. Recommended Action Plan

1. Sequential Actions Summarized by Major Categories

The sequential actions for implementation of the Procurement Reforms by Category are :

1.1 Category 1: Long Term Actions

1. Introduction of Public Procurement Law (Item 1.1)
2. Training and Workshops (Items 1.10 and 3.2)

1.2 Category 2: Medium Term Actions

1. Creation of Procurement Regulatory Agency (Item 1.2)
2. Establishment of Accreditation System (Item 1.4)
3. Strengthening of Bribery Commission and Auditor General's Department (Item 3.1)
4. Introduction of Code of Conduct/Ethics Oversight (Item 3.3)
5. Introduction of Electronic Tendering (Item 1.9)
6. Creation of Procurement Tracking System and Contractor Database (Item 2.2)
7. Revise Procedures for Registration of Contractors (Item 1.12)
8. Introduction of Technical and Performance Auditing (Item 1.11)
9. Revision of Data Book/Schedule of Rates (Item 1.13)

1.3 Category 3: Short Term Actions

1. Strengthening of the Procurement Support Bureau (Item 1.3)
2. Simplification of Review and Approval Process (Item 1.8)
3. Revision of Guidelines (Items 1.7 and 2.1)
4. New SBDs (Items 1.6)
5. Standardization of Goods Specifications (Item 1.5)

1.4 Measures to be taken by Government/ Private Sector

All the above actions are to be taken by the Government, following consultations with the Private Sector in areas where they are directly involved/affected.

1.5 Measures to be taken by Bank and other Donors/ Organizations

The Donor Agencies should support the procurement reform process, providing technical support for implementation of the Action Plan. The Donors should take a proactive role in helping to periodically review the progress, identify bottlenecks and help GOSL overcome them.

1.6 Technical and financial assistance

Technical and Financial Assistance would be required for drafting the new Procurement Law revising the Guidelines, and preparing standard SBDs and functional specifications; development of training plan and materials; strengthening of institutions for imparting

training; development of curricula for procurement related courses run by academic institutions; e-governance and e-commerce. Estimated cost US\$0.75 Million

1.7 Time table

The time table for implementation of the Action Plan is shown in Table 3 of Volume I of this CPAR.

1.8 Potential sources of financing

World Bank, ADB, JBIC and other multi- and bilateral financing agencies through a Technical Assistance Project or financing from already approved Project/s.

1.9 Monitoring and follow-up plans

One of the Donors could be the lead agency with active support and cooperation from other donor agencies for monitoring and taking follow up action. The Task Manager should be assisted by a full time Procurement Specialist, who would closely monitor the progress, coordinate the output of the Consultants and liaise with PSB and GOSL. The PSB should prepare quarterly progress reports, which may be reviewed by the Financing Agencies.

After the finalization of the CPAR, an agreed action plan with monitorable milestones should be drawn up. PSB should be made responsible for implementation of the Action Plan.

Attachment 1**QUESTIONNAIRE FOR GOVERNMENT****A. LEGAL FRAMEWORK****A.1. GENERAL FEATURES**

Sl.No.	Question	Reply
A.1.1	What is the legal system in the country? (i.e. Common/Civil Law/Socialist/Shariyat or other)	
A.1.2	What is the form of Government (i.e. federal or centralized)	
A.1.3	Does the Constitution contain any provision directly bearing on public sector procurement? (If so describe)	
A.1.4	Is the Country a signatory to the Agreement on Government procurement of the World Trade Organization?	
A.1.5	Does the basic Contract Law contain any provision directly bearing on public sector procurement? (If so describe)	
A.1.6	Is there a separate body of law, which regulates public sector procurement, or is it governed by regulations issued under an organic finance act?	
A.1.7	Do other bodies of law regulating associated aspects of procurement contain provisions, which are directly related to problems identified within the local system? (e.g. Labour, tax, customs, insurance, and banking laws, foreign exchange controls or laws defining national standards – If so describe)	
A.1.8	Is the procurement system clear, comprehensive and consistent? Does it cover all essential aspects with no unduly complicated, unnecessary, conflicting or outdated regulations and are rules found in various distinct sources or within a well-coordinated legal framework?	
A.1.9	Is the hierarchy of sources of procurement rules well established?	
A.1.10	Do the same rules apply to central and local governments?	
A.1.11	Are there procurement rules established for parastatals? Describe.	
A.1.12	Is the procurement function decentralized? If so describe basic structure, name of the main decentralized procurement entities and indicate whether their role, rights and responsibilities are clearly delegated in writing.	

Sl.No.	Question	Reply
A.1.13	Is there entity (ies) with oversight responsibilities for procurement functions throughout public administration (e.g. with primary regulatory powers, responsible for harmonization of rules and monitoring of compliance)? If so, identify and describe responsibilities and structure. Is it operationally involved in procurement? Is it the Central tender Board?	
A.1.14	Is there a Central Tender Board or a similar institution? What are its duties and responsibilities? Do the procuring entities or the Central tender Board issue the award recommendations?	
A.1.15	Does the system allow/facilitate the introduction of new and innovative techniques and contracting practices without compromising basic principles?	
A.1.16	Are there rules/procedures regarding bidder suspension and debarment?	
A.1.17	Is the country a member of regional trade/custom agreements? (If so, specify)	
A.1.18	Are there primary/secondary boycotts? (Specify)	
A.1.19	Are there provisions regarding preferences for particular categories of suppliers of goods and services? (Specify) Is the purchasing entity compensated by the government for awarding contracts to higher cost national or local firms?	
A.1.20	Are provisions on domestic/international arbitration codified? (If so, specify in which statute). Are the Arbitration rules applicable to procurement contracts? Do they incorporate international rules?	
A.1.21	If domestic rules are in force, are they generally in line with established principles such as those embodied in the UNCITRAL rules? (Highlight major differences)	
A.1.22	Is the country a member of the New York Convention on the Recognition of Foreign Arbitral awards?	
A.1.23	Are there laws or regulations governing policies and procedures for awarding concessions/contracts for private sector provision/operation of power, water or other infrastructure facilities? (BOO, BOT etc.) Do any general conditions of contract apply as a matter of law or regulation?	

