



**PRIVATIZATION AND CORPORATIZATION BOARD**

# **PROCUREMENT PROCEDURES AND GUIDELINES FOR STATE OWNED ENTERPRISES OF MALDIVES**

# Abbreviations and Acronyms

BOM	Bill of Materials
BOQ	Bill of Quantities
CIF	Cost, Insurance and Freight
CIP	Cost and Insurance Paid
CQS	Consultant's Qualification Selection
EOI	Expression of Interest
EXW	Ex-Works
FBS	Fixed-Budget Selection
	International Federation of Consulting
FIDIC	Engineers
GCC	General Conditions of Contract
ICB	International Competitive Bidding
ISO	International Standards Organization
ITB	Instructions to Bidders
ITC	Information to Consultants
ITT	Invitation to Tender
LC	Letter of Credit
LCS	Least Cost-Based Selection
LOI	Letter of Invitation
MOF	Ministry of Finance
NCB	National Competitive Bidding
PCB	Privatisation and Corporatization Board
PE	Procuring Entity
QBS	Quality-Based Selection
QCBS	Quality and Cost-Based Selection
RFQ	Request for Quotations
RFP	Request for Proposals
SBDs	Standard Bidding Documents
SCC	Special Conditions of Contract
SOE	State Owned Enterprises
SSS	Single Source Selection
TOR	Terms of Reference

# Table of Contents

GLOSSARY OF TERMS.....	9
1. SECTION 1 PURPOSE.....	16
2. SECTION 2 SCOPE.....	16
3. SECTION 3 USAGE.....	16
4. SECTION 4 REVIEW AND AUDIT OF PROCUREMENT FUNCTION.....	17
5. SECTION 5 LEGAL FRAMEWORK.....	19
6. SECTION 6 FUNDAMENTAL PRINCIPLES.....	21
VALUE FOR MONEY.....	21
FAIRNESS AND EQUAL TREATMENT.....	22
TRANSPARENCY.....	22
INTEGRITY AND ETHICAL BEHAVIOUR.....	24
7. SECTION 7 OTHER GUIDING PRINCIPLES AND OBJECTIVES.....	29
COMPETITION.....	29
EFFICIENCY.....	29
CONFIDENTIALITY AND ACCURACY OF INFORMATION.....	29
ENVIRONMENTAL SUSTAINABILITY.....	29
8. SECTION 8 FORMATION AND DUTIES OF THE TENDER EVALUATION COMMITTEE.....	32
FORMATION OF THE TENDER EVALUATION COMMITTEE.....	32
DUTIES OF THE TENDER EVALUATION COMMITTEE.....	33
PROCEEDINGS OF TENDER EVALUATION COMMITTEES.....	34
9. SECTION 9 FUNCTIONS OF AD-HOC TENDER COMMITTEES.....	35
PRE-TENDER COMMITTEE.....	35
BID OPENING COMMITTEE.....	35
PROCUREMENT GRIEVANCE COMMITTEE.....	36
STATEMENT OF ETHICS AND DECLARATION REGARDING FRAUD AND CORRUPTION.....	36
10. SECTION 10 ORGANISATION AND RESPONSIBILITIES OF THE TENDER EVALUATION COMMITTEE.....	37
AGENDA OF THE TENDER EVALUATION COMMITTEE.....	37

CONTRACT AND EVALUATION SUMMARIES, AND PUBLICATION OF CONTRACT AWARDS.....	38
INTERNAL AND INDEPENDENT MONITORING.....	38
DOCUMENTATION/RECORDS MANAGEMENT.....	38
FILING/RECORD MANAGEMENT SYSTEM.....	39
<b>11. SECTION 11 BUDGET PREPARATION AND PROCUREMENT PLANNING.....</b>	<b>42</b>
<b>12. SECTION 12 PROCUREMENT PLANNING PROCESS.....</b>	<b>42</b>
EFFECTIVE PROCUREMENT PLAN.....	42
PROCUREMENT PLAN MONITORING AND UPDATING.....	43
PROCUREMENT PLAN AND PRIVATE SECTOR CAPACITY.....	43
<b>13. SECTION 13 COMPETITIVE TENDERING.....</b>	<b>47</b>
CONTRACTOR REGISTRATION.....	49
ADVERTISING AND PRE-QUALIFICATION.....	49
PREFERENTIAL TREATMENT FOR LOCAL BIDDERS.....	50
TAX COMPLIANCE REQUIREMENT FOR FOREIGN CONTRACTORS.....	50
COST OF BIDDING DOCUMENTS.....	51
SINGLE VS. TWO-STAGE TENDERING.....	51
DEBARMENT, SUSPENSION AND INELIGIBILITY.....	53
<b>14. SECTION 14 PRE-QUALIFICATION OF BIDDERS.....</b>	<b>53</b>
PRE-QUALIFICATION DOCUMENTS.....	53
CRITERIA FOR PREQUALIFICATION.....	54
EVALUATION OF PREQUALIFICATION APPLICATIONS.....	54
NOTIFICATION TO APPLICANTS.....	54
<b>15. SECTION 15 DEFINING THE CONTRACT &amp; SBDS.....</b>	<b>55</b>
SUBJECT OF THE CONTRACT.....	55
ESTIMATING THE VALUE OF THE CONTRACT.....	55
LONG-TERM CONTRACTS.....	56
LOTS AND OPTIONS.....	57
DURATION OF THE CONTRACT.....	57
TYPES OF CONTRACT(S).....	58
THRESHOLD VALUES.....	59
SELECTING THE RIGHT BIDDING DOCUMENTS.....	61
<b>16. SECTION 16 TENDERING METHODS.....</b>	<b>61</b>
OPEN TENDERING PROCEDURE.....	62
SELECTIVE COMPETITIVE BIDDING/RESTRICTED TENDERING PROCEDURE.....	62
SINGLE SOURCE OR DIRECT CONTRACTING.....	63

SHOPPING METHOD (QUOTATIONS) .....	63
PROCUREMENT FOR GENERAL SERVICES .....	64
<b>17. SECTION 17 EMERGENCY PROCUREMENT .....</b>	<b>65</b>
<b>18. SECTION 18 BID OPENING .....</b>	<b>66</b>
PUBLIC BID OPENING .....	66
BID OPENING COMMITTEE / TEAM .....	67
BID OPENING STEPS .....	67
CONSULTANTS' PROPOSALS .....	69
BID PAGES TO BE INITIALLED .....	69
QUESTIONS FROM ATTENDEES .....	70
THE END OF THE OPENING SESSION AND MINUTES OF BID/PROPOSAL OPENING.....	71
FORMULATION OF THE EVALUATION PLAN .....	72
EVALUATORS .....	73
<b>19. SECTION 19 BID EVALUATION.....</b>	<b>73</b>
GENERAL .....	73
PRELIMINARY EXAMINATION (GOODS AND WORKS) .....	74
TENDER VALIDITY .....	74
QUALIFICATION REQUIREMENTS .....	76
SUBSTANTIAL RESPONSIVENESS.....	76
CORRECTION OF ARITHMETIC ERRORS .....	78
DETAILED EXAMINATION OF TENDERS .....	78
POST-QUALIFICATION .....	79
<b>20. SECTION 20 CONTRACT AWARD.....</b>	<b>80</b>
DETERMINATION OF AWARD .....	80
DISAGREEMENT AMONG TENDER EVALUATION COMMITTEE MEMBERS .....	81
RECOMMENDATION FOR AWARD AND EVALUATION REPORT .....	81
REVIEW AND APPROVAL OF EVALUATION REPORT.....	83
PRE-AWARD NOTICE AND COMPLAINTS PROCESS.....	83
EXTENSION OF TENDER VALIDITY .....	84
NEGOTIATION, GOODS AND WORKS.....	85
AWARD AND SIGNING OF THE CONTRACT.....	86
PREPARATION OF THE CONTRACT .....	87
SIGNING OF THE CONTRACT .....	88
THE PERFORMANCE SECURITY.....	88
FAILURE OF A BIDDER TO SIGN THE CONTRACT OR PROVIDE THE PERFORMANCE SECURITY (BOND).....	90
ADVANCE PAYMENTS.....	90
NOTIFICATION OF THE UNSUCCESSFUL BIDDERS .....	90

PUBLISHING THE AWARD.....	91
DEBRIEFING UNSUCCESSFUL BIDDERS.....	91
<b>21. SECTION 21 STANDARD BIDDING DOCUMENTS &amp; IMPORTANT CLAUSES PREPARING THE BIDDING DOCUMENTS.....</b>	<b>93</b>
FRAUD AND CORRUPTION .....	94
INSTRUCTIONS TO TENDERS.....	95
GENERAL CONDITIONS OF CONTRACT (GCC).....	96
SPECIAL CONDITIONS OF CONTRACT (SCC).....	97
SUB-CONTRACTING .....	98
CONTRACT SECURITIES.....	100
LIQUIDATED DAMAGES AND BONUS CLAUSES.....	102
FORCE MAJEURE .....	103
SETTLEMENT OF DISPUTES.....	104
TERMINATION OF CONTRACT.....	105
<b>22. SECTION 22 IMPORTANT CONTRACT PROVISIONS.....</b>	<b>106</b>
CLARITY OF BIDDING DOCUMENTS .....	106
STANDARDS & BRAND NAMES.....	107
SAMPLES.....	108
BIDS VALIDITY .....	108
BID SECURITY .....	108
PRICING OF BIDS.....	111
TRANSPORTATION.....	112
INSURANCE.....	114
TERMS AND METHODS OF PAYMENTS.....	115
CLARIFICATION/MODIFICATION OF BIDDING DOCUMENTS AND PRE-BID MEETING.....	117
TIME FOR PREPARATION/SUBMISSION/OPENING OF BIDS.....	118
CLARIFICATION AND ALTERATION OF BIDS.....	119
CONFIDENTIALITY .....	119
FRAUD AND CORRUPTION .....	120
OTHER CONTRACT PROVISIONS.....	120
<b>23. SECTION 23 CONSULTING SERVICES PROCEDURE.....</b>	<b>122</b>
WHEN RFP MAY BE USED.....	122
PROCUREMENT STAGES.....	122
KEY ELEMENTS OF PROCUREMENT CYCLE FOR SERVICES.....	123
SPECIAL FEATURES OF CONSULTANCY SERVICES .....	123
<b>24. SECTION 24 PROCUREMENT METHODS.....</b>	<b>124</b>
QUALITY COST BASED SELECTION (QCBS) .....	125

QUALITY BASED SELECTION (QBS) .....	126
SELECTION UNDER A FIXED BUDGET .....	127
LEAST-COST SELECTION (LCS) .....	128
SELECTION BASED ON CONSULTANTS' QUALIFICATIONS (CQS).....	129
SINGLE-SOURCE CONTRACTING/SELECTION OR DIRECT CONTRACTING.....	129
SELECTION OF INDIVIDUAL CONSULTANTS.....	130
<b>25. SECTION 25 TERMS OF REFERENCE AND BUDGET ESTIMATE.....</b>	<b>130</b>
THE TERMS OF REFERENCE (TOR).....	130
ESTIMATING COST AND BUDGET .....	132
<b>26. SECTION 26 EXPRESSION OF INTEREST (EOI) .....</b>	<b>133</b>
PRE-QUALIFICATION CRITERIA .....	133
ADVERTISEMENT .....	133
EVALUATION OF EOI AND SHORT-LISTING .....	134
<b>27. SECTION 27 PREPARATION AND ISSUE OF REQUEST FOR PROPOSAL (RFP).....</b>	<b>134</b>
THE LETTER OF INVITATION (LOI) .....	135
INFORMATION TO CONSULTANTS (ITC).....	136
TECHNICAL PROPOSAL - STANDARD FORMS .....	136
FINANCIAL PROPOSAL – STANDARD FORMS.....	137
STANDARD FORMS OF CONTRACT.....	137
<b>28. SECTION 28 EVALUATION OF PROPOSALS TECHNICAL EVALUATION CRITERIA.....</b>	<b>137</b>
CONSULTANT'S SPECIFIC EXPERIENCE.....	138
KEY PERSONNEL.....	139
MINIMUM TECHNICAL SCORE .....	139
FINANCIAL EVALUATION CRITERIA .....	140
WEIGHTING OF TECHNICAL AND FINANCIAL SCORES.....	140
<b>29. SECTION 29 CONTRACT TYPES AND NEGOTIATION.....</b>	<b>140</b>
LUMP SUM (FIXED PRICE) CONTRACTS.....	140
TIME-BASED CONTRACT .....	141
RETAINER AND/OR CONTINGENCY (SUCCESS) FEE CONTRACT.....	142
PERCENTAGE CONTRACT .....	142
DEFINITE DELIVERY CONTRACT (PRICE AGREEMENT) .....	143
TENDER AND PERFORMANCE SECURITY.....	143
NEGOTIATION OF CONTRACT .....	144
AWARD OF CONTRACT .....	145
AWARD NOTIFICATION .....	145
NOTIFICATION TO UNSUCCESSFUL TENDERERS.....	145

30.	SECTION 30 EFFECTIVE CONTRACT MANAGEMENT.....	147
	PRINCIPLES OF CONTRACT ADMINISTRATION .....	148
	CONTRACT ADMINISTRATION PLANNING.....	150
	CONFERENCE FOLLOWING SIGNATURE OF CONTRACT .....	152
31.	SECTION 31 CONTRACT PERFORMANCE MONITORING.....	153
	MONITORING QUALITY OF PERFORMANCE .....	153
	MONITORING PROGRESS OF PERFORMANCE .....	154
	DEFECTS IN PERFORMANCE .....	155
	DELAY IN PERFORMANCE .....	156
	WARRANTY OBLIGATIONS .....	158
	OTHER ASPECTS OF MONITORING .....	159
32.	SECTION 32 MANAGEMENT OF PAYMENT .....	160
	ADVANCE PAYMENT .....	160
	PROGRESS (OR PARTIAL) PAYMENTS .....	161
	INVOICES .....	162
	RETENTION MONEY .....	163
	DISBURSEMENT .....	163
33.	SECTION 33 OTHER CONTRACT MANAGEMENT ELEMENTS.....	163
	CONTRACT MODIFICATIONS .....	163
	ASSIGNMENT AND SUB-CONTRACTING .....	165
	STOP WORK ORDERS .....	166
	REPLACEMENT OF PERSONNEL .....	167
	REMEDIES .....	168
	SETTLEMENT OF CONTRACT DISPUTES.....	168
	END OF ACTIVITY REPORT .....	170
	DOCUMENTATION .....	170
	CONTRACT CLOSE-OUT .....	171
34.	SECTION 34 COMPLAINT MECHANISM .....	173
	FORMAT OF THE COMPLAINT .....	173
	PROCURING ENTITY REGISTER OF COMPLAINTS.....	174
35.	SECTION 35 REVIEW OF PROCUREMENT PROCESS.....	174
	REVIEW BY THE PROCUREMENT GRIEVANCE COMMITTEE OF PROCURING ENTITY.....	175
	APPENDIX 1A: STATEMENT ON ETHICAL CONDUCT AND FRAUD AND CORRUPTION (APPLICABLE TO EVALUATION REPORTS) .....	176
	APPENDIX 1B: DECLARATION ON ETHICAL CONDUCT AND FRAUD AND CORRUPTION (APPLICABLE TO THE PRIVATE SECTOR) .....	177



APPENDIX 2A: SUMMARY OF EVALUATION OF CONTRACT AWARD SAMPLE REPORTS.....	179
APPENDIX 2B: CONTRACTS REGISTER SAMPLE REPORT .....	180
APPENDIX 3: PROCUREMENT PLAN SAMPLE FORMAT .....	181
APPENDIX 4: RECOMMENDED SUBMISSION DEADLINES.....	182

## Glossary of Terms

Whenever used in these Guidelines, each of the following terms shall have the indicated meaning, unless the context within which such a term appears clearly intends another meaning.

**Advertising:** Conforming to statutory requirement to advertise a tender in newspapers, websites, international tender sites, the Government Gazette, etc.

**Advance Payment:** An advance payment to a supplier in the case of a major infrastructure or an industrial project or a long-term arrangement.

**Aggregation:** Process by which procurement requirements for same or similar goods or services are aggregated together to gain economies of scale and obtain the most advantageous conditions.

**Arbitration:** Method of settling a dispute between the parties involved in a contract by referring it to one or more neutral persons, selected by the parties, for a decision.

**Attempt to Influence (the procurement process):** To support, promote, oppose, or seek to modify or delay a procurement decision or action, including to provide or use bribery, threats, persuasion, information, statistics, analyses or studies. Attempt to influence also means to assist another person in doing any of the foregoing.

**Award:** Process of awarding a contract to a bidder after selecting the tender/offer that is determined to be substantially responsive to the tender documents and is the most advantageous.

**Best Practices:** Generally accepted international or regional standards applied to the public procurement function.

**Best Value:** Optimum combination of whole-life costs including price, delivery time, quality, and/or implementation costs, ongoing operating costs, and end-of-life disposal depending on the nature of the procurement, as well as environmental sustainability and socio economic matters.

**Bid (or Tender):** An offer submitted in response to an invitation for bids, or invitation to tender, under a competitive bidding process. In this Guidelines, the words Bid or Tender are interchangeably used.

**Bidder (or Tenderer):** Natural or legal person, or group of such persons submitting a bid to a Procuring Entity with a view to concluding a contract for goods, works or services. In this Guidelines, the words Bidder or Tenderer are interchangeably used.

**Bidding Documents:** Standard documents elaborated by the Procuring Entity for the purpose of procuring goods, works, services or consulting services. They are composed of, but not limited to, an Invitation to Bid, Instructions to Bidders, Bid Data Sheet, General Conditions of Contract, Specific Conditions of Contract, Technical Specifications, Schedule of Requirements, etc.(also called Tender Documents)

**Bid Evaluation:** Analysis of bids/offers received by the Procuring Entity to appraise and assess the most advantageous and competitive offer. In this Guidelines, the words Bid or Tender Evaluation are interchangeably used.

**Bid Opening:** In procurement through competitive bidding, the opening and reading of tenders/offers conducted at the time and place specified in the bidding documents, and in the presence of anyone who wishes to attend. In this Handbook, the words Bid or Tender Opening are interchangeably used.

**Bill of Quantities:** Description and quantitative estimate of all materials and/or other supplies which will be required for a proposed construction project or production of equipment (usually custom designed).

**Breach of Contract:** Failure of the supplier or purchaser, without a legal excuse, to carry out his part of the duties and obligations as implied by the terms and conditions of a contract.

**Conflict of Interest:** Situation where personal or business interests of a party could affect the outcome of a transaction through the non-declaration of that interest.

**Consultant:** Natural or legal person who is an expert in a specialised field and using their professional skills to study, design and/or organise specific projects, advice, conduct training and transfer knowledge.

**Consulting Services:** Intellectual or advisory services provided by a Consultant under a service contract.

**Conditions of Contract:** General Conditions of Contract are generally fixed and not altered. Any alterations are normally included in the Special Conditions of Contract.

**Direct Procurement Method:** Method of procurement that does not require the use of the competitive bidding (Single source procurement).

**Eligibility:** Legal and objectives criteria set up for bidders/tenderers. If not met, tenderers will not be allowed to tender or their tenders/offers already submitted will be rejected.

**Expression of Interest:** Statement received from a bidder/tenderer, usually in response to a public advertisement, invitation to tender or prequalification, for the supply of specific goods, works or services, confirming the interest of the tenderer in making an offer to supply the goods, works or services.

**Goods:** Raw materials, products, equipment, and commodities in solid, liquid or gaseous form, including perishables, or software and electricity, and also services (excluding Consulting Services) such as transportation, maintenance, and warehousing.

**International Competitive Bidding:** Procurement procedure where tendering is open to all local or international legal entities interested to submit a tender.

**Invitation to Bid:** Initiates the process of competitive bidding, in which bidders are invited to submit sealed offers for clearly defined procurements. The invitation may be either open to all interested bidders or restricted.

**Market Analysis:** Information required to make an assessment of market conditions such as demand and supply conditions, prices, discounts, etc. to enable a purchaser to make the right purchase decision.

**Offer:** Positive answer issued by a bidder in response to a tender invitation, or an announcement to deliver goods, carry out works and/or services to a purchaser without a specific request or invitation to tender.

**Open Tendering Procedure:** Procurement or disposal method, open to competition and participation by all providers, through advertisement.

**Performance Bond/Guarantee:** Contract of guarantee executed subsequent to award by a successful supplier to protect the purchaser from loss due to the supplier's inability to complete the contract as agreed.

**Prequalification:** Screening of potential suppliers with reference to predetermined criteria, such as technical and financial capability, reputation, reliability, etc., in order to develop a list of suppliers qualified to bid/offer to whom alone the bidding documents may be sent.

**Procurement:** Acquisition of goods and services, contracting of works, purchasing, and buying, renting or leasing, and the management thereof, in accordance with specific methods and procedures, by the Government. The term procurement and public or government procurement in this handbook shall have the same meaning and vice versa.

**Procurement Process:** Successive stages in the procurement cycle including planning, choice of procedure, measures to solicit offers from bidders, examination and evaluation of such offers, award of contract and contract management.

**Procuring Entities (PEs):** State Owned Enterprises of Maldives, which are not public limited companies and Government of Maldives ownership exceeds 50% of its shares.

**Services:** General (maintenance) or consulting (intellectual or advisory) activities carried out by a supplier or consultant to achieve contractually fixed results. Mixtures of supplies and services are usually put in the category to which more than 50% by value belongs.

**Standards:** Established norms or requirements; usually a formal document that establishes uniform engineering or technical criteria, methods, processes and practices.

**Sub-Contractor:** Person or firm who enters into an agreement with a prime (main) contractor and undertakes to perform a part of the prime contractor's obligations with reference to the main contract.

**Supplier:** Tenderer/bidder whose bid/offer has been selected for a procurement contract.

**Technical Specifications:** Technical requirements defining the characteristics of works, material, product, supply or service, and enabling a piece of work, a material, a product, a supply or a service to be objectively described.

**Tender Documents:** Set of documents issued by the Procuring Entity which establish the object of procurement (the technical specifications and/or the terms of reference), specify proposed contract conditions and the procurement procedure to be followed.

**Terms of Reference:** Standardised scope of work issued by the Procuring Entity for a service contract, equivalent to the specification of goods in a contract for the purchase of goods, and giving the definition of requirements and/or objectives of the consulting services, including, where applicable, the methods and means to be used and/or results to be achieved.

**Threshold:** Represents the highest nominal amount for applying a procurement method, irrespective of any other considerations.

**Two-Envelope System:** Tendering option for the selection of the most advantageous bid, in two separate envelopes, both of them sealed and clearly marked. The first envelope contains the technical proposal, the second one the price proposal.

**Works:** Activities associated with civil engineering, such as construction, demolition, repair, or renovation of a building, road, or structure. Works may include materials, installation of equipment, and services incidental to Works,

provided that the value of those services does not exceed the value of the Works themselves.

# CHAPTER 1. THE GUIDELINES ON SOE PROCUREMENT PROCEDURES



## **1. Section 1 Purpose**

- 1.1. The SOE Procurement Procedures Guidelines has been compiled to provide guidance to officials responsible for procurement in the SOE sector. It is intended as policy and a guiding tool for the practice of procurement in SOEs, ensuring efficiency, and application of procurement best practices. It also serves to facilitate the standardisation of procurement practice across all SOEs in the Maldives with a view to ensure an efficient and transparent procurement system that is central to good financial management and offers equal opportunities for eligible competitors.
- 1.2. The Guidelines gives procedural guidance and instructions on the many aspects of procurement and contracting, including standard and model documentation provided in Annexes. Where funding is provided by international donor partners, there may be a requirement to use the donor's own procurement procedures; guidance on this is given in the Guidelines.

## **2. Section 2 Scope**

- 2.1. This Guidelines is applicable to non-PLC SOEs with over 50% government shares, for procurement of goods, works and services (hereafter referred to as "Procuring Entities"), whether in or outside Maldives, for and on behalf of the SOE, unless specifically excluded.

## **3. Section 3 Usage**

- 3.1. The Guidelines is structured so as to allow the users to easily find practical information and guidance through the sequential stages of the procurement process, from planning to bidding. It also contains step by step guide for developing the tender documentation for the procurement of goods, works or services.

- 3.2. The Guidelines is divided into Chapters, each of which is broken down into Sections.
- 3.3. This Procedures Guidelines is issued by the PCB and has been developed via assistance from the Word Bank. It is anticipated to require further review and amendment after being in use for a period of time, and as the procurement context evolves in Maldives and within the international best practices.

#### **4. Section 4 Review and Audit of Procurement function**

- 4.1. Procurement function and operation must be audited by either the internal audit function of the SOE or an independent auditor for compliance with this Policy. The first audit must be done after two (2) years of initial implementation, and thereafter once every year.
- 4.2. A quarterly procurement report detailing all the procurement activities with information including procurement value and winning parties must also be submitted to the Privatization and Corporatization Board of the Ministry of Finance.

# CHAPTER 2. THE PUBLIC PROCUREMENT FRAMEWORK

## 5. Section 5 Legal Framework

- 5.1. Public sector procurement in the Maldives is governed by the following legal instruments:
  - Public Finance Act 2006 and Amendments
  - Public Finance Regulation 2017/R-20 and Amendment
- 5.2. However, the Courts have ruled that these legal instruments are not applicable to SOEs. Hence, the PCB, being the institution responsible for the monitoring of SOEs in the Maldives, have decided to issue these procedures and guidelines, under the authority of the following act:
  - The Privatization, Corporatization, Monitoring and Evaluation of Government Businesses' Act 2013
- 5.3. The legal and regulatory framework relevant to public procurement and international best practices provides a basis for these Guidelines, to deliver on the main objectives of sound finance management, namely transparent and efficient delivery of services
- 5.4. In order that actual procurement practice contribute to the achievement of these objectives it is crucial that Procuring Entities adhere to the requirements of the legal framework by complying with its procedures and provisions.
- 5.5. In the event that Procuring Entity is unable to comply with a provision of this Guideline, it is required to report the non-compliance to PCB, underlying the reason for the particular non-compliance.

# CHAPTER 3. PUBLIC PROCUREMENT GUIDING PRINCIPLES AND OBJECTIVES

Procurement principles should be used to guide decisions pertaining to procurement practice. This chapter introduces the basic procurement principles to be applied in order to achieve sound procurement practice and preserve public trust and public interest. Procuring Entities shall ensure that these principles are adhered to and implemented.

## **6. Section 6 Fundamental Principles**

- 6.1. The following general principles shall govern the administration of SOE procurement. Procuring Entities and their staff shall be responsible and accountable for complying with these principles in the practice of procurement and in the application of discretion and judgments made in the decisions pertaining to procurement proceedings if the objectives of sound procurement practice are to be achieved. These principles, however, are not intended to replace standards supported by other disciplines in which procurement officials participate.

### **Value for Money**

- 6.2. The ultimate objective of the SOE procurement activity is to achieve best value for money in order to maximize economy and efficiency of public spending. This key operating principle encompass a number of factors which include not only the price of the goods, works or services, but also the suitability and satisfactory quality of those procured. Other influential factors may include total life cycle costs, maintenance/servicing costs, delivery/construction period, transportation or storage costs, as well as benefits of broader elements whether environmental, social and/or economic.

## Fairness and Equal Treatment

- 6.3. Good procurement is impartial and consistent, and should offer all interested suppliers, purchasers and consultants an equal opportunity to compete. Procuring Entities must adopt practices that promote fair competition and allow adequate time in the tendering procedure for those participating, as well as must avoid unnecessarily burden or constrain them. Also, the principle of equal treatment prohibits discrimination against any bidder regarding conditions of participation with regard to financial, technical or commercial qualifications and capacity.

## Transparency

- 6.4. The procurement process and the implementation of procurement and sale contracts must be transparent. The promotion of transparency in procurement complements procedure control and serves as an effective tool against corruption. It also ensures undistorted competitive conditions between the suppliers or contractors in the market, and allows them to monitor compliance with the procurement rules.
- 6.5. Procuring entities shall to the extent possible carry out all procurement proceedings in a transparent way with an emphasis on the following elements:
  - a) Advertising of Opportunities. Procurement notices shall be publicised as early as possible in Government Gazette and the PE's website. These notices should contain all the necessary information to enable the participation of pertinent bidders.

- b) Public Accessibility of Procurement Documents. Legislations, regulations, manuals should be made available through the PCB website, to enhance the knowledge of the business community and be acquainted with government procurement procedures. Bidding documents should be made public via the Government Gazette. It is also recommended to publish the documents on the Procuring Entity website and MOF Procurement Portal.
- c) Publication of Contract Awards. Notices of contracts awarded by Procuring Entities shall be published on the Government Gazette indicating the name of the winning bidder, the date, and procurement method employed, within 30 days. It is also recommended to publish the notice of contracts on Procuring Entity website and the MOF Procurement Portal.
- d) Record of Procurement Proceedings. Procuring Entities shall maintain appropriate recording of procurement procedures, with an individual file for each procurement requirement marked with the relevant reference number. Procurement records shall be kept for a minimum period of 5 years as required by Tax Administration Act 3/2010.
- e) Debriefing of Bidders and Consultants. Debriefing participating bidders on the outcome of the results of their bids and why they were not successful is a generally accepted good practice for Procuring Entities.
- f) Participation of Civil Society. Procuring Entities are encouraged to invite Civil Society organizations to attend key procurement cycle activities, such as bid openings and contract signing proceedings.



## Integrity and Ethical Behaviour

### Code of Conduct

- 6.6. In order to achieve value for money and to effectively contribute to efficient service delivery, SOE procurement practice must adopt a strong ethical stand. All SOE officials and other personnel connected with the procurement of goods, services or works, are responsible for carrying out their duties with due diligence and in the proper manner, whatever their role in the procurement process, directly or indirectly, whether it be planning, requisitioning, ordering, producing documents, making approvals, maintaining documents and records, or monitoring payments.
- 6.7. The Principles of the Code of Conduct requires concerned officials not to:
- Place themselves in positions in which they have or could have a conflict of interest;
  - Compromise the fair exercise of their public or official functions or duties;
  - Use their office for private gain;
  - Allow their integrity to be called into question;
  - Demean their office or position;
  - Endanger or diminish respect of, or confidence in, integrity of the Government.

### Unethical Conduct

- 6.8. Instances of unethical behaviour applicable in procurement are presented in this paragraph to serve as a guideline and shall be applied to all Procuring Entities staff:

- a) Private Gain. No individual shall, directly or indirectly, use his office for private gain. Personal gain includes accepting or requesting anything of material value from bidders, prospective bidders or suppliers for the individual, his or her spouse, parents, children or other close relatives, or for other persons from whom the individual might gain direct or indirect benefit.
- b) Gifts or Benefices in Kind. No individual shall ask for or accept any property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties (except unsolicited gift of a nominal value, like a souvenir and less than MVR250 retail value). Any unsolicited gifts should be declared to the designated authority as determined by the PE.
- c) Use of company funds. No individual shall be a party to or shall undertake any project or activity involving the use of company funds in disregard of the financial orders or other rules and regulations applicable to such funds.
- d) Bribery. No individual shall offer any person any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or the discharge in his favour of such person's duties.

6.9. Other examples of internationally recognised unethical practices relevant to public procurement include:

- Revealing confidential or “inside information”, directly or indirectly, to any (prospective) bidder, supplier or purchaser;
- Discussing a procurement with any party outside the official rules and procedures during the procurement cycle;
- Favouring or discriminating against any (prospective) bidder or supplier in the drafting of technical specifications or standards, or in the evaluation of tenders;

- Destroying, damaging, hiding, removing, or improperly changing any official procurement document;
- Discussing or accepting future employment with a (prospective) bidder, supplier or purchaser;
- Ignoring evidence that a member of a Tender Committee, other personnel of the Procuring Entity has breached ethical rules;
- Ignoring illegal or unethical activity relevant to procurement proceedings, including any offer of personal inducements or rewards.

6.10. Any officials who attempt to influence a procurement process shall be subject to sanctions and legal remedies to the fullest extent of relevant Laws and Regulations of Maldives.

6.11. Any supplier, purchaser or consultant who attempts to influence a procurement process, or the administration of a contract by any unfair method, shall also be subject to sanctions. This may include blacklisting of the company or the individual from SOE contracts for a certain period (usually from three to five years), in addition to other legal remedies in accordance with relevant Laws and Regulations of Maldives.

### Conflict of Interest

6.12. It is the responsibility of all public officers involved in SOE procurement to ensure the integrity and impartiality of the procurement process, and stay alert to situations which may lead to actual, potential or perceived conflict of interest. Conflict of interest situations may arise in cases where there may be a personal, social, financial or technical interest, and/or when:

- An officer exercises his authority, influences decisions and actions or gains access to valuable information, not necessarily restricted or confidential;
- An officer has personal relationships with a bidder, supplier, contractor or consultant, defined as consanguinity or affinity.

- 6.13. Officers shall declare any personal interest that may affect or might reasonably be deemed by others to affect impartiality in any matter relevant to their duties pertinent to the procurement process. This person shall not take any part in either the decision-making process or the implementation of any procurement contract where such a situation exists.
- 6.14. Conflict of interest may also arise from participation by consulting firms, suppliers, purchasers or contractors in SOE procurement. Procuring entities must be alert to potential conflicts of interest which may arise from the different roles or assignments bid participants may take up in same or related projects, whether past, current or new. The General Conditions of the Contract should outline the possible conflict of interests that may be encountered in the provision of consultancy services.

#### Declaration of Ethical Conduct

- 6.15. Members of Tender Evaluation Committees involved in tender evaluation shall be required to sign and attach a Declaration on Ethical Conduct and Fraud and Corruption to each evaluation report in which they participate. Appendix 1a: Statement on Ethical Conduct and Fraud and Corruption (applicable to Evaluation Reports) to this Guidelines contains a standard form to be completed and signed by relevant parties.
- 6.16. The private sector shall not be exempt from responsibility to act ethically in procurement proceedings with SOEs. Bidders, whether private firms or individuals, shall also be required to sign a formal declaration on ethical conduct. Appendix 1b: Declaration on Ethical Conduct and Fraud and Corruption (applicable to the Private Sector) to this Guidelines contains a standard form to be completed and signed by relevant parties.

## Engaging Contractors, Firms, and Consultants of Related Parties of Related Employees

- 6.17. PE's Company Secretary shall maintain a register of related parties of BOD of the company. This register should be accessible to the Tender Evaluation Committee at the time of bid evaluation.
- 6.18. Engaging a contractor, firm, or consultant deemed as related parties of BOD of PE or members of Tender Committees or any related employee directly or indirectly involved in the procurement process will require an additional approval from BOD of the PE irrespective of the value of such contracts.
- 6.19. Related parties for the purposes of these guidelines are defined as:
- a) Parents
  - b) Children
  - c) Spouse of children
  - d) Spouse
  - e) Siblings
  - f) Spouse of siblings
  - g) Any entity (partnerships, companies, corporative society, sole proprietorships, or another form of registered business or non-government organization) with over 20% of stake of any of the above persons described in 6.19 (a) to (f)
- 6.20. Related employees for the purposes of these guidelines are defined as:
- a) Board of Directors
  - b) All heads of the senior management and heads of department
  - c) Heads of units and sections
  - d) Assistant Directors, Assistant Managers and all employees above this level
  - e) Members of Tender Evaluation Committee or other ad-hoc Committees
  - f) All employees of Procurement Department
  - g) Employees that are in positions to either directly or indirectly influence

## 7. Section 7 Other Guiding Principles and Objectives

### Competition

- 7.1. Procuring Entities must adopt practices that promote fair competition in all public procurements, discourage the use of fake competition, and use methods of aggregation where appropriate in order to take advantage of economies of scale. They shall also treat all bidders and suppliers with fairness and impartiality, and avoid any business arrangement that might prevent the effective operation of fair competition.