A.2. BASIS OF TRANSPARENCY

Sl.No.	Question	Reply
A.2.1	Is there a legal or regulatory requirement for public disclosure of procurement legal texts?	
A.2.2	Are there mandatory requirements for maintaining written records of procurement? Are they available to the general public?	
A.2.3	Are requirements for advertisement of contracting opportunities adequate? Is the country's national gazette published in a timely fashion? Is it available to the general public?	
A.2.4	Are requirements regarding public bid opening, if any adequate?	
A.2.5	Are negotiations after bid opening or award selection generally forbidden?	
A.2.6	Do rules for negotiated procurement, if any, provide the basis for a fair and transparent process? Detail.	
A.2.7	Are conditions for use of various procurement methods clearly established and is there an explicit requirement that open competitive bidding is the preferred or default method?	
A.2.8	Is there a requirement of public notice of contract awards?	
A.2.9	Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, names of successful bidders)? If so describe scope and frequency.	
A.2.10	Does government hold regular meetings with the business community to discuss public procurement issues?	
A.2.11	Is there a conflict of interest policy in effect? (If so, describe its essential features)	
A.2.12	Are the laws on bribery of government officials enforced? Do government bidding documents and contracts contain anti-bribery and anti-corruption conditions?	

A.3. BASIS OF ACCOUNTABILITY OF PROCUREMENT OFFICIALS

Sl.No.	Question	Reply
A.3.1	Are government employees expected to follow a published code of ethics? If so describe its basic features?	
A.3.2	How easy is it for bidders to report bribes by others and solicitation/extortion of bribes by government officials?	
A.3.3	Do bidders have adequate access to administrative or judicial review/appeal?	
A.3.4	Are there measures/initiatives to curb/control corruption, e.g. anti-corruption statutes and/or bodies, whistle-blower statutes, comprehensive reforms of the civil service/judiciary, regional initiatives, provisions in the criminal law, anti-bribery provisions, etc.? If so, describe.	

B. TRADE PRACTICES

Sl.No.	Question	Reply
B.1	Are foreign firms engaged in trade with the country required to use a national agent?	
B.2	Are there indications that over-invoicing and/or under-invoicing are common practices? For which purposes?	
B.3	Are goods frequently described incorrectly on the invoices?	
Sl.No.	Question	Reply
B.4	Are there indications that import documents are falsely labelled?	
B.5	Is there evidence of any other trade malpractice affecting public sector procurement?	
B.6	Is there a pre-shipment verification program? Who conducts the inspections? What goods are included?	
B.7	Is there a threshold for pre-shipment inspection? What is the amount?	
B.8	If pre-shipment inspection is conducted by a private company, what is the duration of the contract with the company?	
B.9	Is pre-shipment inspection, if any, conducted according to generally established procedures? Are there indications that the inspection is not effective?	
B.10	Are goods also normally inspected upon arrival?	
B.11	Are inspection procedures in conformance with established practice?	

Sl.No.	Question	Reply
B.12	Do pre-shipment/post-shipment inspection, if any; unduly increase the procurement lead-time?	
B.13	Is counter-trade used? Barter agreements? In which percentage of the country's total trade? For which commodities?	
B.14	Are the ICC's INCOTERMS generally understood and commonly used in the country? Are other trade terms used? What are the most commonly used INCOTERMS? FOB? CIP? CFR? DDP?	
B.15	Are there indications suggesting price-fixing in open bidding?	
B.16	Are licensing and customs procedure generally transparent and efficient?	
B.17	Are "facilitation" payments normally necessary to clear goods through customs, obtain work permits for expatriate labour, process monthly payment certificates/invoices?	
B.18	Is local staff familiar with shipping and other trade documents? With documentary credits?	
B.19	Is local staff experienced in import planning and importation procedures?	

C. FINANCIAL FRAMEWORK

Sl.No.	Question	Reply
C.1	Are banks capable of issuing Letters of Credit?	
C.2	Are banks generally credit worthy?	
C.3	Can bid, performance and advance payment securities be obtained easily locally? What formats are permitted? Bank Guarantees? Bonds? Other? Provide details on cost if available.	
C.4	Are the requirements of issuance of bid, performance and other securities to local contractors/suppliers reasonable?	
C.5	Do local suppliers/contractors have reasonable access to credit?	
C.6	Do implementing agencies obtain budgetary authorization for contract payments falling due beyond the current financial year?	
C.7	Are major projects or programs clearly identified in government budget estimates?	

Sl.No.	Question	Reply
C.8	What procedures are followed to ensure procuring entity obtains budget authorization prior to inviting bids?	
C.9	Do procuring entities reliably receive the monies authorized? Or is the budget subject to revision during the year by a restrictive cash release system?	

D. PUBLIC SECTOR PROCUREMENT

D.1. VOLUMES

Sl.No.	Question	Reply
D.1.1	What are the approximate annual values of public procurement of goods, works and consultant services respectively? If possible, distinguish between procurements for projects and ongoing programs.	
D.1.2	What are the approximate percentages of goods, works and consultant services financed by external donors?	
D.1.3	What percentage of public procurement follows competitive bidding procedures? Other methods?	
D.1.4	What percentage of competitively bid procurement is donor financed?	