### Efficiency

- 7.2. SOE procurement should be carried out as cost-effectively as possible to ensure economic efficiency and make optimum use of available funds.

### Confidentiality and Accuracy of Information

- 7.3. Officers shall respect the confidentiality of information received in the course of their duties and shall never use such information for personal gain or unfair benefit of any bidder or supplier. Also any information given should be true and fair and never designed to mislead participants or colleagues, in any part of the procurement process.

### Environmental Sustainability

- 7.4. Procuring entities, when procuring goods, services or works should consider long-term economic viability, minimising any adverse environmental impact arising from procurement performance, as well as improve social conditions and stimulate the market to further innovate sustainable production.

- 7.5. Environmental performance criteria in purchasing decisions may relate to maximum energy efficiency, minimum use of toxic chemicals and other pollutants, maximum use of products based on recycled materials and/or minimum use of unnecessary packaging and other superfluous material.

# CHAPTER 4. THE TENDER EVALUATION COMMITTEE



Ideally, key tasks in the tendering process should be done by different people. This chapter describes the role and responsibilities of the main Tender Evaluation Committee to be established in each Procuring Entity, as well as the mechanism of the functional tender groups that should assist the Tender Evaluation Committee in the opening and evaluation of bids.

## **8. Section 8 Formation and Duties of the Tender Evaluation Committee**

### **Formation of the Tender Evaluation Committee**

- 8.1. Each Procuring Entity should establish its own Tender Evaluation Committee constituted to advise the Head of the Procuring Entity on the acceptance of tenders for works, services and supplies. The appointment should be made by the PEs' CEO and endorsed by the BOD of the PE.
- 8.2. The Tender Evaluation Committee shall be composed of members with the necessary skills, knowledge and experience, relevant to procurement requirements. Where appropriate, the members of the Committee shall be on the basis of their knowledge and expertise in the supplies, works or services, as well as procurement procedures and the law. Tender Evaluation Committees will be composed between three (3) to seven (7) members, with the required technical expertise suitable for the evaluation of specific tenders. The Committee membership should be an odd number in total and include members who have skills in the following areas:
  - Relevant technical expertise and knowledge;
  - End user representation;
  - Procurement and contracting skills;
  - Financial management or analysis skills;
  - Legal expertise (where possible).

- 8.3. Tender Evaluation Committee shall be reconstituted on an annual basis, with the allowance to reappoint of the members if appropriate. However, at a minimum, 33% of the committee must be reshuffled every year. Quorum of the Committee shall be by the simple majority of the members.
- 8.4. The Chairperson of the PE's Tender Evaluation Committee shall not be anyone who by reason of their functional responsibilities within the Entity, would approve or sign-off on procurements or sales. The Committee is empowered to call upon any Departmental officers to assist with expert advice.
- 8.5. PEs must ensure that the members of Tender Evaluation Committee are sufficiently oriented/trained on procurement policy and evaluation process.
- 8.6. Where appropriate, Tender Evaluation Committee may seek advice of subject matter experts, to assist them in the bid evaluation process.
- 8.7. Evaluation of low value / routine procurement activities, where no Tender Evaluation Committee is necessary, shall normally be undertaken by the Procurement Department with the evaluation records / quotations securely kept for audit purposes by the Internal Audit team of the PE or the Auditor General's Office.

### **Duties of the Tender Evaluation Committee**

- 8.8. The duties of the Tender Evaluation Committee are to:
- Overseeing all aspects of tender evaluation;
  - Making decisions regarding all procurements above Threshold 3;
  - Ensuring cost-effectiveness, transparency and fairness of the tender evaluation process;
  - Ensure compliance with relevant policies, guidelines and procedures;
  - Facilitate response to contractor inquiries;

- Maintain proper record of Committee meetings, including records of the procurement;
- Ensure compliance with reporting obligations, including reporting all activities undertaken by the Committee to the Board of Directors on a monthly basis.

## Proceedings of Tender Evaluation Committees

- 8.9. Recommendations for award of contracts shall be made solely on the basis of information and evaluation criteria provided in the tender documents, and without reference to any other information any person may provide, or influence by personal or political preferences.
- 8.10. In the event that a member of the Tender Evaluation Committee should find they have a conflict of interest in the tender evaluation, he/she shall declare his/her interest in the tender, leave the meeting and shall not participate further in the deliberations, or decision-making process, of the Committee, in relation to the said submission.
- 8.11. An evaluation plan shall be drawn up by the Secretary of the Tender Evaluation Committee under the supervision of the Chairperson prior to the evaluation team meeting. The evaluation plan shall describe to the members details of the evaluation process. Team members are not allowed to conduct the evaluation outside of the designated room, nor are any of the documents allowed to be removed from the room. The evaluation team members shall sign a Declaration of confidentiality.
- 8.12. The evaluation shall be conducted on the basis of predetermined and publicly published evaluation criteria.

## 9. Section 9 Functions of Ad-Hoc Tender Committees

9.1. PE CEOs may appoint ad-hoc committees that are tasked with oversight of certain activities of the tender preparation and process. These Committees are temporary in nature and may be of the following nature:

- Pre-Tender Committee (Preparations of Specifications/TOR/Drawings)
- Bid Opening Committee (Technical).
- Bid Opening Committee (Financial).
- Samples Evaluation Committee
- Post-Tender Negotiation Committee (Clarification of issues).
- Procurement Grievance Committee

### Pre-Tender Committee

9.2. A Pre-Tender Committee is necessary only when the project is technically complex and where considerable work needs to be undertaken, before the tender process can begin. It will normally involve the preparation of Specifications / TOR / BOM / Plans / Drawings / Obtaining Licenses / Changes to the Law / Obtaining planning permission and such other types of pre-tender activities.

### Bid Opening Committee

9.3. A Bid Opening Committee will be composed of procurement personnel and a rotating membership from other Departments within the organisation. The Bid Opening Committee will be comprised of no less than three (3) members.

- 9.4. In PEs where a Bid Opening Committee is not mandated, the function of the committee can be performed by minimum two individuals: one representative from Tender Evaluation Committee and one representative from the respective technical department. In such cases, all functions assigned to the Chairperson of the Committee elsewhere in this policy can be performed by one of the individuals present at the bid opening function.

### Procurement Grievance Committee

- 9.5. A Procurement Grievance Committee will be composed of personnel independent of all other Tender Committees and Ad-Hoc Committees. This Committee will be comprised of no less than three (3) members and its function is to review grievances by (potential) bidders, contractors and consultants in relation to the procurement of any goods, works or services of the PE.
- 9.6. All grievances must be reviewed by the Procurement Grievance Committee, without exception, and appropriate action taken in a timely manner.

### Statement of Ethics and Declaration Regarding Fraud and Corruption

- 9.7. To promote the practice of ethical standards throughout SOE sector procurement operations, each member of a Tender Evaluation Committee or ad-hoc Committee shall be required to sign a copy of the Declaration shown in Appendix 1a: Statement on Ethical Conduct and Fraud and Corruption (applicable to Evaluation Reports) to this Guidelines. This Declaration shall be attached to each evaluation report and signed by each member of the Tender Evaluation Committee or ad-hoc Committee.

## 10. Section 10 Organisation and Responsibilities of the Tender Evaluation Committee

### Agenda of the Tender Evaluation Committee

- 10.1. The Secretary to the Tender Evaluation Committee shall prepare the Agenda for every meeting. The purpose of Agenda is to ensure that the Tender Evaluation Committee is given all necessary and accurate information for making informed decisions. The Agenda shall have the following format:
  - Title
  - Purchase items
  - Background information
  - Invitation of bids
  - Submission and opening of bids
  - Evaluation of bids
  - Secretariat comments
  - Request to the committee
- 10.2. The Secretary must ensure that the agenda is brief, comprehensive, accurate and informative to facilitate speedy execution of the business of the Tender Evaluation Committee.
- 10.3. The recommendations of the Tender Evaluation Committee shall normally be unanimous, but any divergent views shall be recorded in the evaluation report.
- 10.4. The individually scored points shall be summed together to arrive at an aggregate score, the basis on which a recommendation report for the contract award shall be made. The Secretary to the Tender Evaluation Committee will prepare a formal evaluation report for each evaluation conducted and the report shall be signed by all participating members of the Committee.

## Contract and Evaluation Summaries, and Publication of Contract Awards

- 10.5. To help ensure increased transparency, all Committees are required to compile the following two reports: Summary of Evaluation and Contracts Register. Templates of these reports be found in
- 10.6. Appendix 2a: Summary of Evaluation of Contract Award Sample Reports and
- 10.7. Appendix 2b: Contracts Register Sample Report of this Guideline.
- 10.8. Once a month, each Procuring Entity's Tender Evaluation Committee shall issue a summary report of all the Evaluations and the Contracts Register to the BOD for information.

## Internal and Independent Monitoring

- 10.9. Each Procuring Entity shall ensure that regular internal monitoring of procurement activity is undertaken in accordance with the principles and provisions of this Guideline, to ensure the overall effectiveness of procurement. Regular monitoring of procurement in a Procuring Entity will be conducted by the entity's Internal Audit function. All PEs will also be subject to audits conducted by the Auditor General undertaken according to the Audit Act.

## Documentation/Records Management

- 10.10. Documentary records, both in print or electronic format, are essential for efficient and effective management of activities, provide evidence in support of decisions and actions taken, and provide an audit trail for verification of transparency, accountability and effectiveness.

- 10.11. Efficient records management is essential to ensure effective storage, retrieval and use with due regard to security, integrity and confidentiality. All officers shall ensure they obtain, retain and maintain appropriate documentation supporting the activities for which they are responsible. Senior officers involved in approval or authorisation shall ensure that any transactions they approve or authorise are backed by appropriate supporting documentation.

### Filing/Record Management System

- 10.12. The Procuring Entity has a general responsibility for maintaining Procurement Dossiers and Contracts Registers.
- 10.13. Each Procuring Entity must ensure that complete documentation is maintained in respect of all procurement activities, and for contracts and agreements entered into.
- 10.14. Responsibility for the official maintenance of record files, authority to access files and co-ordination of management and follow-up actions must be clearly defined in each Procuring Entity to avoid:
- Partial and incomplete records being held by different departments and individuals;
  - Unauthorised access to records; and
  - Failure to take any necessary action at the right time.
- 10.15. All documents regarding a particular procurement shall be kept for future reference and monitoring and control purposes. The recommended filing structure for a record of procurement shall include the following documentation:
- Original Request from Originating Officer
  - Correspondence with Originating Officer
  - Correspondence with Suppliers, Contractors and Consultants (pre- order)
  - Internal Correspondence within Procurement
  - Requests for Expressions of Interest
  - Shortlist or Advertisement



- Tender documents and Specifications/Terms of Reference
- Correspondence with suppliers relating to Tender
- Tenders, Quotations or Pro-forma invoices received
- Tender opening records
- Record of Tender Securities and release
- Evaluation Report with Declaration on Ethical Conduct and Fraud and Corruption
- Submissions to the relevant authority & Minutes of proceeding
- Notice of Contract Award and publication
- Contract/Purchase Order & Acknowledgement of receipt
- Delivery/Executions Documentation
- Inspection and Acceptance Reports
- After sales warranty and performance claims
- Copy of Record of Commitment of Funds
- Copy of Invoices or Certificates
- Copy of Payment Vouchers
- Record of Retentions and release
- Performance Security and release

# CHAPTER 5. PROCUREMENT PLANNING & BUDGETING

An annual Procurement Plan is a forward plan summarising purchases expected to be undertaken in the year ahead. The plan is an essential part of the annual budget preparation process. It also helps businesses in their market research and planning activities, and is a useful tool for managers in planning their resources over the coming year.

## **11. Section 11 Budget Preparation and Procurement Planning**

- 11.1. Each Procuring Entity is responsible for managing funds allocated for its use by planning and executing procurement. The Head of a Procuring Entity and any other Official to whom such responsibility is delegated shall be responsible and accountable for all procurement actions taken.
- 11.2. Procurement planning starts with the developing of annual plans, budgets and time schedules to execute an operational or capital activity. These plans are required to address in detail all required resources including those to be affected by procurement or asset disposal.

## **12. Section 12 Procurement Planning Process**

### **Effective Procurement Plan**

- 12.1. Procurement planning is a crucial task for any public entity's annual planning requirements as it is necessary to calculate the expected procurement costs likely to be incurred. The plan will include both recurring and non-recurring costs (revenue and capital expenditure). In order to avoid delivery delays, the planning of procurement activities should be carried out in advance of budget approvals.
- 12.2. A sample format for Procurement Plan is provided in Appendix 3: Procurement Plan Sample Format to this Guidelines. However, Procuring Entities are free to include any additional elements they consider necessary.

- 12.3. Planning for procurement eliminates the necessity of emergency orders, or waivers, and the resultant complaints from the contracting community. Planned procurement results in lower purchase costs, as well as improved service delivery.
- 12.4. Effective planning also allows requirements to be aggregated into larger purchases at lower unit costs, rather than frequent sourcing of quotations for identical items and issuing many individual Purchase Orders.
- 12.5. Each Procuring Entity will ensure the procurement planning process is fully integrated with the Entity's annual budgeting processes to develop annual procurement plan.

## Procurement Plan Monitoring and Updating

- 12.6. During the financial year, the Procuring Entity should regularly monitor and update the Procurement Plan. The essence is to see how actual performance compares with the planned activities and to make changes in the plan if necessary.
- 12.7. If slippage occurs in the award or execution of one major contract, it may require rescheduling of other related contract awards and deliveries. The purpose of monitoring is to complete the details of what has actually been executed, to note whether there are major discrepancies with what was anticipated, and make adjustments in the plans so as to give a complete picture of procurement performance.

## Procurement Plan and Private Sector Capacity

### Market Analysis

- 12.8. After the Budget approval, Market Analysis is required to determine the private sector's capability to meet the needs of the contract. Market Analysis should address issues in the following order:

1. Understanding requirements. This means reviewing requirements of the contract in terms of scale and components, in identifying questions such as “Can this contract be combined with other contracts to attract a high number of contractors?”; or “Can the contract be broken into smaller components, to achieve a higher level of competition without compromising management of the contract?”
2. Determining likely tenderers, their capabilities and willingness to tender, asking questions such as “What is the range of likely contractors who may be interested in this contract” and “What can I do to attract more appropriate contractors to tender for this contract?”
3. Determining appropriate levels of competition. Once items 1 and 2 are determined, the appropriate scale and nature of the contract which will attract an appropriate and manageable level of competition should complete the market analysis process.

#### Local Supply Capabilities and Foreign Interest

- 12.9. The ability of local suppliers of goods and services to meet government needs and the likely interests of foreign bidders to participate, are some of the factors to be considered when making contract packaging decisions. If there are well established local civil works contracting and goods supply capabilities, the scope and sizes of contract packages should be set in such a way that permits local firms to compete effectively. Also if foreign interest in bidding for contracts is low, for example, because they are not established in the country or because of the known competitiveness of local firms, package sizes can generally be set to match those local capabilities. However, if there are reasons of economy or efficiency in choosing larger contract packages or if it is known or believed that there are benefits to the PEs by allowing foreign bidders to participate in bidding, these should be the determining factors in contract packaging and sizing.

## Informing the Private Sector

- 12.10. Publication on the Government Gazette (and/or the Procuring Entities' website, MOF Procurement Portal) of realistic annual Procurement Plans allows the private sector to respond more effectively to the requirements and specifications of the PE, through investment in staff and equipment, manufacture and importing of goods, and financial planning.

# CHAPTER 6. PROCUREMENT METHODS AND STRATEGIES: PROCUREMENT OF GOODS, WORKS, AND GENERAL SERVICES

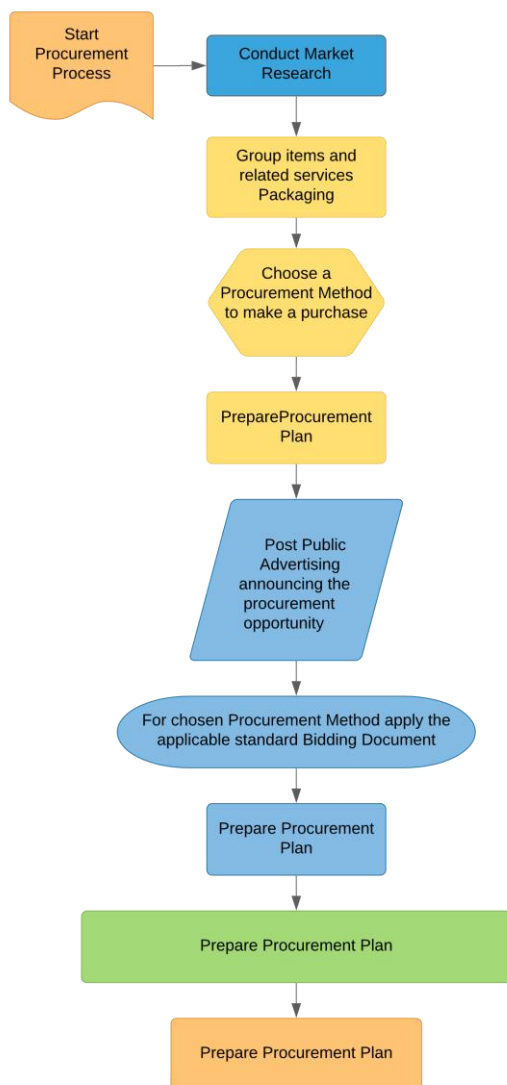
This chapter addresses the procurement of goods, works and general services. It aims at guiding on how to select and apply the appropriate procurement or sale method, from the tendering stage to the contract award, and includes key topics as contract selection, pre-qualification of bidders, bids opening and evaluation. It also details the preparation of the Standard Biddings Documents and specifications that officially specify the procurement requirements and proceedings in a legally binding manner, and the essential contract provisions.