D.2. GENERAL RISK ASSESSMENT

Sl.No.	Question	Reply
D.2.1	Is the public sector procurement profession held in high regard?	
D.2.2	Are pay levels for procurement professionals comparable to that for other public and private sector technical specialists? Give current range of monthly salaries.	
D.2.3	Is the procurement profession generally staffed with honest and capable individuals?	
D.2.4	Does a code of ethics exist that procurement professionals are expected to follow?	
D.2.5	Are the authorities relating to procurement clearly delegated to the entities carrying out the process? Are the applicable procedures clearly defined?	
D.2.6	Are the procurement decisions ever over ridden by higher governmental agencies? If so, by whom? To what degree is the procurement decision-making process independent from politics?	

Sl.No.	Question	Reply
D.2.7	Does the highest level of government encourage /support/enforce compliance with existing procurement regulations? Are violations investigated and procurement/other responsible officials held accountable?	

D.3. ORGANIZATION

Sl.No.	Question	Reply
D.3.1	Is appropriate information on procurement adequately disseminated (i.e. Procurement staff are aware of updated rules and thresholds and other issues relevant to their assigned responsibilities)?	
D.3.2	Are the procurement and supply management functions clearly distinguished?	
D.3.3	Is contracting authority reasonably delegated (i.e. there are no unnecessary levels of approvals or cumbersome procedures)?	
D.3.4	Are threshold for contracting powers regularly updated?	
D.3.5	Do procuring entities have internal quality control mechanisms? Are they regularly audited?	
D.3.6	Are procurement staff experienced in international procurement?	
D.3.7	Is career advancement primarily based on job-related accomplishments and factors?	
D.3.8	Do adequate formal and on-the-job training programs exist for entry-and higher level procurement staff that contribute to proper professional career development?	
D.3.9	Are their additional training resources in the country which are currently utilized or that could be utilized to complement Government/donor-administered programs (e.g. Universities and Private institutions)?	
D.3.10	Did previous training programs lead to an obvious improvement in the quality/ productivity of procurement work?	
D.3.11	Do procurement staff have adequate project /contract management capabilities?	
D.3.12	Are procurement agents used? Under what circumstances? How are they selected? Describe normal basis for compensation and contract duration.	
D.3.13	Is procurement monitoring and administration computerized? How adequately do procurement entities track the key steps in the procurement and collect appropriate project-related cost and schedule information?	

D.4.GENERAL EXPERIENCE

Sl.No.	Question	Reply
D.4.1	Are government organizations generally perceived by suppliers/contractors/the public as fair and efficient in their procurement practices?	
D.4.2	Has the country been rated in Transparency International Corruption surveys? What results?	

D.5. EXPERIENCE WITH WORLD BANK ASSISTED PROJECTS

Sl.No.	Question	Reply
D.5.1	How many Bank financed projects have been completed in the country? Are now underway? In which sector?	
D.5.2	Which organizations are responsible for procurement in these projects?	
D.5.3	What threshold for prior review for goods, works and consultant services are currently in effect for ongoing projects? Are they the same for all projects?	
D.5.4	Do project audits/completion reports/supervision reports indicate significant procurement problems? Any case of misprocurement ? Describe.	
D.5.5	Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe.	
D.5.6	Are there a large number of complaints about procurement procedures, selections decisions in the country?	
D.5.7	Are contracts generally awarded within the planned, usual time frame required for similar operations by experienced and efficient organizations?	
D.5.8	Are there serious problems or conflicts between local practices and World bank Guidelines which should be addressed on an interim basis pending implementation of recommended long-term action plans?	

Attachment 2**QUESTIONNAIRE FOR IMPLEMENTING AGENCIES****1.0 LEGAL FRAMEWORK****1.1 GENERAL FEATURES**

Sl.No	Question	Reply
1.1.1	Is your organization a government department, or a state or national corporation, or a parastatal enterprise? If it is a state or national corporation or parastatal enterprise, furnish details of owners, date of incorporation, Memorandum/Articles of Association and list of Board of Directors. etc.	
1.1.2	What are the applicable laws/regulations/government orders to the procurement activities in your organization? Are any procurement manual/rules prescribed by your organization? Furnish a copy of the same or furnish reference, issuing authority and date of last revision.	
1.1.3	What is the hierarchy of the sources of procurement rules?	
1.1.4	Is there a document in your organization containing procurement policy and delegation of powers to different levels ? If yes, furnish a copy.	
1.1.5	Is the procurement function of your organization centralized or decentralized and carried out by different procurement entities at different locations? If decentralized describe the basic structure of procurement unit, name of procurement entities, their role and responsibilities and delegation available to them.	
1.1.6	Is there a Central Tender Board/Committee or similar set up? Or is there a Tender Evaluation Committee on a case by case basis? Who approves the award recommendations of the Committee?	
1.1.7	Are there rules/procedures regarding bidder suspension and debarment (black listing)?	
1.1.8	Are there prescribed procedures for the settlement of contractual disputes? Furnish details along with copy of relevant orders.	