## 13. Section 13 Competitive Tendering

- 13.1. Good procurement of goods, works and general services is sometimes described as the five rights of:
  - Quality
  - Quantity
  - Time
  - Source
  - Price
- 13.2. Competition is an essential ingredient in achieving this and promotes effectiveness in procurement, discourages monopoly situations and avoids favouritism.
- 13.3. A balance needs to be achieved when deciding on how many suppliers should be asked to participate in the tendering process. If there are too many, the process becomes time-consuming for both the Procuring Entity and the suppliers; if there are too few then competition suffers.
- 13.4. Suppliers incur costs in preparing and submitting their bids: An unnecessarily large tender list will result in much wasted effort by suppliers, which could be criticised. Generally, the higher the value and importance of the requirement, the more suppliers should be invited to bid.



Figure 1: Overall Procurement Process for Goods & Wo



## Contractor Registration

- 13.5. There may be circumstances under which PEs may require firms to be registered with a government authority to undertake a particular work (for example, audit firms to be registered with the Auditor General's office). In such cases, any prerequisites and requirement for registration must be clearly stated in the bidding documents.

## Advertising and Pre-Qualification

- 13.6. Invitation to tender or invitation to pre-qualify shall be published on the Government Gazette (and recommended to publish on the Procuring Entity's website and the MOF Procurement Portal), or at least one journal of wide international circulation dedicated to publishing international tendering wherever foreign tenderers are expected to be interested in the contract. Contracts in which only national tenderers are expected to be interested may be advertised only nationally.
- 13.7. Advertisements and invitations for pre-qualification should have the following information:
- a) a brief description of the goods and works to be procured;  
contract conditions;
  - b) eligibility requirements for potential applicants; and
  - c) the time and place where prequalification documents can be obtained.
- 13.8. Similar to public procurement, in SOE procurement, the contract should be awarded only to a bidder who has the necessary "qualifications" to perform the contract satisfactorily in respect of quality, quantity and time.
- 13.9. The mandatory principles in establishing the qualifications of suppliers and contractors include:

- a) technical competence, financial resources, facilities, reliability, experience and reputation of product and personnel to perform the contract;
- b) legal capacity;
- c) solvency;
- d) fulfilment of tax obligations;
- e) absence of criminal record within past 5 years;
- f) satisfactory past performance.

13.10. The objective of pre-qualification is to ensure that bidders for a contract will be only those contractors, purchasers or suppliers who have the experience and technical/ financial resources necessary to fulfil the contract requirements.

13.11. Minimum durations for bid submissions are stated in Appendix 4: Recommended Submission Deadlines.

### **Preferential Treatment for Local Bidders**

13.12. Preferential treatment shall be given to local bidders for procurement valuing under MVR 2,500,000 for locally produced goods, works and services including general and consulting services. Points shall be allocated for this criterion as per Section 28 Evaluation of Proposals Technical Evaluation Criteria.

### **Tax Compliance Requirement for Foreign Contractors**

13.13. Where the contract will require the performance of any part of the works or service in Maldives, the foreign contractor will be required to obtain a valid Tax Compliance Certificate before the signing of the contract and present this to the Tender Evaluation Committee to be eligible for award.

## Cost of Bidding Documents

- 13.14. Bidding documents are normally sold to prospective bidders to offset the costs of production. Request for Proposals are issued to the shortlisted firms at no cost. The cost of the documents should be a reflection of the actual cost of production.
- 13.15. It is important that any who wish to review the documents before purchasing them, are allowed to do so. There are two reasons for this:
- Potential Bidders should not be forced into purchasing documents before reviewing them – if once they purchase them, and they find out that the products are outside of their manufacturing or supply capabilities, they will be reluctant to purchase documents in the future, perhaps depriving the Procuring Entity of a competitive source;
  - Members of the general public should be actively encouraged to take an interest in the procurement process as a means of promoting greater transparency and providing a useful check helping to ensure that the SOE's procurement legal framework is being followed.

## Single vs. Two-Stage Tendering

- 13.16. The PE can use the Two-Stage tendering when it is not feasible to formulate detailed specifications due to the complex nature of the contract in order to obtain the best performing solution. Pre-qualification as per Section 14 Pre-Qualification of Bidders may be done in such cases.
- 13.17. In the first stage, bidders shall submit proposals based on the conceptual design or performance-based specifications provided by the PE.

- 13.18. In the second stage, bidders submit final technical proposals with prices on the basis of documents revised following the first stage.
- 13.19. In a two-stage process, the PE prepares a first stage bidding document with functional performance specifications, rather than detailed technical specifications. In response, bidders offer un-priced technical proposals (i.e., no financial proposal is submitted at this time). The PE then:
- Assesses the suppliers' qualifications if prequalification has not been done;
  - Evaluates the technical proposals;
  - Indicates to the suppliers precisely what must be done to make their bid technically responsive.
- 13.20. Following the first stage evaluation, the PE prepares the memoranda of changes for each bidder and may prepare addenda to the bidding documents, including revisions to the technical requirements made in the light of the first stage technical evaluation, and initiates the second stage bidding process. During the second stage bidding process, bidders offer amended bids containing their final technical and a financial proposal. The PE then evaluates the proposals (both technical and financial) according to the criteria & method specified in the bidding documents.
- 13.21. One or single stage process is most appropriate for relatively straight-forward procurement of fairly standard technologies and ancillary services. In contrast, the additional capacity to review technical proposals, revise technical requirements and interact directly with the suppliers during the first stage make the two-stage process much more suitable for the procurement of industrial plant, complex information systems and procurements which involve extensive technical services.

## Debarment, Suspension and Ineligibility

- 13.22. A supplier, purchaser or contractor may be disqualified and/or stricken from a qualified list of approved suppliers or purchasers, without liability to the PE, if it is found, at any time, that the information submitted concerning the qualifications of the contractor was deliberately falsified.
- 13.23. A supplier, purchaser or contractor may be disqualified, suspended or stricken from a qualified list of approved suppliers or purchasers, without liability to the PE, for reasons of poor performance, pursuant to the contract documents.

## 14. Section 14 Pre-Qualification of Bidders

### Pre-Qualification Documents

- 14.1. Pre-qualification documents should enlarge on the information provided in the notification advertisement and contain a description of:
- the scope and description of the proposed procurement;
  - the estimated value of the contract and major quantities of work;
  - location of the work;
  - eligibility requirements including, eligibility requirements for domestic preference (if applicable);
  - procurement scheduling of goods or works to be procured;
  - abbreviated specifications and conditions of contract;
  - main quantities to be procured;
  - delivery or implementation schedules;
  - requirements for bid and performance securities;
  - the source of financing of the procurement;
  - the contract conditions, and at least the following if full contract conditions are not yet developed:

- payment terms;
- price adjustment provisions;
- language and governing law of the contract;
- other information in sufficient detail to enable bidders, suppliers or contractors to assess their interest and respond appropriately; and
- name and address of the Procuring Entity and of the Procuring Entity's official in charge of the procurement with statement of their roles.

## Criteria for Prequalification

- 14.2. The prequalification should be based entirely upon the technical, managerial and financial capabilities of prospective bidders to perform the particular contract satisfactorily. Where the prime contractor proposes to use the services of major specialist subcontractors, their names and experience should also be solicited.

## Evaluation of Prequalification Applications

- 14.3. The evaluation of prequalification applications should be based on compliance with quantifiable clearly identified minimum thresholds, which establish the capability of an applicant to carry out the contract satisfactorily. Applicants are prequalified if they meet all the required criteria on a pass/fail basis.

## Notification to Applicants

- 14.4. PE shall promptly notify each supplier or purchaser who participated, whether or not it has been prequalified and shall make available, upon request, the names of all who have been prequalified. Promptly after the notification of the results of the prequalification, the PE shall invite bids from all the applicants that have been prequalified.

- 14.5. Bid documents should be issued only to prequalified applicants. Verification of the information provided in the prequalification application shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

## 15. Section 15 Defining the Contract & SBDs

- 15.1. The first important step of the procurement procedure is for the Procuring Entity to respectively determine the:
- Subject of the contract;
  - Total value; and
  - Duration of the contract
- 15.2. These characteristics will determine the type of procedure to be used, and the various legal obligations in terms of publicity.

### Subject of the Contract

- 15.3. The Procuring Entity should provide a full and accurate description of the goods, services or works required.
- 15.4. The technical specifications should be clear and easily understood, and should be based on the function of the requirements. Brand names should be avoided.

### Estimating the Value of the Contract

- 15.5. The estimated value of a contract should not be calculated in such a way as to circumvent the rules on the procedures to be used.
- 15.6. A contract may not be split for the purpose of avoiding competitive tendering or circumventing threshold limits.



- 15.7. The value of a contract must not be increased to exceed the threshold value of the specific procedure followed.
- 15.8. The suppliers or purchasers' total price should include all applicable taxes, duties and other charges.

## Long-Term Contracts

- 15.9. For long-term contracts, estimating the value should take into account the following:
- The contract values must cover the total estimated cost for the intended duration of the contract.
  - In contracts for goods for 1 year (twelve months), the total value should include the residual value.
  - Where contracts are to be awarded regularly, or are to be renewed within a specified period of time, the contract value is established on the basis of the actual aggregate cost of similar contracts or service awarded over the previous twelve months or financial year, adjusted where possible for anticipated changes in value or quantity.
  - In the case of fixed-term service contracts which do not specify a total price, or supply contracts for leasing, rental or hire, purchase of products, less than twelve months in the case of services, or twelve months or less in the case of supplies, the basis for calculating the estimated value is the total contract value for their duration.
  - In the case of works contracts, the estimated contract value should include:
    - the value of the works;
    - the estimated total value of any supplies needed to carry out the works; and
    - any associated services, if made available to the contractor by the Procuring Entity.

## Lots and Options

- 15.10. In the case of contracts with lots or options, the following should apply:
- Where a contract provides for OPTIONS, the basis of the calculation must be the amount authorised, including options.
  - In the case of contracts made up of a set of products or services serving a similar purpose, and where the combined value is such that few suppliers or contractors would be able to provide them all, the contract should be divided into LOTS.
  - Any competent supplier or purchaser can tender for one or more lots.
  - The value of contract must include:
    - Financial services or banking fees,
    - interest and other types of remuneration.

## Duration of the Contract

- 15.11. All contracts must be for a limited period; this also applies to contracts covering operations of a repetitive nature, or for which the tendering procedure must be repeated at regular intervals.
- 15.12. In the case of one-off operations, the contract should be self-evident from the full, clear and detailed technical subject of the contract.
- 15.13. The duration of framework contracts may not exceed three (3) years, unless in exceptional cases this is justified by the particular subject of the contract, and authorised by the BOD of the PE.

## Types of Contract(s)

15.14. There are three main types of contracts that an entity can choose from when contracting with a potential supplier. The choice of the type of contract depends on the category and nature of the item or service that needs to be provided.

15.15. The types of contracts are as follows:

1. Supplies Contract: Refers to the physical products, articles or equipment as described in the contract, that are to be supplied to the Procuring Entity. It involves delivery of the items and transfer of ownership from the supplier to the Procuring Entity. In some cases, it may involve the items being installed and connected to utility services (water, gas, electricity) of the PE, or being tested and issued with a test certificate.
2. Service Contract: Refers to the provision of services to the Procuring Entity that facilitates, or creates change. It may be the provision of services (security guards, cleaning, pest control, etc.) or the provision of professional services or advice (consultancy services, creative/artistic services) to the Procuring Entity, through the provision of skills or knowledge based services. Some consultancy, professional, advisory, or artistic services may be difficult to measure in real quantifiable terms, as they can often be intangible or creative services.
3. Works Contract: Involves the physical construction, e.g. a new school, or road, or hospital extension; or the demolition of a physical structure such as a building. Alternatively, it may be the refurbishment/rehabilitation of a building such as old offices or school premises.

## Threshold Values

15.16. The following 4 thresholds are applicable to the PEs. The monetary values applicable to these thresholds are shown in Table 1:

- a. Threshold 1
  - Preferred procurement method: Quotation / Direct Purchase
  - Documentation of vendor selection is not required.
  - Approvals: Head of Procurement or persons authorised by Head of Procurement
- b. Threshold 2
  - Preferred procurement method: Quotation
  - A minimum of three (3) bids, written or verbal (ie. Web price lists and catalogue listings) are required, unless publicly advertised on the Government Gazette and entity website as prescribed in this policy
  - Each vendor must be provided with the same precise and accurate description of the specifications and technical requirements for the good or service.
  - Approvals: Head of Procurement
- c. Threshold 3
  - Preferred procurement method: RFQ or RFP under Open Competitive Bidding or Selective Competitive Bidding (other procurement methods may be used if conditions as prescribed in this Policy are met).
  - A minimum of one (1) responsive bid, written, is required.
  - An RFQ or RFP must be provided to each vendor with the same precise and accurate description of the specifications and technical requirements for the good or service.
  - Cost/price analysis to be conducted and shall select the vendor offering the best mix of quality, service and price for the specified need.
  - The Tender Evaluation Committee shall undertake evaluation of all Threshold 3 purchases. The Committee may use the services of independent technical experts in the technical evaluation.
  - See Table 1 for approval limits

d. Threshold 4

- Open Competitive Bidding (RFQ or RFP) should be the default method for purchases over this threshold (other procurement methods may be used if conditions as prescribed in this Policy are met).
- The Tender Evaluation Committee shall undertake evaluation of all Threshold 4 purchases. The Committee may use the services of independent technical experts in the technical evaluation.
- See Table 1 for approval limits

**Table 1: Values Applicable for Procurement Thresholds**

Applicable SOEs (PE)	Threshold 1	Threshold 2	Threshold 3	Threshold 4
Annual Procurement total below MVR 100m	for purchases below MVR 3,000	for purchases between MVR 3,000 and MVR 34,999.99	for purchases between MVR 35,000 and MVR 249,999.99	for purchases above MVR 250,000  Approvals in addition to Tender Evaluation Committee: a) Between MVR 250,000 – 999,999.99 shall be approved by MD; b) Over 1,000,000 shall be approved by BOD.
Annual Procurement total above MVR 100m	for purchases below MVR 3,000	for purchases between MVR 3,000 and MVR 99,999.99	for purchases between MVR 100,000 and MVR 499,999.99	for purchases above MVR 500,000.  Approvals in addition to Tender Evaluation Committee: a) Purchases between MVR500,000 – 2,499,999.99 shall be approved MD b) All purchases above 2,500,000 shall be approved by BOD.

## Selecting the Right Bidding Documents

- 15.17. For the purposes of this section the term Bidding Documents also includes documents for consulting services (RFPs). The task of determining what the PE is actually setting out to procure, i.e. is it goods, works or services, is also essential as each have their own specific bidding documents. This is normally, but not always, a very simple task – for example, when does the procurement of goods with an element of installation services cease to be procurement of goods and become procurement of works? Or could the procurement of general services including the acquisition of equipment become procurement of goods?
- 15.18. There is no hard and fast answer. However, the simplest way to answer the question will usually be for the PE to ask itself “Whom do I expect to bid? Suppliers, contractors or consultants?” in view of the main activity to be carried out. Depending on the answer given, the PE will have identified the procurement of either goods, works or services.

## 16. Section 16 Tendering Methods

- 16.1. Contract packaging and scheduling are interlinked with the choice of procurement methods. In most cases, arriving at the procurement plan requires iterative adjustments in all three of these aspects. It is impossible, for example, to think about what contract packaging would be appropriate, without having in mind how this affects the choice of the procurement method and the time that will be needed to carry it out.
- 16.2. The choice of procurement method depends on:
- The nature of the goods, services or works to be procured;
  - The value of the procurement (threshold);
  - Critical dates for delivery; and
  - Transparency of procedures proposed.

## Open Tendering Procedure

- 16.3. Open tendering is the preferred method recommended by PCB to be used by all Procuring Entities, and means that the procurement or sale of goods, works or services is open to any interested local or foreign contractor (where appropriate). Contractors shall show proof of fulfilment of tax obligations prior to contract award. Procurement offered through open tender must be advertised on the Government Gazette and is recommended to publish on the website of the PE and the MOF Procurement Portal.

## Selective Competitive Bidding/Restricted Tendering Procedure

- 16.4. In this method, PEs reach selectively to competent parties or persons, without any public announcement, requesting for participation in tendering for procurement of goods, works or services. Bidders are selected based on their proven experience or recognized ability to undertake a particular activity. RFQ or RFP may be used under this method of procurement.
- 16.5. Criteria for selecting contractors, suppliers or purchasers should include:
- Nature of the goods/services/works required;
  - Relevant experience;
  - Past performance record on similar contracts;
  - Current commercial and financial resources;
  - Capabilities with respect to personnel, equipment, and/or construction or manufacturing facilities;
  - Required licensing and professional registrations.
- 16.6. Procurement offered through selective tender is not advertised. Procuring entities may award their contracts by limited tendering procedure, only in the following cases:
- It is impractical due to time/cost constraints to invite open tenders; or

- Only a small number of suppliers can participate in the bidding process due to the nature or purpose of the contract; or
- When Open Competitive Bidding is regarded as inappropriate; or
- Where open tenders are invited and no offer has been received, or any offer received is not acceptable.

## Single Source or Direct Contracting

16.7. Single Source or Direct Contracting relates to a situation where goods, works or services are available from only one source. The request to use this method of procurement must be accompanied by a convincing justification, and where appropriate, the cost benefits, and must be approved by the Procuring Entity's BOD.