1.2 TRANSPARENCY

Sl.No	Question	Reply
1.2.1	Is there a legal or regulatory requirement for public disclosure of procurement legal texts?	
1.2.2	Are there mandatory requirements for maintaining written records of procurement? Are they available to the general public?	
1.2.3	What are the requirements for advertisement of contracting opportunities? Furnish a copy of the standing instructions if any.	
1.2.4	Does the national gazette contain advertisements for contracts? Is it published in a timely fashion? Is it available to the general public?	
1.2.5	What are the requirements of public bid opening? Furnish a copy of the standing instructions if any.	
1.2.6	What are the threshold limits for use of various procurement methods i.e. open competitive bidding, shopping, direct contracting etc.?	
1.2.7	What are the rules/practices of the Organization in respect of price negotiations for goods, works and consultancy?	
1.2.8	Is bid and performance securities insisted for all classes and values of contracts and from all bidders/suppliers/contractors? Are any exemptions permitted? Furnish details along with copy of orders/standing instructions if any.	
1.2.9	Are any preferences (prices or any conditions of contract) granted any class of bidders/suppliers/contractors? If so, please furnish complete details along with copy of relevant orders or standing instructions.	
1.2.10	Are summaries of information about public procurement published (e.g. number of bids received, number of contracts awarded, names of successful bidders etc.) If so, describe scope and frequency along with copy of orders or standing instructions if any.	
1.2.11	Does your organization hold regular meetings with the business community to discuss public procurement issues? Furnish details. What follow-up actions are taken on such meetings?	
1.2.12	Are there any rules for prevention of conflict of interest in case of staff who deal with bids as well as Firms/Consultants' complaints who participate in the bidding? Describe its essential features with copy of orders or standing instruction if any.	

Sl.No	Question	Reply
1.2.13	Are there any provisions in the bidding documents and contracts regarding anti-bribery and anti-corruption conditions? Furnish details	

1.3 ACCOUNTABILITY

Sl.No	Question	Reply
1.3.1	Are the employees of the Organization expected to follow a published code of ethics? If so, describe its basic features.	
1.3.2	What is the system in the Organization to handle bidder's/supplier's/contractor's representations/complaints before contract award/after contract award? Furnish details.	

2.0 PROCUREMENT OF GOODS/WORKS/SERVICES

2.1 PROCUREMENT UNIT

Sl.No	Question	Reply
2.1.1	Describe the general staffing of the procurement unit. Furnish procurement staffing chart including the number of staff at each level. Also furnish the list of projects/tasks in hand and details of the staff assigned to these projects/tasks.	
2.1.2	Is there a role directory for various levels of procurement staff as also the qualification and experience required?	
2.1.3	Furnish academic qualifications of key procurement staff. Has there been major staff turnover in the past five years? Furnish details.	
2.1.4	How are staff needs assessed? Who does it? How frequently? Are there current gaps on staffing needs?	
2.1.5	How are procurement staff selected and recruited?	
2.1.6	Is there a well-documented Procurement Manual? If so, furnish a copy of the same.	
2.1.7	How often is the Procurement Manual updated? Who is responsible for this task?	

Sl.No	Question	Reply
2.1.8	What are the thresholds for contracting powers? When was it last updated? Are they regularly updated? Furnish details along with copy of order or standing instruction.	
2.1.9	Is the procurement staff aware of the updated rules and thresholds and other issues relevant to their assigned responsibilities?	
2.1.10	Is the procurement staff experienced in handling contracts concluded following International Competitive Bidding procedures involving import planning and importation procedures?	
2.1.11	How are entry and higher-level procurement staff trained? How many training programs were conducted for them? Who conducted these programs? Were they in-house or external?	
2.1.12	What are the financial powers available to the procurement unit? How do award recommendations get processed? Are there review committees?	
2.1.13	Is the set-up for materials/stores management part of procurement set-up or separate? Furnish details.	
2.1.14	Has the procurement unit handled World Bank financed or Internationally funded procurement in the past? When? What value? Furnish details.	
2.1.15	Are procurement agents used? Under what circumstances? How are they selected? Furnish details	
2.1.16	Is procurement monitoring and administration computerized? How adequately do procurement entities track the key steps in the procurement process and collect appropriate project related cost and schedule information?	
2.1.17	What is the source of legal advice available to the procurement unit (both internal and external)?	
2.1.18	What entities carry out audit functions internal and external?	
2.1.19	What is the mechanism for the review of the audit reports and for implementation of their recommendations?	

2.2 PLANNING

Sl.No	Question	Reply
2.2.1	What were the budget figures for your organization for the last three years (1999-2000 to 2001-2002) in respect of Bank or other externally aided projects and Government projects; Give break up showing establishment, operation and maintenance and investment operation involving original works and procurement of equipment.	
2.2.2	What was the approximate volume of procurement (works, goods, consultancy services) in your organization for the last three years (1999-2000 to 2001-2002) in respect of Bank or other externally aided projects and Government projects	
2.2.3	Are Project Implementation Units adequately staffed with trained procurement, planning, scheduling, expediting and cost estimating personnel?	
2.2.4	Is overall planning for complex goods, works and other contracts done in sufficient detail to produce realistic project definition, achievable completion schedules and accurate cost estimates?	
2.2.5	Please furnish a copy of the procurement plan prepared for a typical project? How is the duration for the various procurement activities estimated? Who prepares these plans? What are the experiences in adhering to these plans? Furnish details.	
2.2.6	How are the procurement plans monitored? How is timely award of contracts ensured? Who intervenes in case of delays?	
2.2.7	List all procurement activities from issue of notice inviting bids to award of contract indicating the department /level responsible for each activity.	
2.2.8	Is the early technical and financial planning well co-ordinated so that those contracts are fully funded when work needs to begin, based on accurate cost estimates?	
2.2.9	Are appropriate methodologies used to plan inter-related procurement activities on large projects (e.g. the critical path method)? Please furnish a typical planning done for any major project.	
2.2.10	How are bidding/packaging strategies for project procurement (such as item basis, supply, supply-cum-erection, turnkey etc.) decided? Are there any written rules for guidance? Furnish details.	
2.2.11	Are completion schedules generally met for goods, works and consultant services contracts? If not, what is the major cause for slippage? Furnish data and explain what steps are taken/contemplated to reduce these slippages? Is sufficient time generally allowed for reviews/clearances?	
2.2.12	Do procurement units regularly conduct market surveys to update their knowledge of prevailing prices for goods? If not, what is the basis of forming cost estimates before inviting the bids? Furnish details. For civil works what data –bank (analysis) is used? When was it compiled? When was it reviewed and updated? Furnish details	
2.2.13	Are procedures and methodologies for planning procurement of recurrent items (i.e. inventory control, forecasting of future requirements, classification, coding, accounting/financial management, spare parts management and delivery systems) adequate?	