16.8. Single Source or Direct Contracting may be used only where:

- The item falls within Procurement Threshold 1; or
- The item is available only from a single source (e.g. patent/copyright ownership, exclusive manufacturers/distributors/agents, spare parts for existing equipment); or
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- After solicitation of a number of sources, competition is determined inadequate.

## Shopping Method (Quotations)

16.9. "Shopping" is obtaining quotations (a minimum of 3) from parties providing the goods or services and making comparison between the quotations and obtaining the goods or services from the most suitable party, without a public announcement.



- 16.10. This method is allowed only for small purchases, i.e. for securing services, supplies, or other goods that do not cost more than Procurement Threshold 2 or in cases of emergency. PEs should obtain price or rate quotations from an adequate number of qualified sources to ensure that the selection process is competitive.

## Procurement for General Services

- 16.11. It is important for the Procuring Entity to distinguish between Consulting Services and other types of services in which the physical component of the activity is crucial. These other types of services often involve equipment-intensive activities using established technologies and methodologies that have measurable physical outputs – for example, field investigations and surveys such as cartography, aerial surveys, satellite mapping, drilling, computer services and installation of information systems, or plant operation and maintenance. These services are procured through the following procedures for procurement of goods and works.
- 16.12. Depending on the objectives and characteristics of the assignment, the Procuring Entity should determine the Consultant's selection methods and procedures. Below are examples of activities in each services category:
1. General Services – (The provision of general services, which may be with, or without, the provision of accompanying management services):
    - Gardening
    - Pest Control
    - Security Guards, Patrols
    - Waste Collection
    - Removals
    - Catering
    - Cleaning, Window Cleaning
    - Collection and Delivery

2. Consulting Services - (Generally classified as the provision of intellectual skills, or of an advisory and/or an artistic nature):
  - Advisory (e.g. policies relating to tourism or health sectors)
  - Studies (e.g. environmental impact, population, health, education, market prices)
  - Design (e.g. paintings, sculptures, architecture, advertising)
  - Institutional services (procurement, taxation, budgets, police, pensions, customs)
  - Training (e.g. music, sports, educational)
  - Other services of intellectual and professional nature.

## 17. SECTION 17 Emergency Procurement

- 17.1. Emergency requests shall be managed by the most competitive and appropriate method the exigency permits (i.e.: open competitive bidding, selective bidding, direct purchase, in that order) irrespective of the Procurement Threshold.
- 17.2. Emergency procurement can be used only under the following circumstances:
  - If encountered with an incident that may risk a human life or have an adverse impact on the living standard of a community or endanger the environment; or
  - Encounter a situation that may interrupt an essential service to the public; or
  - Company properties and buildings or goods and buildings for public use are at risk of danger that necessitates immediate action to rectify or to restore it to the original condition.
  - If emergency procurement rules are to be applied for any other reason, BOD approval must be obtained.

- 17.3. When procuring under this category the PE should:
- Submit an emergency declaration form to Procurement Department with justification of the nature of the emergency; and
  - Be approved by the Tender Evaluation Committee and the MD/CEO or BOD as required.

## 18. Section 18 Bid Opening

### Public Bid Opening

- 18.1. International best practice calls for all tenders to be publicly opened by the appropriate Committee depending upon the value of the procurement.
- 18.2. This is a very important aspect of the whole procurement process. It is through public opening that the public, whose money is funding the procurement, can see that the Procuring Entity is following its obligation to ensure the maximum of free and fair competition in procurement. Public Bid Openings should always be exactly that, i.e. public, with anyone who wishes to attend allowed to do so. Procuring Entities are also encouraged to invite Civil Society Organizations for key procurement cycle activities, such as attending Bid Openings and Contract Signing proceedings.
- 18.3. Public bid openings are also important in that they help to reassure bidders and consultants that the procurement process is being undertaken fairly and that all who submit an offer have an equal opportunity for securing a contract. This encourages participants to compete and results in a higher number of more competitive bids.
- 18.4. The time set for the bid opening should, without exception, be that is set as the deadline for submission, with no gap between the two.

## Bid Opening Committee / Team

- 18.5. The Bid Opening Committee should be chaired by a member of the Tender Evaluation Committee. The Chair is responsible for reading out the relevant details of each bid or proposal. One member of the Committee physically opens the bids, passes them to the Chair, and records details in the minutes (if there are a large number of bids, another person can be tasked with taking down the minutes). The 2<sup>nd</sup> Member will be responsible for checking the presence, amount and form of any securities that are required.

If there is no formal "Bid Opening Committee" refer Section 9 Functions of Ad-Hoc Tender Committees for alternative arrangement.

## Bid Opening Steps

- 18.6. At exactly the time scheduled for the deadline for submission of bids, the Chairperson of the Bid Opening Committee should declare the expiry of the deadline for submission of bids and that no further bids will be accepted or considered. From this moment on, no new bids can be accepted for any reason whatsoever. Late bids will not be accepted but will be returned to the bidder.
- 18.7. The Chairperson should examine the seals of the packages to make sure that they have not been tampered with, holding up each package so that attendees can see that it remained unopened. Each unopened package will then be placed on the top table. Packages shall receive consecutive numbers and shall be authenticated by the initials of the Chairperson and Committee members present. Any corrections, deletions or additions in a tender shall be initialled by the Chair.
- 18.8. Any attendee who wants to take a closer look at any of the envelopes submitted may do so. However, attendees should never be allowed to touch any of the bids or enter into a conversation with any member of the Opening Committee that cannot be clearly heard by all and recorded in the bid opening minutes.

- 18.9. The outer packaging and envelope of each bid will then be removed, making sure that no documents are discarded that should be retained - like courier dockets or outer envelopes - as evidence of how a bid was marked and sealed. The unopened original and copy bid envelopes of each bidder will be placed in a pile together with the original on top and copies underneath.
- 18.10. The Secretary to the Committee will identify any envelopes marked either "WITHDRAWAL" or "MODIFICATION", removing the outer packing and envelope in the same way as the main bids, discarding nothing that should be retained - like courier dockets or outer envelopes - as evidence of how a bid was marked and sealed, and place the unopened inner envelope with the corresponding Bid.
- 18.11. The Secretary to the Committee will then open in turn each envelope (if any) marked "WITHDRAWAL". Any bid with what appears to be a valid withdrawal notice will not be opened and the original and all copies of the bid will be returned unopened to the bidder. If there is a representative of the bidder present, he/she should be asked to confirm that the bid is to be withdrawn.
- 18.12. The Secretary to the Committee will then open each original bid, in turn passing it the Chair who will announce the following details in the presence of all those who are present:
- Name of the bidder or consultant;
  - Country of the bidder or consultant;
  - Which lot(s) are offered;
  - Details of any modifications or withdrawals;
  - Total bid price (for goods and works only);
  - Discounts offered, if any;
  - The presence or absence of the bid securing declaration or bid security (as applicable).
- 18.13. The Chair will then pass the bid to a Member of the Committee who will announce the type and amount of the bid security, if applicable.

- 18.14. Except for the late Bids, no bid is to be rejected at a bid opening, even if it appears to contain a major deviation such as the absence of a bid securing declaration or bid security. Any apparent major deviation that is noted during the bid opening should be announced and minuted. Late bids, received after the stipulated deadline for bid submission, shall be rejected and returned unopened to the bidder.

## Consultants' Proposals

- 18.15. Users should take note that only the technical envelopes of Consultants' proposals should be opened at the first opening. The financial envelopes, still sealed, must be placed with the Secretary of the Tender Evaluation Committee. Only when the technical evaluation is completed, will the envelopes be called, and all Consultants who submitted a proposal invited to attend a public opening of the financial envelopes.
- 18.16. When inviting Consultants to the public opening of financial proposals, they should be informed of their technical points score based on the evaluation criteria in the RFP and whether or not their financial proposal will be opened. For QCBS, least cost selection and selection under a fixed budget, all financial proposals achieving the minimum points score required will be opened. In the case of QBS, only the highest ranked technical proposal will have its financial proposal opened, but the financial proposals of other Consultants are retained until a contract is satisfactorily agreed with the winner.

## Bid Pages to be initialled

- 18.17. Once a bid or proposal has been opened and its contents announced, the original document should be initialled by the Chair and any other members of the Bid Opening Committee as follows:

- a) Goods and Works:
  - The Bid Form

- The Price Schedule.
- The Covering Letter
- Any other pages that are deemed necessary

b) Services, Technical Proposals:

- Covering Letter
- Each page of the Workplan
- The first page of each CV submitted
- Any other pages that are deemed necessary

c) Services, Financial Proposal:

- Financial Proposal Submission Form
- Breakdown of costs by activity
- Any other pages that are deemed necessary.

18.18. The reading should be from the original version of each bid and proposal, and the actual amounts and other key details read-out should be circled for later verification.

18.19. The Bid Security must never be marked in any way. Certain types of financial documents become invalid if they are marked, annotated or amended in any way from their original state.

## Questions from Attendees

18.20. Representatives will sometimes ask for the details to be re-announced. This shall be complied with within reason. The Opening Committee team should be aware that representatives may take notes, and that it is therefore essential that information should be conveyed and recorded clearly.

18.21. A brief time shall be allowed after the envelopes have been opened for questions from the audience/attendees of the public bid opening.

- 18.22. However, questions regarding the specific details of any bid shall not be answered unless it is simply a request to repeat an earlier announcement. Specific discussions should not be entered into with any of the representatives concerning any of the bids or proposals. It is acceptable, if asked, to provide a general timeframe of how long the evaluation may take.
- 18.23. Any question to which the answer is given in the bidding documents should be answered only with the simple statement: "Please refer to the bidding documents".

### The End of the Opening Session and Minutes of Bid/Proposal Opening

- 18.24. Before the session is declared closed and representatives asked to leave, the Secretary to the Committee should carefully check all discarded packaging, envelopes, boxes, etc., to ensure that no documents have been overlooked. In the event that an important document, modification, etc., or entire bid has been overlooked, it cannot be subsequently included in the evaluation unless it was identified and the appropriate announcements made during the bid opening.
- 18.25. When the details of the last bid and proposals have been read, and all questions answered, the Chair should declare the Opening session complete.
- 18.26. Before the conclusion of the bid opening proceedings, the Committee must prepare minutes documenting all the information announced and any questions asked and responses given, in accordance with the provisions of the above paragraphs. The minutes shall be signed in original by all those present at the bid opening. At the end of the bid opening session, copies of the minutes shall be provided to the bidders and community representatives present at the bid opening.



- 18.27. The attendees should be encouraged to leave the room as quickly as possible and members of the Opening Committee should not engage in any formal or informal discussions with them. As soon as the evaluation process is underway, there should be no contact whatsoever with bidders or Consultants other than written requests for clarification and responses to these requests.
- 18.28. The opened bids, which are highly confidential, should now be transferred to the safe lock up and placed under lock and key until the evaluation process starts.

### Formulation of the Evaluation Plan

- 18.29. The Secretary for the Tender Evaluation Committee will prepare the Evaluation Plan. The purpose of this Evaluation Plan is to provide guidance to Procuring Entity's officers and advisers involved in the evaluation of tenders submitted in response to a Pre-qualification or Call for Tender.
- 18.30. The members of the Tender Evaluation Committee and other officers and advisers involved in the evaluation must be fully prepared for the evaluation process.
- 18.31. In order to ensure a confident and well-prepared approach to the evaluation, the Tender Evaluation Committee and other officers and advisers involved in the evaluation must, as a minimum:
- Read and understand the tender document;
  - Understand the relationship between the tender evaluation criteria and the tender requirements in the tender document; and
  - Understand (as relevant to them) the evaluation processes outlined in the Evaluation Plan.
- 18.32. In addition, the Evaluation Committee, all other officers and advisers involved in the evaluation process, must be fully aware of, and comply with, all requirements of these Procurement Guidelines.

## Evaluators

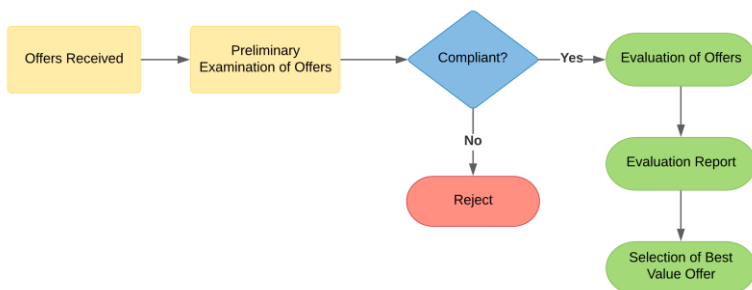
- 18.33. To ensure broad and balanced perspectives on offers, especially for complex and significant procurements, usual Evaluators would be a member of the Procuring Entity and the End User community. Evaluation reports must be retained on the Contract file.

## 19. Section 19 Bid Evaluation

### General

- 19.1. Bid Evaluation is a critical step in the procurement cycle. Bid evaluation is the step that is most easily manipulated if one wants to favour a particular bidder. Thus, all Procuring Entities' Tender Evaluation Committees are advised to strictly adhere to the procedures provided in these Guidelines.
- 19.2. The basic sequence for bid evaluation is the same for all general services, goods and works, and consists of the following steps, as also shown in Figure 2 below:
- Preliminary examination;
  - Determination of bid responsiveness;
  - Correction of arithmetic errors;
  - Quantification of omissions and deviations;
  - Application of evaluation criteria;
  - Comparison of bids; and
  - Preparation of evaluation report.

*Figure 2 – Overall Evaluation Process*



## Preliminary Examination (Goods and Works)

- 19.3. The bid examination phase begins during the public bid opening with a preliminary examination of the bids. After the bid opening has been completed, as its first step in the evaluation, the Tender Evaluation Committee should make a thorough examination of all responsive bids received.
- 19.4. The purpose of the preliminary examination is to identify and reject bids and proposals that are incomplete, invalid or substantially non-responsive to the documents and therefore are not to be considered further. To this end, the evaluators shall ascertain whether the bids and proposals received are fulfilling the requirements described below.

## Tender Validity

- 19.5. The following checks relating to verification, eligibility, bid security, and completeness of tender should be applied to assess the validity of the tender.

- 19.6. Verification. Attention should be directed toward deficiencies that, if accepted, would provide unfair advantages to the Tenderer, such as missing items in the Bill of Quantities or quoting an inferior product. Sound judgment must be used: for example, simple omissions or mistakes which have occurred by simple human error should not be grounds for rejection of the Tender. Rarely is a Tender perfect in all respects. However, the validity of the Tender itself, for example, its signatures, must not be in question. If the Tenderer is a joint venture, the joint venture agreement must be submitted; in addition to any documentation required of the contractor or manufacturer itself. All copies of the Tender should be compared with the original and corrected accordingly, if necessary. Thereafter, the original tender should be kept in a safe location in the Procuring Entities' offices, and only copies should be used for the evaluation.
- 19.7. Eligibility. This confirms the conditions considered essential for the contractors to fulfil the contract. The tenderer (including all members of a joint venture and sub-contractors) may be disqualified if affiliated with a firm that has provided related consulting services on the project, or lacking legal and financial autonomy.
- 19.8. Bid Security. The bidding document may require submission of a tender/bid security. If so, the bid security must conform to the requirements of the Bidding Documents, and it must accompany the tender. If the bid security is issued as a bank guarantee, it must be consistent with the wording of the bid security form provided in the Bidding Documents. Furthermore, securities for an amount smaller or for a period shorter than the one specified in the Bidding Documents are not acceptable. The security for a tender submitted by a joint venture should be in the name of all of the partners of the joint venture.

- 19.9. Completeness of Tender. Unless the Bidding Documents have specifically allowed partial tenders — permitting Tenderers to quote for only select items or for only partial quantities of a particular item — tenders not offering all of the required items should ordinarily be considered non-responsive. However, under works contracts, missing prices for occasional work items are considered to be included in prices for closely related items elsewhere. If any erasures, interlineations, additions, or other changes have been made, they should be initialled by the Tenderer. They may be acceptable if they are corrective, editorial, or explanatory. Missing pages in the original copy of the tender may be cause for rejection of the tender.

## Qualification Requirements

- 19.10. All tender evaluations shall consider the following factors:
- Capacity: Adequate and available resources to undertake the contract.
  - Experience: Relevant experience to implement the contract.
  - Integrity: Is the company correctly registered, was the Tender correctly signed and is there a conflict of interest?
  - Past performance: Has the Tenderer got a good history?
  - Financial status: What is the financial standing of the company and does it have the funds to undertake such a contract?
  - Plus, other such matters considered relevant.

## Substantial Responsiveness

- 19.11. Major deviations to the commercial requirements and technical specifications are a basis for the rejection of Tenders. As a general rule, major deviations are those that, if accepted, would not fulfil the purposes for which the tender is requested, or would prevent a fair comparison with tenders that are properly compliant with the bidding documents. Examples of major deviations include:

- Stipulating price adjustment when fixed price tenders were required;
- Failing to respond to specifications by offering instead a different design or product that does not offer substantial equivalence in critical performance parameters or in other requirements;
- Phasing of contract start-up, delivery, installation, or construction not conforming to required critical dates or progress markers;
- Sub-contracting in a substantially different amount or manner than that permitted;
- Refusing to bear important responsibilities and liabilities allocated in the bidding documents, such as performance guarantees and insurance coverage;
- Taking exception to critical provisions such as applicable law, taxes and duties, and dispute resolution procedures;
- Those deviations that are specified in the Bidding Documents as requiring rejection of the tender (such as, in the case of works, participating in the submission of another's tender other than as a sub-contractor).

19.12. Tenders that offer deviations may be considered substantially responsive — at least as to the issue of fairness — if the deviations can be assigned a monetary value that would be added as a penalty during the detailed evaluation process and if such deviations would be acceptable in the eventual contract.