2.3 DOCUMENT PREPARATION

Sl.No	Question	Reply
2.3.1	How are the estimates of costs prepared for Works and Goods: In case of Works are they prepared on the basis of the Schedule of Rates? If so, what is the basis of revision of Schedule of Rates? Is there a Data-book for the analysis of the rates? When was the data-book last updated? Furnish details.	
2.3.2	Do standard documents exist for goods, works and other types of contract? List. Are international contract formats used? If so, identify. Furnish copy of each document.	
2.3.3	If standard documents do not exist furnish copy of each of the bidding documents /conditions of contract generally adopted for various categories of contract (works, goods and services).	
2.3.4	Are there separate documents for international and national competitive bidding not financed by external agencies (World Bank, Asian Development Bank etc.)?	
2.3.5	Do Instructions to Bidders (ITBs) contain all information necessary to prepare responsive bids and clearly understand evaluation criteria and their method of application? Do they contain other necessary information such as eligibility requirements, basis of bid, language and currency of bids, common currency for purposes of evaluation, source and date of exchange rates, etc.? Are sample forms and appropriate sections of the documents provided?	
2.3.6	Are bidders required to provide bid security (earnest money)? What is the usual amount prescribed? What are the forms in which the bidders are required to furnish bid security? Furnish details.	
2.3.7	Are technical specifications for goods/ works prepared in-house or through consultants?	
2.3.8	Are the contractors made responsible for all materials or the department supplies some materials? What is the reason for departmental supply of materials?	
2.3.9	Is pre- or post-qualification provided for? What are the principles followed in determination of pre- or post-qualification criteria? Is there a formal system of framing and approving such criteria in the organization?	
2.3.10	Are conditions of contract generally equitable? Do they provide adequate coverage for most important commercial and legal issues (for the method of procurement, size, nature and type of contract used) and provide adequate protection to the Government, without putting undue risk on bidders?	
2.3.11	Are there any prescribed rules for shopping? Furnish copy.	
2.3.12	Is there any standard format for inviting quotations from firms? Furnish copy.	
2.3.13	Are standard purchase orders used for shopping? Furnish copy.	

2.4 PRE-QUALIFICATION

Sl.No	Question	Reply
2.4.1	What are the types of contracts for which pre-qualification is carried out? Works? Goods? Others?	
2.4.2	Are standard pre-qualification documents used? Do they clearly and completely describe all the prerequisites for submitting responsive applications for pre-qualification? Is financial information routinely requested and critically evaluated to assess an applicant's financial capacity to perform? Furnish a copy of the document used.	
2.4.3	Do you or your units procurement entities verify prior to contract award if a successful bidder continues to meet pre-qualification requirements?	
2.4.4	Is the pre-qualification process fair and transparent? Are decisions made promptly? Are foreign firms allowed to apply?	
2.4.5	Are foreign suppliers required to have an agent within the country in order to qualify to bid for goods and services?	
2.4.6	Do you maintain updated lists of qualified suppliers and contractors and updated market information on commonly procured goods, including spares and consumables? Is supplier and contractor participation/ performance routinely evaluated and are any standing lists of pre-qualified suppliers and contractors updated and modified based on this information. Can new comers readily apply and be qualified? During the last two years how many new firms were added to the list and how many were deleted or temporarily debarred from participation?	

2.5 ADVERTISEMENT; ISSUE OR SALE OF DOCUMENTS

Sl.No	Question	Reply
2.5.1	Are contracts to be awarded by competitive bidding publicly advertised? Are there any standing instructions on the scale of newspaper advertisement for various contracts? Furnish a copy of the instructions, if any	
2.5.2	Are the documents issued or sold at a cost? How the cost of document is fixed? Are there any standing instructions? Furnish if any.	
2.5.3	Is there any formal or informal system of checking the credentials of prospective bidders before sale of bidding documents or is the bidding document issued/sold freely for all applicants who remit the requisite amount?	
2.5.4	Is there a system of registration of firms for supply of goods/construction of works? What are the procedures for registration of firms? Are the firms categorized? If so what is the basis of categorization? Are there any prescribed rules? If so, please furnish copy.	
2.5.5	Is sufficient time allowed to obtain documents and prepare bids? Are there any standing instructions regarding this? If so, please furnish copy.	

Sl.No	Question	Reply
2.5.6	Are bidding documents made available for sale on the date the sale is to start as per notice?	
2.5.7	Is the sale of bidding document restricted to a definite number of days or is it open till a day prior to the last date for receipt of bids? Are there any standing instructions regarding this? If so, please provide copy.	

2.6 COMMUNICATIONS BETWEEN BIDDERS AND THE PROCUREMENT UNIT/ENTITIES

Sl.No	Question	Reply
2.6.1	Are pre-bid conferences held? If so, in what types of contracts? Are there any standing instructions on the above? If so, please furnish copy.	
2.6.2	Are requests for clarification answered promptly and completely in a written form?	
2.6.3	Are clarifications, minutes of pre-bid conference, if any, and modifications of the documents promptly communicated to all prospective bidders?	
2.6.4	Are bidders afforded sufficient time to revise their bids following a modification of the document? Is there any minimum period prescribed?	
2.6.5	Do procuring entities maintain accurate records of all communications with the bidders (before and after the deadline for submission of bids)?	
2.6.6	Are there communications between the procuring entities and the bidders, other than appropriate requests for clarification of a bid made by the evaluating committee?	
2.6.7	Is asking for clarification on a bid is routine or exception? What is the nature of clarification normally asked (is it on the qualification or on the substance of the bid)?	

2.7 RECEIPT AND OPENING OF BIDS

Sl.No	Question	Reply
2.7.1	How are bids received prior to the dead line stored/handled? Furnish details	
2.7.2	Is there a system of using a Tender box for receipt and storing of bids? How does it function? Are there any rules prescribed? If so, please furnish copy.	
2.7.3	What is the usual time gap between the deadline for submission of bids and its opening?	
2.7.4	Are public bid openings conducted? Who are invited/permitted to attend bid opening (both from the bidder's and procurement entity's side)?	

Sl.No	Question	Reply
2.7.5	What is the bid opening procedure? What information is read out and recorded at the meeting? Are minutes of bid opening separately drawn OR only a register is maintained?	
2.7.6	Are all bids received opened and read out at the time of bid opening? Or is there a system in which bids not accompanied by a bid security or of inadequate value not opened at all?	
2.7.7	What is the procedure adopted in respect of bids (i) received after the deadline for submission; (ii) received by the procurement entity but not opened; and (iii) received but already opened? Furnish details	
2.7.8	Do bid opening procedures differ for goods, works or other types of contracts? If so, how?	
2.7.9	Are two/three envelopes bidding procedure followed? For what types of contracts are these followed? Is there a system of receiving both unpriced technical proposal and price bids together or separately at different stages? Furnish details.	

2.8 BID EXAMINATION AND EVALUATION

Sl.No	Question	Reply
2.8.1	What is the usual composition of bid evaluation committees for a typical (a) large value contract, (b) small value contract? Furnish details indicating their powers.	
2.8.2	Are evaluating committees appointed ad hoc for each evaluation? Or is there is a standing evaluation committee?	
2.8.3	Are bid evaluation reports prepared containing all essential information i.e. (a) a clear and complete description of the evaluation process; (a) determination of the responsiveness of bids on the basis of the documentary requirements described in the documents and according to established practice; and (b) satisfaction of the criteria specified in the bidding document, (c) how the successful bidder's qualification were verified? Furnish a copy of the format of evaluation report used.	
2.8.4	Is the successful bidder's qualification to perform the contract determined solely on the basis of the criteria stated in the documents? How rigidly is this enforced? Are there instances of relaxation of qualification criteria, while recommending for award particularly in cases of lowest quoted offer? Furnish examples.	
2.8.5	Based on the experiences of evaluation of bids furnish examples of (a) non-material deviations or reservations; (b) material deviation or reservations; for various types of contracts say goods, works, consultancy etc. Furnish examples where the bids are treated as non-responsive for each type of contract as above.	
2.8.6	Are there instances when all the participating bids are declared as non-responsive or all bidders do not meet the specified qualification criteria? Furnish examples.	
2.8.7	Is there a counter-offer system followed? What are the rules for such counter-offers?	

Sl.No	Question	Reply
2.8.8	Describe any significant differences between goods and works procurement relating to the above, i.e., 2.8.3 to 2.8.7	
2.8.9	<p>Furnish the following information in respect of contracts (value more than the equivalent of \$100,000) awarded in the past three years (1999-2000 to 2001-2002) through International and National competitive bidding (separately), with break-up under categories of (i) goods plus supply and erection; (ii) works</p> <ol style="list-style-type: none"> 1. Description of contract (goods/works/supply and erect) 2. Whether the Project is Bank Financed or not (If Bank financed , give name of Project and Credit Number) 3. Estimated cost: 4. Cost of work put to tender: 5. Date of issue of advertisement of NIT/IFB 6. Date of publication of NIT/IFB in press; 7. Details of papers or Gazette in which the NIT/IFB was published 8. Dates from which the tender documents were sold; 9. Whether single envelope or two or more envelope? If two envelope, date of opening of first envelope (technical bid); date of opening of second envelope (financial bid); Was the financial bid revised after opening of financial bid? Was any technical bid rejected and financial bid not opened? 10. Number of tender documents sold; 11. Date of closing for receipt of tenders; 12. Date of opening of tenders: 13. Number of tenders received and read; 14. Initial validity period specified in the tender documents; 15. Period of completion as specified in the tender document; 16. Date of holding negotiations if any: 17. Reasons for negotiations; 18. Original tender amount and negotiated amount; 19. Authority accepting the tender; 20. Date of notification of award of the contract; 21. Date of Contract signature; 22. date of completion of work/supplies (if already completed) 23. Reasons for completion of contract 	

2.9 CONTRACT AWARD AND EFFECTIVENESS

Sl.No	Question	Reply
2.9.1	What are the criteria generally adopted for award of contracts. Is it the lowest bid or the lowest evaluated responsive bid that has been determined to be qualified to perform the contract satisfactorily?	
2.9.2	Are negotiations conducted with bidders on (a) price; (b) technical terms and conditions; and (c) scope of work/supply/services, before or after selection? If so, furnish examples.	
2.9.3	Is your Organization fully authorized to conclude contracts or additional approvals are required before contracts can be made effective?	

Sl.No	Question	Reply
2.9.4	Furnish a list of financial instruments, which is acceptable for providing performance security.	
2.9.5	Furnish a copy of the format used for submission of performance security in contracts for (a) goods; and (b) works. What is considered as conditional/inadequate performance security? Furnish examples.	
2.9.6	Describe any differences between goods and works relating to the above i.e. 2.9.2 to 2.9.5	
2.9.7	Is repeat order system followed? If so, what are the rules or standing instructions? Furnish copy.	