19.13. The results of preliminary examination should be summarised in the Evaluation Report conducted by the Committee.

## Correction of Arithmetic Errors

- 19.14. Bids should be checked carefully by the Tender Evaluation Committee for arithmetic errors in the bid form to ensure that stated quantities and prices are consistent. The quantities should be the same as stated in the bidding documents. The total bid price for each item should be the product of the quantity and the quoted unit price. If there is a discrepancy, the quoted unit price shall govern in the recalculation. Prices spelled out in words shall take precedence over numeric quotations in case of differences. The Tender Evaluation Committee should correct all arithmetic errors and notify each bidder of the detailed changes. The Bidder must accept such arithmetic corrections or its bid will be rejected.

## Detailed Examination of Tenders

- 19.15. Only those tenders surviving preliminary examination need to be examined in this phase. Evaluation will now include the following process:
1. Corrections for Errors. The methodology for correction of computational errors should be described in the Bidding Documents. The read-out tender prices and their corrections should be noted in the Evaluation Report. The corrections may be considered binding on the tenderer. Unusual or large corrections that could affect the comparative ranking of Tenders should be explained in footnotes. If necessary, the Tenderer may be asked to clarify these corrections.
  2. Corrections for Provisional Sums. Tenders may contain provisional sums set by the Procuring Entity for contingencies or for nominated subcontractors, etc. As these sums are the same for all Tenders, they should be subtracted from the read-out prices.

3. Modifications and Discounts. In accordance with the Bidding Documents, tenderers should be allowed to submit, prior to tender opening, modifications to their original Tender. The impact of modifications should be fully reflected in the examination and evaluation of the tenders. These modifications may include either increases or discounts to the tender amounts that reflect last-minute business decisions. Accordingly, the original tender prices should be modified at this point in the evaluation. Discounts offered in accordance with the Bidding Documents that are conditional on the simultaneous award of other contracts or lots of the contract package (cross-discounts) shall not be incorporated until the completion of all other evaluation steps. Any discount expressed in percent must be applied to the appropriate base specified in the tender.

## Post-Qualification

- 19.16. The Tender Evaluation Committee should conduct a post-qualification of the lowest evaluated responsive Tenderer, to determine the Tenderer's physical capability to perform the contract. Using the criteria specified in the Bidding Documents, this review should include an assessment of the Tenderer's technical, financial and physical resources available to undertake the contract, including his current workload.
- 19.17. If pre-qualification was conducted, the lowest evaluated responsive Tender should be recommended for the award of contract, unless the Tenderer's qualifications have since materially deteriorated, or if the Tenderer has since received additional work that reduces the available capacity.
- 19.18. Where pre-qualification has not taken place, the lowest evaluated responsive Tender should be subjected to post-qualification, according to the procedures described in the Bidding Documents.



- 19.19. If the lowest evaluated responsive Tenderer fails post-qualification, his Tender should be rejected, and the next ranked Tenderer should then be subjected to post-qualification examination. If successful, this Tenderer should receive the award. If not, the process continues for the other Tenderers.
- 19.20. The rejection of a Tender for reasons of qualification requires substantial justification, which should be clearly documented in the attachments to the Evaluation Report.
- 19.21. A history of poor performance may be considered a justification for failing post-qualification if the Tenderer is unable to demonstrate that steps have been taken to resolve previous problems.

## **20. Section 20 Contract Award**

### **Determination of Award**

- 20.1. The Tender Evaluation Committee will make its final comparison of tenders for works and for goods, with the corrected tender prices, together with adjustments for omissions, deviations, and specified evaluation factors. The Tenderer which meets the requirements of the Bidding Documents and has the lowest evaluated responsive bid or combination of bids should be recommended as the preferred tenderer.

## Disagreement among Tender Evaluation Committee Members

- 20.2. If one or more of the Tender Evaluation Committee members has provided an evaluation which is significantly different to the other members, then the Tender Evaluation Committee Chair must convene all Committee members to address the issue. The dissenting member must justify the evaluation. If the dissenting member subsequently changes the evaluation, the change must be noted in the Evaluation Report. However, if the dissenting member does not wish to change the evaluation, then this must also be noted in the report. In this case, the majority decision of the evaluation team must be adopted.

## Recommendation for Award and Evaluation Report

- 20.3. After the completion of the evaluation process, as soon as possible after tender opening, preferably no later than three (3) weeks prior to the expiration of the tender validity, the Tender Evaluation Committee presents to the Head of Procurement Department, bid evaluation report setting out the process by which the Tender Evaluation Committee evaluated the bids received in response to the procurement process.
- 20.4. The evaluation report should be prepared using the standard format for the evaluation of Goods or Works, with relevant narrative and should include:
- A summary of the Tenders received and opened;
  - The results of the preliminary examination;
  - The results of the technical evaluation;
  - Reasons why any Tenders were declared non-responsive. (Attach copies of selected pages from Tenders if necessary, to show examples of objectionable features);
  - Details of any non-material deviations, which were accepted and the way in which they were quantified and taken into account in the financial evaluation;

- The evaluated price of each Tender, showing any corrections or adjustments to the tender price and any conversion to a common currency;

20.5. The evaluation report should also contain an explanation of:

- Any inconsistencies between prices and modifications to prices read out at Tender opening;
- Any substantial corrections for arithmetic errors which may affect the ranking of Tenderers;
- Any additions, adjustments, and priced deviations that may affect the ranking of Tenderers.
- Any cross-discounts not read out and recorded at the Tender opening;
- The ranking of the Tenders, according to their total evaluated price;
- A statement of the lowest evaluated substantially responsive tender, for each lot where applicable, clearly establishing the actual amount of the contract award;
- Confirmation that the total price quoted by the lowest evaluated responsive Tender is acceptable compared with the original estimated cost or the procurement;
- The results of any post-qualification examination; and
- A recommendation to award the contract or contracts to the lowest evaluated responsive Tenderer or combination of Tenderers, or other appropriate recommendation, such as the cancellation of the procurement process.

20.6. The Tender Evaluation Committee may recommend that all of the Tenders be rejected if:

- None of the Tenders are found to be responsive;
- All of the Tenders are unreasonably high in price compared to the cost estimate;
- None of the Tenderers are qualified;
- There is deemed to be an absence of competition; (however lack of competition is not usually decided solely on the basis of the number of Tenderers).

20.7. The following are to be attached to the Evaluation Report:

- Copies of any correspondence with tenderers who raised objections to the Tender or evaluation process, together with detailed responses;
- Copies of any letters from tenderers requesting clarifications, and responses by the Procuring Entity, and Tender clarifications requested by the Evaluation Committee and Tenderer responses;
- Any separate evaluation report from a consultant, if one was engaged for this purpose;
- All required Tables and supporting documents;
- Declaration on Ethical Conduct and Fraud and Corruption.

20.8. The tender Evaluation Report should be double-checked, signed and complete before submitting to the Head of Procurement Department. The Evaluation Report forms a part of the record of procurement proceedings.

## **Review and Approval of Evaluation Report**

20.9. The Head of Procurement of the Procuring Entity in accordance with the legal framework thresholds, will review the Evaluation Report and recommendations presented in the Evaluation Report.

## **Pre-award Notice and Complaints Process**

20.10. Procuring Entities must issue a 'notice of winning bidder' to all the participating bidders informing the winning bidder prior to awarding the contract. The PEs must also provide minimum five (5) days' notice for the bidders to file any clarifications or complaints regarding the procurement. The notice must include as a minimum information, project name; announcement number; bid submission date; number of participating bidders; name of successful bidder; names of unsuccessful bidders, and the details on how to file clarifications or complaints.

- 20.11. Any clarifications or complaints received must be reviewed and addressed by the Tender Evaluation Committee prior to awarding the contract.

### Extension of Tender Validity

- 20.12. The duration of tender validity is specified in the Bids Documents and should be confirmed in the signed Tender Form submitted by each Tenderer.
- If circumstances occur in which award cannot be made within the original tender validity period, extensions in writing should be requested from Tenderers, in accordance with the Tender Documents;
  - The evaluation and award of contract should be completed within the period set for the validity of tenders (usually 90 days). The date for expiry of tender validity must be monitored and attention drawn to this deadline not less than two weeks before the expiry date;
  - If, due to unforeseen circumstances, the task cannot be completed within the set period, the Tender Evaluation Committee may contact tenderers to seek their agreement to an extension of the tender validity;
  - Tenderers who refuse this request may withdraw their Tender without incurring any penalty, but tenderers who agree to an extension will also be required to extend their Tender Securities for an appropriate period;
  - When an extension of tender validity period is requested, tenderers shall not normally be requested or be permitted to change the quoted price or other conditions of their tenders. However, the Tender Documents may provide for an appropriate price adjustment mechanism when requests for second or subsequent extensions are made, to reflect changes in the cost of inputs for the contract over the period of extension.

## Negotiation, Goods and Works

- 20.13. In general terms, there are no grounds for negotiation in the procurement of goods and works. Price negotiations with bidders on a competitive bid are not allowed. When procurement is undertaken on the basis of direct contracting (DC), the Procuring Entity will determine the prevailing market rate for the goods or works based on evidence of the price previously paid by the PE; the price paid for similar goods or works; or the cost of the same goods or works supplied to a different purchaser. The PE will only hold negotiations on price under direct contracting when the evidence suggests that the price quoted is not in line with the prevailing market rate.
- 20.14. The PE's right to vary quantities prior to contract award is not a negotiable issue. Either it is exercised within the tolerances allowed in the bidding documents, or it is not. The PE's right to vary quantities and the percentage limit for increase or decrease in quantities must be specified in the Bidding Documents.
- 20.15. No change to the substance of the bidders' bids is ever sought or permitted – if the bid requires significant negotiations to render it acceptable it should have been rejected during the evaluation as non-responsive. Negotiations are not permitted that:
- Alter the scope, substance terms of conditions of the bid or bidding documents;
  - Would make a non-responsive bid responsive;
  - Alter unit prices in anyway;
  - Alter the contract price beyond that allowed in the bidding documents for variation in quantities;
  - Change the technical specifications offered in the bid;
  - Alter the delivery schedule, unless the bidder agrees to accelerate delivery at no cost – however a bidder may refuse to do so;
  - Significantly alters the project or delivery sites – minor changes such as a change of location within the same city or island is acceptable, delivery to a different city or island is not.

- 20.16. The limitations on negotiations do not mean that the contract can be awarded at unreasonably high prices. If the proposed contract price exceeds the pre-bid cost estimate by a substantial margin, the possible causes for the cost differential should be assessed by the PE and approval of the Tender Evaluation Committee should be obtained on the proposed next steps, which may include re-invitation of bids after revision of the bidding documents to address the identified causes.
- 20.17. Face-to-face negotiations can only be conducted by the Tender Evaluation Committee and minutes of negotiation must be taken and signed by both the PE and the bidder. Negotiations conducted through correspondence must pass through the Chair of the Tender Evaluation Committee and be signed by them.
- 20.18. The Evaluation Report must include details and scope of any proposed negotiations before negotiations can be conducted.

## Award and Signing of the Contract

- 20.19. The Procurement Department shall prepare the notification of award that will establish the intent to formally sign a contract between the Procuring Entity and the successful bidder (a copy of the award letter is kept in the procurement file). The notification of award must be received by the successful bidder prior to the expiry of the period of bid validity.
- 20.20. All contract awards will be to persons or firms deemed to be the preferred bidders according to criteria specified in the bidding documents, provided they demonstrate their qualification to perform the contract, if so awarded.
- 20.21. The award notification letter must contain:
- The date;
  - The name of the winning bidder;
  - The title of the Contract;

- The description of the goods, service or works to be provided;
- The tender reference number;
- The price that was announced at the bid opening, or the revised calculated or award price; and
- Must be signed by either the Head of the Procurement Department of Procuring Entity or delegated agent.

20.22. The successful bidder is required within 10 days of the award notification to confirm acceptance (or otherwise) of the award in writing to the Procuring Entity of their intention to accepting or declining the award of the contract.

20.23. In the absence of any other conditions of contract effectiveness such as the opening of a letter of credit or advance payment, the date of signing the contract will be the effective date of the contract, i.e. the date from which both parties' contractual obligations start such as delivery periods.

## Preparation of the Contract

20.24. Any Contract arising out of consideration of tenders shall be prepared by the Procurement Department, in consultation with the PEs legal officer to ensure, from the legal point of view, the document is in order.

20.25. The Form included in the bidding documents is always the basis of the actual contract as it is the basis on which bidders prepared their bids.

20.26. The Tender Evaluation Committee will edit the Contract Form to include:

- The date;
- The name and address of the PE;
- The name and address of the Supplier or Contractor;
- A brief description of the goods, works or services to be contracted;
- The total contract price in words and figures;



- Any other specific information required paying particular attention to the special conditions of contract ensuring that contract specific information is inserted, such as the name of the PE's project manager, the recipient of notices on the part of a supplier or contractor, etc.

## Signing of the Contract

- 20.27. Three copies of the contract should be prepared, and each contract should be signed by signing authority based on the value of the contract. The contract, already signed, will accompany the notification of award. Suppliers, purchasers and contractors are required to sign and witness all three copies, retaining one original copy for their own records, and returning the other two to the PE. National suppliers, purchasers and contractors will be allowed one week to return the signed contract forms and international ones will be allowed three weeks.

In the event that the supplier, purchaser or contractor is an international person, the contract form shall be sent to them via a reputable international courier.

- 20.28. Where the contract obligations exceed 12 months or contract value is over MVR1million, one original copy of the contract is to be filed, with other original contracts in a secure fireproof location.

## The Performance Security

- 20.29. Procurement of goods, works and general services may require suppliers and contractors to provide performance securities in the form and amount set out in the bidding documents.
- 20.30. The performance security is required to ensure that the supplier or contractor fulfils its obligations under the contract, and is intended to protect the PE against default on the part of the supplier or contractor.

- 20.31. The amount will be determined in the special conditions of contract and, as a general note, should be the maximum amount deductible for liquidated damages for delay.
- 20.32. The notification of award shall outline the requirements in respect of the performance security in terms of amount, form and validity. Depending on what has been stated in the bidding documents, the security will:
- Be in a fixed amount, expressed as a percentage of the contract value valid thirty (30) days beyond the expiry of any warranty or latent defects period;
  - Be in a fixed amount, expressed as a percentage of the contract value valid for thirty (30) days beyond the delivery date or the works completion date, and then in a lesser amount valid for thirty (30) days beyond the expiry of any warranty or latent defects period, or
  - Be in a fixed amount, expressed as a percentage of the contract value valid for thirty (30) days beyond the delivery date or the works completion date to be replaced with retention monies taken from stage payments made to the supplier or contractor.
- 20.33. Other forms of procurement for goods and works such as shopping do not require the supplier or contractor to provide a security.
- 20.34. The successful bidder should be required to provide the performance security within twenty one (21) days of receipt of the notification of award/letter of acceptance in the case of international suppliers/contractors. National suppliers/contractors will be allowed fourteen (14) days as there is no international transit time to take into account.

## **Failure of a Bidder to Sign the Contract or Provide the Performance Security (Bond)**

- 20.35. Failure of the successful bidder to return the signed contract or provide a performance security when one is required constitutes sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid.
- 20.36. In which event, the Tender Evaluation Committee may, after review of the Evaluation Report recommend award of the contract to the next lowest evaluated and qualified bidder if the price is reasonable, or re-invitation of bids.

## **Advance Payments**

- 20.37. From time to time, the contract will allow for an advance payment to be made to a supplier or contractor. No advance payment must ever be made without first securing an advance payment guarantee (except in the case of consultants, who are not expected to provide an advance payment guarantee).
- 20.38. The advance payment amount will be stated in the bidding documents and should generally not be more than 15% of a contract's value and should be an accurate estimate of the supplier or contractor's mobilisation and start-up expenses. Advance payments are amortised, i.e. set-off in equal amounts, against following payments until fully off-set.
- 20.39. Advance payments under 15% may be approved by HOD Procurement. Advance payments over 15% must be approved by MD.

## **Notification of the Unsuccessful Bidders**

- 20.40. Upon receipt of the signed contract forms and the successful bidder's performance security (when required), the PE will:

- Notify the unsuccessful bidders that their bids have been unsuccessful;
- Return the bid securities of the unsuccessful bidders.

## Publishing the Award

- 20.41. Information on contract awards shall be published in accordance with Section 10 Organisation and Responsibilities of the Tender Evaluation Committee, Paragraph 10.5 of these Guidelines.
- 20.42. All other information of the evaluation process should be held in the strictest confidence and not released to any third party, with the exception of those required under the Laws of the Maldives.

## Debriefing Unsuccessful Bidders

- 20.43. In the interest of transparency and openness, it is normal practice to debrief each participating bidder of the results of their bid. Debriefing is a mandatory requirement for every PE. The bidders/contractors will have incurred costs in preparing and developing their bid and therefore, at the very least, it is only good manners to inform them of the outcome of the results and why they were not successful. It demonstrates the PE's commitment to good practice and transparency, and also shows an appreciation of the efforts that a bidder/contractor has gone to in preparing their bid.

- 20.44. The first element to ascertain in debriefing is the accuracy of the evaluation report, the range of the allocated points, and how those points were awarded. The PE should be fully confident in the results of the Evaluation Report, how it was evaluated, the spread of the points, the strengths and weaknesses of each bidder, and finally the conclusions to which the evaluators came to. Did the evaluators fully understand how the points were to be allocated and the standard of measurement? Could there be a challenge on the assessment of points? Did the points reflect the true ranking position? If there is a weakness in the Evaluation Report and its conclusion, it will be very difficult for the debriefing panel to support that conclusion.
- 20.45. After selection and award, a letter must be issued to all participants thanking them for their interest and indicating who was awarded the contract.
- 20.46. Debriefing of those bidders who submitted tenders takes place only after the contract is awarded, or the procurement is otherwise concluded, and after all parties have been informed of the results of the tender. After the award of contract, there is no reason to conceal comparative pricing information, as the bidders were probably present at the bid opening and already know the spread of prices. The meeting itself should take place at the earliest mutually convenient time.
- 20.47. The Bidders should be informed that it is only their own submissions that will be discussed and that an opportunity will be given for them to air their views. It is wise to include a clause saying that there will be no discussion about any commercially sensitivity information during the meeting, nor to discuss how the individual points were allocated to each particular bidder.