2.10 CONTRACT ADMINISTRATION

Sl.No	Question	Reply
2.10.1	Are there manual or computerized procurement and/or contract monitoring systems? Furnish sample report/output	
2.10.2	How are the receipts of goods/completion of works recorded? Are measurement books used for this purpose? Does it form the basis for payment of goods/works? What are the rules/codal instructions in regard to the issue, recording and maintenance of measurement books? Furnish relevant copy of the instructions/ extracts from the codes.	
2.10.3	Are suppliers and contractors generally paid on time? Give the following data in respect of contracts of value over the equivalent of \$200,000 in respect of works and equivalent of \$50,000 in respect of goods concluded during the last three financial years (1999-2000 to 2001 –2002): <ol style="list-style-type: none"> 1. Description of contract works/supply: 2. Value of contract: 3. Date of award of contract: 4. Date of invoice for advance and date of actual payment: 5. Dates of invoices for progress payment and date of actual payment: 6. Date of invoice for final payment and actual payment: 7. Reasons if any for delay in payments: If delayed, what steps are taken to minimize these? 	
2.10.4	For delayed due payments does the contract provide for payment of interest? Are there instances of interest being paid?	
2.10.5	What is the set-up for Technical/Quality Assurance and Inspection to ensure compliance to specifications and conformance to quality by the Supplier/Contractor?	
2.10.6	How is delivery of goods and services monitored?	
2.10.7	Who manages transportation of goods to project store? Is it the responsibility of the Supplier?	
2.10.8	Describe in brief detail the stores and inventory management system in the organization.	

Sl.No	Question	Reply
2.10.9	What is the procedure for handling contract changes/variation in goods and works contracts? In respect of civil works does the Contractor undertake work prior to issue of formal change order?	
2.10.10	Are there instances when work stops due to delays in issue of formal change order?	
2.10.11	Are there instances of large variations in quantity beyond the limits envisaged in the contract? How are such situations handled? Furnish examples. In civil works contracts are there problems dealing with variations? If so, how are they tackled?	
2.10.12	Are there instances of contract execution delays due to (a) late release of inputs by the Organization; or (b) unforeseen problems faced by the Supplier or the Contractor? How are such disputes resolved? Furnish examples.	
2.10.13	Are Contractor's /Supplier's disputes generally resolved by making a good faith attempt through amicable settlement or through the process of adjudication/arbitration?	
2.10.14	How many contracts were awarded during the last three years (1998-1999 to 2000-2001) and how many arbitration cases reported? How many were in favour of the Supplier/Contractor? What was the amount of arbitral awards vis a vis the contract amounts in such contracts?	
2.10.15	How are cases of non-performance or failure of contractor handled? Furnish examples where with timely and skillful intervention the situation was retrieved. In how many cases during the last few years, imposition of liquidated damages and forfeiture of performance security were enforced.	
2.10.16	Are works contracts supervised by independent Engineers or by representatives of the Employer?	
2.10.17	What is the set-up for inspection (pre-shipment/upon delivery) of goods? Is it in-house or third party? Furnish details.	
2.10.18	Are there instances of complaint by the Supplier on (a) delays in carrying out inspection; (b) over inspection; or (c) improper rejection of goods and services/ Furnish examples.	
2.10.19	What is the mechanism for handling Supplier/Contractor's claims?	
2.10.20	Furnish data on original contract period/contract cost vs. actual period of completion/actual cost of completion of contract in respect of contracts concluded during the last five years and reasons for large variation.	
2.10.21	Are procurement evaluations/audits conducted? If so, describe scope, frequency, which carries them out etc. When was the last evaluation/audit done? What were the main findings? What remedial actions were taken on the findings?	
2.10.22	Is there a formal system of contract closing? Furnish data for the last five years as to (a) number of contracts completed; (b) number of cases where all amendments including on-time extensions, if any, are issued and (c) number of contracts for which final payments were released.	

2.11 RECORD KEEPING

Sl.No	Question	Reply
2.11.1	<p>For contracts awarded on the basis of competitive bidding, does the procurement entity maintain complete record of the process, namely (i) copies of all public advertisements, (ii) pre-qualification documents (if used), (iii) the pre-qualification evaluation report documenting any decisions not to pre-qualify certain potential bidders, (iv) the bidding documents and any addenda, (v) a record of any pre-bid meetings, (vi) the bid opening minutes, (vii) the final bid evaluation report (including a detailed record of the reasons used to accept or reject each bid, (viii) copies of bids, (ix) appeals against procedures or award recommendations, (x) a signed copy of the final contract and (xi) any performance and advance payment securities issued etc.</p> <p>If so, furnish a copy of the reports for one typical contract.</p>	
2.11.2	<p>Are adequate contract administration records maintained such as, (i) contractual notices issued by the Supplier, Contractor, Purchaser, or Employer, (ii) a detailed record of all changes or variation orders issued affecting the scope, quantities, timing, or price of the contract, (iii) records of invoices and payments, (iv) certificates of inspection, acceptance and completion, (v) records of claims and disputes and their outcome etc.</p> <p>If so, furnish a copy of the reports for one typical contract.</p>	
2.11.3	<p>For small contracts or purchases orders for goods procured using shopping procedures, is a database maintained showing the current market price for commonly needed items?</p>	
2.11.4	<p>Are periodic reports prepared on overall procurement activities? By and for whom? If so, furnish a copy of the recent report.</p>	