## 21. Section 21 Standard Bidding Documents & Important Clauses

### Preparing the Bidding Documents

- 21.1. The basic method for preparing Bidding Documents is the same irrespective of which document is selected. Each document has a number of sections that are to be used un-amended and also sections and data sheets where specific details need to be input.
- 21.2. The Bidding Document or Request for Proposals is the most important document in the procurement process. It translates requirements into specifications, terms of reference and contractual conditions. It should contain all the information necessary for a prospective bidder, purchaser or consultant to prepare its offer. The content, detail and complexity will vary with the size and nature of whatever is being procured and according to the procurement or sale method selected.
- 21.3. The qualities, numbers, competitiveness of bids and proposals received will all rely on how effectively the bidding documents or RFP communicate the requirements. If they are unclear, offers will vary significantly based on each bidder or consultant's unique interpretation, rendering it impossible to evaluate the offers received in an objective manner.
- 21.4. Where applicable, the bidding documents will define the tests, standards, and methods of inspection and assessment that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications.
- 21.5. All drawings shall be consistent with the text of the specifications, and an order of precedence between the two shall be specified.
- 21.6. The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating and comparing bids and proposals, and how such factors will be quantified or otherwise evaluated.

- 21.7. If bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.
- 21.8. All prospective bidders, purchasers and consultants shall be provided the same information, and shall be assured of equal opportunities to obtain additional information on a timely basis. The Procuring Entity shall provide reasonable access to project sites for visits by prospective bidders and consultants, and if necessary, arrange for a pre-bid conference.

## Fraud and Corruption

- 21.9. To promote the practice of ethical standards throughout the procurement process and minimise fraud, corruption, coercion and collusion within the process, each member of a Tender Evaluation Committee is required to sign a copy of the Declaration shown in Appendix 1a: Statement on Ethical Conduct and Fraud and Corruption (applicable to Evaluation Reports), to this Guidelines. This Declaration will be attached to each Evaluation Report and signed by each member of the Committee.
- 21.10. All bidders, purchasers and consultants are also required to adhere to the ethical standards and PCBs policies on fraud, corruption, and collusion set out in these Guidelines. In support of this, bidders and consultants are required to complete the declaration shown in Appendix 1b: Declaration on Ethical Conduct and Fraud and Corruption (applicable to the Private Sector), to this Guidelines and submit it with their bid or proposal as may be the case.

## Instructions to Tenders

21.11. The Instructions to Tenders are intended to provide the information needed by bidders to prepare responsive bids and proposals, in accordance with the requirements of the project, including information on submission, opening, evaluation and comparison, and award of contract. As a minimum, they should include the following information:

- A general description of the goods, equipment and services to be purchased.
- A description of the Procuring Entity's policies in respect to fraud, corruption, and collusion.
- The scope of bids and proposals, e.g. if bidding, evaluation or contracting, is to be on a per-item, per-lot or per-package basis.
- The procedures for submission.
- Dates, time and venues for submission and opening.
- The number of original and copies required.
- The validity periods.
- The procedures for contract formation.
- The method and criteria for evaluation.
- The venue, time and date of the pre-bid or proposal conference.
- Instructions for completing forms.
- Acceptable currencies and methods of conversion.
- Documentation required establishing eligibility of goods, works, consultants and suppliers.
- Procedures for clarifying and amending the bidding documents and request for proposals.
- Instructions for the sealing and marking of bids and proposals.
- Details of bid and proposal modification.
- Bid opening procedure.
- Right to vary quantities.
- Conditions for contract effectiveness.



## General Conditions of Contract (GCC)

21.12. The GCC in the bidding documents establish an accepted basis for similar procurement or sale contracts. The GCC should not be changed by the PE in any contract. Item specific changes are to be included only in Special Conditions of Contract.

21.13. The GCC contain:

a) Operational Clauses. These establish the relationship between the PE and the supplier/purchaser/contractor, and contain information regarding:

- I. Definitions;
- II. Rights and obligations of both parties;
- III. Procedures for shipment and documentation;
- IV. Delivery and transfer of risk;
- V. Terms and currencies of payment;
- VI. Mode and form dispute settlement;
- VII. Governing language; and applicable law.

b) Protective Clauses. They establish protection against various risks and allocate them between the parties. They include instructions on:

- I. Performance security;
- II. Retention of payments;
- III. Insurance;
- IV. Inspection and tests;
- V. Warranty;
- VI. Protection against third party infringement suits; and
- VII. Force Majeure.

c) Variations. Unforeseen or planned changes during the life of the contract are identified and provided for under these parts of the GCC. They cover the following:

- I. Quantity changes;

- II. Adverse physical conditions;
  - III. Price adjustments; and
  - IV. Changes in delivery requirements.
- d) Remedies. These provisions deal with the breach of contract by one of the parties. They include provisions on:
- I. Forfeiture of performance security;
  - II. Procedure for damages, penalties for delay;
  - III. Procedure for suspension and termination; and
  - IV. Non-payment or failure to provide required approvals and information.

## Special Conditions of Contract (SCC)

21.14. SBDs have a section on General Conditions of Contract that is standard for all bidding and one on Special Conditions of Contract which contains provisions that should be drafted specifically by the PE for each procurement. Unlike the other sections of SBDs, the Special Conditions of Contract are not mandatory and are meant to assist the PE in providing contract-specific information relating to corresponding clauses in the General Conditions of Contract. The provisions of the Special Conditions of Contract complement the General Conditions of Contract, specifying contractual requirements linked to the special circumstances of the sector and the goods, works or services to be purchased, or sold. In preparing the Special Conditions of Contract, the PE should take into consideration the following aspects:

- a) Information that complements the provisions of the General Conditions of Contract must be incorporated; and
- b) Amendments and/or supplements to the provisions of the General Conditions of Contract, as necessitated by the specific circumstances of the procurement/sale, must also be incorporated.

- 21.15. Where there is a conflict between the provisions of the General Conditions of Contract and those of the Special Conditions of Contract, the provisions of the latter prevail.

## Sub-Contracting

- 21.16. In the case of Goods Contracts:

- a) Sub-contracting does not pose problem in supply contracts. Generally the supplier shall notify the Procuring Entity in writing of all sub-contracts awarded under the Contract, if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- b) Similarly, neither the PE nor the supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

- 21.17. In the case of Works Contracts:

- a) All bidders are expected to indicate clearly in the bid, if they proposed sub-contracting elements of the works amounting to more than 10 percent of the Bid Price. For each such proposal the qualification and the experience of the identified sub-contractor in the relevant field should be furnished along with the bid, to enable the PE to satisfy itself about their qualifications before agreeing for such sub-contracting and include it in the Contract.
- b) In view of the above, normally no additional sub-contracting should arise during the execution of the contract. Of course, the contractor shall not be required to obtain any consent from the PE for:
  - I. The sub-contracting of any part of the Works for which the Sub-contractor is named in the contract;

- II. The provision of labor; and
  - III. The purchase of materials which are in accordance with the standards specified in the Contract.
- c) Beyond this, if the contractor proposes sub-contracting any part of the work during the execution of Works, because of some unforeseen circumstances to enable him to complete the work as per terms of the contract, the principles to be followed by the PE (or Project Director/Engineer appointed by the PE) before agreeing to that proposal is given below:
  - i. The contractor shall not sub-contract the whole of the Works.
  - ii. The contractor shall not sub-contract any part of the Work without prior consent of the PE. Any such consent shall not relieve the contractor from any liability or obligations under the contract and he/she shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents or workmen as fully as if they were the acts, defaults or neglects of the contractor, his agents or workmen.
- d) The PE should satisfy (a) whether circumstances warrant such sub-contracting; and (b) that the sub-contractors so proposed for the work possess the necessary experience, qualifications and equipment for the job proposed to be entrusted to them in accordance with the quantum of work to be sub-contracted. If payments are proposed to be made directly to that sub-contractor, this should be agreed only subject to specific authorisation by the prime contractor so that this arrangement does not alter the contractor's obligation.

e) Note:

- i. Sub-contracting for certain specialised elements of works is acceptable for carrying out the Works more effectively; but vertical splitting of the works for sub-contracting is not acceptable.
- ii. In any case, proposal for sub-contracting in addition to what was specified in the bid and stated in the contract agreement will not be generally acceptable if the value of such additional sub-contracting exceeds 25% of value of the work which was to be executed by the Contractor without sub-contracting.

## Contract Securities

- 21.18. If the supplier/contractor/purchaser, whose tender has been accepted, fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the contract, the appropriate authority shall refer the matter to the Tender Evaluation Committee to determine whether next lowest evaluated responsive bid can be accepted, or the tender will have to be re-invited.
- 21.19. Upon the entry into force of the Contract and if required by the tender documents, the provision by the supplier or contractor of a security or performance bond for the performance of the contract will apply.

- 21.20. Hence, bidding documents for Works shall require performance security in an amount sufficient to protect the PE in case of breach of contract by the Contractor. This security shall be provided in an appropriate form and amount, as specified by the PE in the bidding documents. The amount of the security may vary, depending on the type of security furnished and, on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the PE. Alternatively, contracts may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.
- 21.21. If advance payments are made, they should be secured by an advance payment security for an equal amount valid until the advance has been fully recovered from progress payments and/or final payment. Advance payment may also be paid against material and plant brought to site for incorporation in the works. They are in the form of a bank guarantee or irrevocable letter of credit for an amount equal to the advance payment and are normally callable on demand. Securities must be denominated in the currency of the bid or another freely convertible currency.
- 21.22. In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a guarantee to protect against non-performance of the contract. Such security in an appropriate amount may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations, and any installation or commissioning requirements. The security or retention money shall be reasonable in amount.
- 21.23. The format of the performance security shall be in accordance with the standard bidding documents and shall be issued by a reputable bank or financial institution selected by the bidder.

## Liquidated Damages and Bonus Clauses

- 21.24. Provisions for liquidated damages, or similar provisions in an appropriate amount, shall be included in the Conditions of Contract when delays in the delivery of goods, completion of works, or failure of the goods or works to meet performance requirements would result in extra cost or loss of revenue, or loss of other benefits to the Procuring Entity.
- 21.25. Provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract when such earlier completion or delivery would be of significant benefit to the Procuring Entity.
- 21.26. Liquidated damages of not less than 0.1% per day or 0.5% per week (for goods), and 0.05% per day (for civil works), of the value of the delayed goods, services, or works, subject to a maximum of 10% of the contract value, are normally specified for delays in completion of works or supply of goods. This would mean for delays up to 20 weeks in the case of goods and 200 days in the case of works, the supplier/contractor will pay compensation. Normally, termination for default will be attracted only after this limit is reached. Hence in cases where the PE does not desire to give this much leeway, the quantum of liquidated damages is to be increased suitably.
- 21.27. Where it is desired to make provision for the payment of a bonus for early completion of the whole Works, or partial bonuses for completion of key sections of the Works, an additional Sub-Clause may be added. The amount to be paid for bonus(s) should reflect a substantial portion of the true net profit derived by the PE over the period by which completion was earlier than scheduled. The amount of daily bonus should normally be the same as the amount of daily-liquidated damages. A ceiling of total bonus (of not more than 10 percent of Contract Price, as or liquidated damages) may be inserted to discourage unrealistically rapid Contract implementation by the Contractor, which could adversely affect overall performance. Where bonuses for completion of Sections will apply, a table needs to be attached to the Appendix to Bid,

showing the dates of completion and the amounts of liquidated damages and bonus for each Section. Where bonuses are to be included as part of the contract, details of such incentives should be included in the bid documents.

21.28. Partial earlier completion may not always produce net benefits to the PE, for example where utilisation of the completed Works requires:

- a) the fulfilment of all parts of the Contract (e.g., the training of personnel); or
- b) the completion of all Sections (e.g., early completion of a runway would not be useful if the terminal is still under construction); or
- c) other circumstances.

21.29. Inclusion of a bonus may also entail a more rapid draw down of budgeted funds than desired. All such factors should be fully considered prior to considering inclusion of a bonus clause in the Contract.

## **Force Majeure**

21.30. The Conditions of Contract shall stipulate that failure on the part of the parties to perform their obligations under the Contract will not be considered a default if such failure is the result of an event of force majeure as defined in the conditions of contract. Example of the Clause to be included in the Goods contract is as under:



"The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that the delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the PE in its sovereign capacity, wars or revolutions, fires, hurricanes, floods, epidemics, quarantine restrictions, and freight embargoes.

If a Force Majeure situation arises, the Supplier shall promptly notify the PE in writing of such condition and the cause thereof. Unless otherwise directed by the PE in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event."

## Settlement of Disputes

- 21.31. Settlement of disputes provisions is an integral part of the Conditions of Contract and are seen by bidders as a major risk mitigation factor depending upon how the provisions are specified. This is particularly apparent in bids received for large contracts in which the bidders insert qualifications or deviations pertaining to mode of settlement of disputes or the place selected for settlement if they perceive major risk. These deviations can be considered as major and non-quantifiable in nature and may lead to rejection of such bids.

- 21.32. According to international best practices, Arbitration should be used in contracts for the procurement of goods and works. In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators which are designed to permit a speedier dispute settlement.

## Termination of Contract

- 21.33. The Standard forms of contract all include provisions dealing with the termination of a contract before its term. Most (but not all) the forms also include detailed provisions stipulating how the contractor/supplier/purchaser will be paid following termination of a contract.
- 21.34. Contracts can be terminated as a result of the PE's default, convenience, force majeure, suspension of works/services, or contractor's or supplier's default.
- 21.35. Contractor's default usually includes failure to commence or proceed with the work and to comply with the notice requesting to proceed, failure to complete the work/delivery of goods within the agreed period of time, insolvency, voluntary or involuntary bankruptcy, liquidation or dissolution amount to the same as contractors' default. In such cases, the contractor is responsible for the additional costs incurred by the PE to complete the works/supply.

- 21.36. The Procuring Entity's default includes failure to pay within a certain period of time (usually non-payment, but also in the smaller works, fundamental breach of contract); termination for PE's convenience, i.e. discretionary decision to terminate the contract amounts to the same as termination for PE's default. The contractor, purchaser or supplier is entitled to be compensated for all of the expenses incurred and for the reasonable cost associated with the early termination of the contract, but not loss of profit. Termination may also occur as a result of suspension of the works when not followed by resumption of the works within a certain period of time, force majeure, outbreak of war, or release from performance.

## 22. Section 22 Important Contract Provisions

### Clarity of Bidding Documents

- 22.1. Bidding documents shall be so worded as to permit and encourage wide competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the Bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications and an order of precedence between the two shall be specified.
- 22.2. The Bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

- 22.3. All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information in a timely basis. PEs shall provide reasonable access to works project sites for visits by prospective bidders.

## Standards & Brand Names

- 22.4. 21.4 The PE is responsible for drafting specifications in such a way to avoid any obstacles to wide participation. Thus:
- The specifications should be based on objective technical and quality characteristics;
  - Standardised features or requirements should be as far as possible used.
- 22.5. Standards and technical specifications quoted in Bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, the PE shall specify nationally or internationally accepted standards such as those issued by the International Standards Organization (ISO) with which the equipment or materials or workmanship shall comply. In all cases, the Bidding documents shall state that equipment, material, or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.
- 22.6. Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference. The specifications shall permit the acceptance of offers for goods which have similar characteristics, and which provide performance at least substantially equivalent to those specifications.

## Samples

- 22.7. Bidding documents should generally avoid requesting submission of samples along with bids by bidders, as this requirement discourages competition and increases the bid prices. Alternatively, bidders should be requested to confirm that their product meets with the required specifications and in support attach appropriate test certificates from recognized testing laboratories.

## Bids Validity

- 22.8. Bidders submitting bids for goods and works shall be required to submit bids validity for a period specified in the Bidding documents. Normally, this varies between 30-150 days depending upon the time required by the PE to complete the comparison and evaluation of bids, review the recommendation of award, and obtain all the necessary approvals so that the contract can be awarded within that period. If the validity period is too long, bidders will pad their prices for possible price increases; hence, this should be set reasonably. Usually, this period is 90 days for international competition (ICB) and 30 days for national competition (NCB).

## Bid Security

- 22.9. Bid security is an instrument to provide compensation to the PE for the time and money lost if the successful bidder fails to honour its bid and sign the contract after issue of notification of award. It assures serious bidders and eliminates speculative bids. However, for contracts of very small value, it adds a burden to the bidder and the PE in verifying the acceptability, as the risk of a bidder withdrawing its bid and the consequent additional cost to the PE is minor.

- 22.10. The bid security protects the PE against the risk of the bidder withdrawing the bid during its period of validity, or refusing to sign the contract when the contract award has been notified within the validity of the bid, or failing to furnish a performance security, within the prescribed time, in the form and amount required in the bidding documents.
- 22.11. Bid security shall be required to be valid for 4 weeks beyond the validity period of the bids in order to provide sufficient time for the PE to encash the security if the need arises. The bid security should be released at the end of the bid validity period, unless extended; or upon issue of advice to the successful bidder of contract award; and receipt of the successful bidder's signed contract and performance security.
- 22.12. The Bid Security shall be denominated in the currency of the bid or MVR or US Dollars, and contain the following elements:
- a) Bid Security should be normally about 2% of the cost of works put to tender, but could range between 1% for large contracts and 3% for small contracts. In case of goods, it should normally be in the range of 2% to 5% of the estimated cost of item put to tender. The amount of bid security should be computed based on estimated cost and specified to the nearest thousand or hundreds. Whenever a Bid security is required, the PE shall determine and specify in the invitation to tender, the amount which the security shall be expressed, which amount shall correspond to not less than one and not more than 5% of the estimated value of the contract. This should be followed in all cases.
  - b) The Bid Security has to be in one of the acceptable forms, including Bank guarantees, whose format should be given in the Bidding documents, and should be valid for 4 weeks beyond the bid validity period. The Bid security shall be in the form of an on-demand guarantee by a bank or other reputable financial institution, which is independent of the bidder.