3.0 PUBLIC SECTOR SELECTION OF CONSULTANTS

Sl.No	Question	Reply
3.1	<p>Are you well staffed, experienced and capable of carrying out a professional selection process for consultant services? Do you administer consultant contracts effectively?</p>	
3.2	<p>Is the winning consultant firm normally chosen by comparing competitive proposals submitted by a shortlist of qualified firms? Where do implementing agencies obtain the information necessary to develop shortlists? If not, specify what other methods are used and when they are used.</p>	
3.3	<p>Do requests for proposals clearly describe the selection process and evaluation criteria? Furnish one copy of a RFP</p>	
3.4	<p>Do the Terms of Reference describe the requirements of the assignment clearly and completely, including background, scope and objectives, deliverables, time frame, anticipated staff time and client contribution? Furnish a few TORs</p>	
3.5	<p>Is selection based only on technical considerations or also on price?</p>	
3.6	<p>Are technical criteria detailed and appropriate and their relative weights reasonable? Furnish a sample for a consultancy assignment.</p>	

Sl.No	Question	Reply
3.7	If price is also a selection factor, are technical evaluations completed before opening and consideration of price proposals? Are the relative weights chosen for each factor appropriate?	
3.8	Are there standard conditions of contract? Are they fair and equitable to the consultant? Do they adequately protect the interests of the client? Furnish a copy of each of the Lump-sum and Time-Based contract formats.	
3.9	What form of compensation is used? Unit rates? Lump-sum based on milestones or other?	
3.10	Are consultants required to submit , performance and/or advance payment securities? Provide a copy of the formats used.	
3.11	Is there a conflict of interest policy provision included in the conditions of contract? If so, describe.	
3.12	Are evaluations conducted by committee with appropriate expertise?	
3.13	Are general criteria broken down into appropriate detailed criteria agreed by the evaluating committee before conducting the evaluation?	
3.14	Are all criteria applied consistently, fairly and impartially by the evaluators? Are the individual score sheets kept as a part of the procurement record.	
3.15	Are evaluations conducted individually by each member of the committee and the results averaged?	
3.16	Are new factors or weights added after issuance of the request for proposals which are considered during the evaluation?	
3.17	Are evaluation reports prepared containing essential details of the process, results, and matters to be taken up during contract negotiations?	
3.18	Are evaluations normally completed within the time originally requested for the validity of the proposals?	

4.0 EXPERIENCE WITH WORLD BANK-ASSISTED PROJECTS

Sl.No	Question	Reply
4.1	How many Bank financed projects have been completed or underway in the organization? Furnish details of the projects and the current status.	
4.2	Which procurement units have been/ are responsible for procurement in these projects?	
4.3	What thresholds for prior review for goods, works and consultant services are currently in effect for ongoing projects? Are they the same for all projects? Furnish details	
4.4	Have procurement issues caused serious implementation delays, cost overruns, disbursement delays? Describe and furnish details.	
4.5	Was any contract/contracts in Bank financed procurement declared as 'misprocurement'. Furnish details and describe circumstances leading to the declaration.	
4.6	What was/is the average time taken from bid opening to recommendations for award and from then on to award of contract and from then on to signing of contract for various categories of contracts such as goods, works, consultancy in the Bank financed contracts.	

Attachment 3**REFERENCE DOCUMENTS****1. Background and Supporting Material for the Team's Findings.**

- 1.1 Responses to the Questionnaire from Ministries and Implementing Agencies.
- 1.2 Joint Country Portfolio Performance Review, FY2002 - World Bank/GOSL
- 1.3 PAD of Legal and Judicial Reforms Project (Report No. 201135-CE)
- 1.4 Budget Estimates 2002
- 1.5 Corporate Plan of PSB 2000-2003.
- 1.6 ICTAD Profile.
- 1.7 Guidelines for Grading of Construction Contractors ICTAD/ID/10 Revised Edition September 1995
- 1.8 Application for Grading and Registration of Main Construction Contractors. ICTAD/ID/09 Revised Edition September 1995
- 1.9 Application for Grading and Registration of Specialist Construction Contractors. ICTAD/ID/19. First Edition. November 1998.

2. Listings of Laws/Regulations etc.

- 2.1 Constitution of the Democratic Socialist Republic of Sri Lanka with 17 Amendments
- 2.2 Finance Act No.38 of 1971
- 2.3 Arbitration Act No.11 of 1995
- 2.4 Financial Regulations of the Government of the Democratic Socialist Republic of Sri Lanka - 1992
- 2.5 Unfair Contract terms Act No.26 of 1997
- 2.6 Commercial Mediation Centre of Sri Lanka Act No.44 of 2000
- 2.7 Exchange Control Act – 1986
- 2.8 Customs Ordinance – Incorporating Amendments up to December 31, 1988
- 2.9 Commission to Investigate Allegations of Bribery or Corruption Act No.19 of 1994
- 2.10 Guidelines on Government Tender Procedure - September 1996
- 2.11 Guidelines on Government Tender Procedure – Revised Edition – August 1997
- 2.12 Revised Guidelines on Government Tender Procedure for Projects assisted by Foreign Financing Agencies – Revised Edition – December 2000
- 2.13 Guidelines on Government Tender Procedure Part I – Second Revised Edition – February 2002 (Draft Not yet issued)
- 2.14 Handbook of Stores Management December 1972 – Issued by the Academy of Administrative Studies
- 2.15 Gazette of the Democratic Socialist Republic of Sri Lanka – Extraordinary No. 1215/14 – Thursday December 20, 2001.
- 2.16 Bribery Act (Incorporating all amendments up to December 31, 1995)

- 2.17 Annual Report 2000- Commission to Investigate Allegations of Bribery or Corruption
- 3. **Other relevant information such as Special Studies, Statistical Data etc.**
 - 3.1 ADB Final Report on TA to Democratic Socialist Republic of Sri Lanka for Establishment of Sri Lanka Tender Support Bureau (SLTSB) Project TA No. 2950-SRI – December 2000
 - 3.2 ADB: 2001 Sri Lanka Country Portfolio Review Mission Report