- c) The Bid security of a joint venture must be in the name of all the partners in the joint venture submitting the bid.
- d) No exemption of Bid Security should be permitted to any bidder or class of bidders after the bid is opened.
- e) Any bid not secured in accordance with the requirements specified in the Bidding documents will be rejected as non-responsive.

22.13. The Bid security can be forfeited for the following reasons:

- a) Withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if so stipulated in the documents;
- b) Failure to sign the contract if required by the PE to do so; and
- c) Failure to provide a required performance bond for the performance of the contract after the tender has been accepted, or to comply with any other condition precedent to signing the contract specified in documents.

22.14. The PE shall return the Bid security after:

- a) The expiry of the validity of tender security;
- b) The entry into force of a contract and the provision of a security for performance of the contract where required; and
- c) Termination of tender proceedings without entering into contract.

## Pricing Of Bids

- 22.15. Bids for goods shall be invited on the basis of Cost Insurance Paid (CIP) (first port of entry at customs barrier) for all goods offered from abroad, and EXW (ex-works, ex-factory, or off-the-shelf) for goods already located within the country or those to be assembled or manufactured within the country plus cost of inland transportation and insurance to the place of destination.
- 22.16. Bidders shall be allowed to arrange for ocean and other transportation and related insurance from any eligible source. Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of “supply and installation” contracts, the bidder shall be required to quote for these services, in addition.
- 22.17. In the case of turnkey contracts, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation, and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all customs and other duties, taxes, and other levies.
- 22.18. Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties, taxes, and other levies. Bidders shall be allowed to obtain all inputs (except for unskilled labor) from any eligible source so that they may offer their most competitive bids.



## Transportation

- 22.19. The most widely used transportation term is Cost Insurance Freight (CIF) where the consignment comes by sea to a domestic seaport. Where a combination of road, rail or air transport is used or where the consignment is containerized and shipped, PE can use Cost Insurance Paid (CIP) terms to the first customs clearance point in the country, if one is available, rather than CIF terms.
- 22.20. Commonly used relevant terms are listed in the table below:

Terms	Description
<p>Cost Insurance Freight (CIF) (named port of destination)</p>	<p>The seller delivers when the goods pass the ship's rail in the port of shipment. The seller obtains transport insurance against the risk of loss or damage to goods to the destination port. The seller must contract with the insurer and pay the insurance premium. The risk of loss or damage to the goods as well as any additional costs due to events occurring after time of delivery to the port of destination, are transferred from the seller to the buyer. The purchaser is obligated to pay the contract price of goods as provided in the sales contract and arrange and pay for all import licenses and formalities and take delivery at the port of entry. Used for sea or inland waterway transportation.</p>
<p>Carriage and Insurance Paid (CIP) (named place of destination)</p>	<p>The seller must deliver the goods to the carrier nominated by the purchaser, but the seller must in addition pay the cost of carriage needed to bring the goods to the named destination. The buyer bears all the risk and any additional costs occurring after the goods have been so delivered to the first carrier. However, the seller must also procure insurance against the buyer's risk of loss or damage to the goods during the carriage. The seller must clear the goods for export in his country. The purchaser is obligated to pay the contract price of goods as provided in the sales contract, and arrange and pay for all import licenses and formalities, pay import taxes, if, any, and take delivery at the destination (which may be the first customs clearing point in its country). The term may be used for any mode of transportation.</p>

Ex-Works (EXW) (named place)	The seller delivers when he/she places the goods at the disposal of the buyer at the seller's premises or another named place (i.e. factory warehouse, etc.) not cleared for export and not loaded on any collection vehicle. This term represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller's premises. Used for any mode of transportation.
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## Insurance

22.21. Another common practice in public procurement is to insist on suppliers/contractors to take the following insurance, which is covered in the terms of the Contract:

a) Goods:

The goods supplied under the contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery from warehouse (supplier's) to final destination for an amount equal to 110% of the value of goods on "All Risks" basis, including war risks and strikes.

b) Works:

The contractors shall provide in the joint names of the PE and the Contractor, insurance cover from the start date to the end of the defects liability period in the amounts and deductibles to be specified for each contract, for the following events which are due to the contractors' risks:

- Loss of or damage to the works, plant and materials;
- Loss or damage to equipment;
- Loss of or damage to property (other than works, plant, materials, and equipment) in connection with the contract;

- Personal injury or death.

c) Consultancy:

- Third party motor vehicle liability insurance;
- Third party liability insurance;
- Professional liability insurance;
- Employer's liability and worker's compensation insurance.

22.22. Insurance against loss of or damage to: (i) equipment purchased with the funds provided by client; (ii) the consultant's property used; and (iii) any documents prepared by the consultant in the performance of services.

## Terms and Methods of Payments

22.23. Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works for ICB and commercial practices for NCB.

- a) Contracts for supply of goods shall provide for full payment on the delivery and inspection, if so required, of the contracted goods except for contracts involving installation and commissioning, in which case a portion of the payment may be made after the Supplier has complied with all its obligations under the contract. The use of letters of credit is encouraged where applicable so as to assure prompt payment to the supplier. In major contracts for equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.
- b) Contracts for works shall provide in appropriate cases for mobilization advances, advances on Contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon

compliance with the Contractor's obligations under contract.

- c) Any advance payment for mobilization and similar expenses, made upon signature of a contract for goods or works, shall be related to the estimated amount of these expenses and be specified in the Bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The Bidding documents shall specify the arrangements for any security required for advance payments.
- d) Contracts for construction works shall be paid in instalments as certified in accordance with the contract, except for contracts providing an execution period of less than three months, in which case payment of instalments is optional.
- e) The amount of instalment shall not exceed the value of the services for which the contract is awarded, once the sum required for the reimbursement of advance payments, if any, is deducted.
- f) Where the instalments are paid according to predetermined execution phases and not according to material execution, the contract may determine, in the form of a percentage of its initial price, the amount of each instalment.

22.24. The specifications of general administrative terms determine the periods of technical phases of execution according to which the instalments shall be paid, and the contractor may not use the supplies for which any advance payments or instalments have been paid for any work other than those provided in the contract. Any breach of this provision may lead to the termination of the contract fully and entirely.

- 22.25. Bidding documents shall also specify the payment method and terms offered, keeping the above in view, whether alternative payment methods and terms will be allowed and, if so, how the terms will affect bid evaluation.

### Clarification/Modification of Bidding Documents and Pre-Bid Meeting

- 22.26. A supplier, purchaser or contractor may request a clarification of the tender documents from the PE. The PE shall respond within a reasonable time to any query so as to enable either of them to make a timely submission of its tender. The PE shall communicate the clarification, without identifying source of the query, to all suppliers, purchasers or contractors to which the PE has issued tender documents.
- 22.27. At any time prior to the deadline for submission of tenders, the Procuring Entity may for any reason, whether on its own initiative or as a result of a request for clarification by tenderers, modify the tender documents. Where necessary the PE may convene a pre-bid meeting.
- 22.28. In civil works and complex items of equipment, etc., it is usual to organise a pre-bid meeting before bidders prepare and submit bids. Pre-bid meetings should be convened early in the bidding process, but should allow sufficient time for bidders to study the Bidding documents and prepare questions seeking clarifications. The meeting should be scheduled at about one third or midpoint of bidding time. The purpose of the meeting will be to clarify all doubts/issues raised by bidders on the bidding terms, specifications, evaluation/qualification criteria, etc., at this stage, to enable receipt of competitive and responsive bids.

- 22.29. Minimum post-qualification criteria to be met (if a pre-qualification procedure was not used prior to bidding), as well as the important provisions of the Bidding document, schedule of requirements and the special conditions of contract, and the special features of the specifications, should be explained clearly to the prospective bidders. Minutes of the meeting, indicating the responses given in the meeting (including an explanation of the query but without identifying the source of the inquiry) should be furnished expeditiously to all those attending the meeting (and subsequently to all purchasers of the Bidding documents). Any modification of the Bidding documents, which may become necessary as a result of the pre-bid meeting, shall be made exclusively through issuance of corrigendum and not through the minutes of the pre-bid meeting.

### Time for Preparation/Submission/Opening of Bids

- 22.30. The PE shall fix the place, and a specific date and time, for the deadline for submission of Bids.
- 22.31. If clarification/modifications to documents were issued whether as a result of pre-bid meeting or not, the deadline for submission should be extended to provide reasonable time to the bidders to take the amendments/clarifications into account in their tenders.
- 22.32. The PE has the discretion prior to the expiry of the deadline for submission, to extend the deadline based on documentary evidence, if the bidders were prevented from meeting the deadline by factors beyond their control.
- 22.33. The time allowed for the preparation and submission of bids shall be determined with due consideration of the particular circumstances of the development and the magnitude and complexity of the contract. Where large works or complex items of equipment are involved, this period shall generally be longer to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the PE is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand.

Recommended minimum bid submission deadlines in Appendix 4: Recommended Submission Deadlines.

## Clarification and Alteration of Bids

- 22.34. Bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. However, to assist in the examination, evaluation, comparison and post-qualification of the bids, the PE may, at its discretion, ask any bidder for a clarification of its bid. Any clarification submitted by a bidder in respect to its bid, and that is not in response to a request by the PE, shall not be considered. The PE's request for clarification and the response shall be in writing. No change in the prices or substance of the bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the PE in the evaluation of the bids. Requests for clarification and the bidders' responses shall be made in writing, in hard copy or by a satisfactory electronic system.

## Confidentiality

- 22.35. Information relating to the examination, evaluation, comparison, and post-qualification of bids, and recommendation of contract award, shall not be disclosed to bidders or any other persons not officially concerned with such process until publication of the Contract Award.
- 22.36. From the time of bid opening to the time of contract award, if any bidder wishes to contact the PE on any matter related to the bidding process, it should do so in writing. Any effort by a bidder to influence the PE in the examination, evaluation, comparison, and post-qualification of the bids or contract award decisions may result in the rejection of its bid.



## Fraud and Corruption

- 22.37. To promote the practice of ethical standards throughout the procurement operations and PCB's policy on fraud, corruption and collusion, each member of a Tender Committee will be required to sign a copy of the declaration shown in Appendix 1a: Statement on Ethical Conduct and Fraud and Corruption (applicable to Evaluation Reports), to this Guideline. This declaration will be attached to each evaluation report
- 22.38. All bidders and consultants are also required to adhere to the ethical standards and the Government's policies on fraud, corruption and collusion set out in these Guidelines. In support of this, bidders and consultants are required to complete the declaration shown in Appendix 1b: Declaration on Ethical Conduct and Fraud and Corruption (applicable to the Private Sector), to this Guideline and submit it with their bid or proposal as may be the case.

## Other Contract Provisions

- 22.39. The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Procuring Entity and of the supplier, purchaser or contractor, and the functions and authority of the engineer, architect, or construction manager, in the supervision and administration of the contract. In addition to the general conditions of contract, any special conditions particular to the specific goods or works to be procured and the location of the activity shall be included. The conditions of contract shall provide a balanced allocation of risks between the parties.

# CHAPTER 7. PROCUREMENT METHODS AND STRATEGIES: PROCUREMENT OF CONSULTING SERVICES

This chapter describes the characteristics of procurement of Consulting Services and addresses issues such as when a Request for Proposals may be used, under which conditions, what procurement methods may be used for the selection of Consultants. It also provides standard contents to be used for developing the Request for Proposals, Terms of Reference, and consulting Contracts.

## 23. Section 23 Consulting Services Procedure

### When RFP May Be Used

- 23.1. Request for Proposals (RFP) procurement procedure may be used if the procurement is of services, or combination of goods and services, and the services are advisory or otherwise of a predominantly intellectual nature.
- 23.2. A Procuring Entity shall procure consultancy services only when:
  - It does not have the capacity to provide these services; and/or
  - Time is not available due to workload.
  - When there is a clear cost or quality advantage to engaging a consultant compared with undertaking the task in-house

### Procurement Stages

- 23.3. Irrespective of the amount and method used, the following stages in the procurement of consulting services must be reviewed and approved by the Tender Committee:
  - The method of procurement;
  - The Terms of Reference;
  - The Request for Proposals;
  - The evaluation report;
  - The final draft contract.

## Key Elements of Procurement Cycle for Services

23.4. The procedures and guidelines in this Chapter are generally based on the standard QCBS process of selection, although other selection methods are available for use in appropriate circumstances.

23.5. The steps: Procurement of consultancy services will normally include the following

- Preparation of the Terms of Reference (TOR);
- Preparation of a cost estimate and confirmation of available budgeted funds;
- Advertising for Expressions of Interest (if appropriate) or preparation of the shortlist of consultants;
- Preparation and issue of the Request for Proposals (RFP), including:
  - Letter of Invitation (LOI);
  - Information to Consultants (ITC);
  - Draft contract.
- Receipt of proposals;
- Evaluation of technical proposals;
- Evaluation of financial proposals;
- Final evaluation according to the criteria stated in the RFP;
- Negotiations and Award of the contract to the winning firm;
- Notification of contract Award;
- Record keeping.

## Special Features of Consultancy Services

23.6. The use of merit-point evaluation systems and two-envelope tendering procedures are routine features in the procurement and selection of consultants. Selecting consultants for long or complex assignments on the basis of cost alone is unlikely to achieve the required quality of services.

### Merit-Point Systems

- 23.7. A merit point system uses a point-scoring basis to determine the winning Tenderer. Points are awarded for technical capability and usually for the financial cost, according to criteria specified in the Request for Proposals. The Tenderer scoring the highest number of points is usually recommended for the award of contract. Merit point systems can also be used to evaluate whether tenders pass a minimum technical score to proceed to the final financial evaluation. The financial envelopes of all Tenderers whose tender pass the minimum technical score are then opened, and the tender with the lowest price recommended for award of contract.

### Two-envelope Tendering

- 23.8. To avoid any chance of the Tenderer's price influencing the technical evaluation under a merit point system, financial bids are submitted in a separate sealed envelope. The financial envelope must only be opened after the technical evaluation is completed and approved by the Procuring Entity's Tender Committee.

## 24. Section 24 Procurement Methods

- 24.1. 23.1 The procurement of services is distinct from the procurement of goods and works, primarily due to the significant differences between goods or structures which are relatively simple to quantify in absolute terms and the challenge of quantifying a consultant's service. Because of this difference, consultants' services procurement differs from the procurement of goods and works. The primary difference is that a significant emphasis is placed on quality rather than price alone (although price is often still a factor). Also, rather than submitting 'bids' consultants submit 'proposals', and therefore the Standard Bidding Documents are called a "Request for Proposals".
- 24.2. The primary methods of procuring consultants' services are:

- Quality Cost Based Selection (QCBS);
- Quality Based Selection (QBS);
- Selection under a Fixed Budget (FBS);
- Least Cost Based Selection (LCS);
- Selection Based Upon Consultants' Qualifications (CQS);
- Single Source Selection (SSS);
- Selection of Individual Consultants.

24.3. There is little difference in the processes for QBS, QCBS, FBS, LCS, CQS, and SSS. The same Standard Bidding Documents are required for all types of procurement, except in the case of Selection of individual consultants and procurement of relatively low value.

24.4. All services procurement, with the exception of single source, must be advertised nationally. When the Tender committee determines that there will not be a sufficient number of appropriate skilled national consultants to guarantee competition, irrespective of the value of the procurement, it may recommend the Head of Procuring Entity to place an international advertisement even if the value is below the threshold.

### Quality Cost Based Selection (QCBS)

24.5. Quality Cost Based Selection (QCBS) is the preferred method to be used and is the standard form of procurement of services. It is advertised nationally or internationally, and a shortlist is drawn up. Quality will be evaluated in each of the technical proposals and will be ranked against the criteria listed in the RFP.

24.6. There will also be a financial weighting assigned, of which shall normally be 20 points, the balance of 80 points being available for the technical points. In exceptional cases, 30 points may be made available for the financial weighting when the consulting assignment is very simple. For highly complex assignments, 10 points may be available for the financial weighting.

- 24.7. After the ranking (evaluation of quality) is complete, a public opening is scheduled, and the firms' representatives invited to attend. At this public opening, the firms' technical scores are announced and their financial proposals (which will have been held still sealed in a secure location) are opened, and their financial proposals are read out. After the opening of financial proposals, these are checked for errors and an overall technical and financial score determined for each of the proposals. That with the highest score is the one recommended for a contract award and the consultants invited to negotiate a contract.

### Quality Based Selection (QBS)

- 24.8. The Quality Based Selection (QBS) method is appropriate when quality is the most important consideration in the selection process. The assignment will be advertised both nationally and internationally, and a shortlist will be drawn up from those firms that expressed interest.
- 24.9. Consultants are then asked to submit only their technical proposal and each proposal is ranked in terms of its technical score against a set of criteria included in the Request for Proposals. To guide firms in preparing their proposals, the RFP will normally include either an estimate of the person months the assignment is estimated to take or the funds available. It is recommended that the funds available normally be indicated as this information should already be public knowledge through the PE's various publications. The firm with the highest technical score is invited to submit its financial proposal, and a contract is negotiated on the basis of the firm's technical and priced proposal.
- 24.10. This method is suitable for:
1. National economic or sector studies, multi-sectoral feasibility studies, design of a hazardous waste remediation plant or of an urban master plan, financial sector reforms.

2. Assignments that have a high downstream impact and in which the objective is to have the best experts (for example, feasibility and structural engineering design of such major infrastructures such as large bridges, policy studies of national significance, management studies of large government agencies).
3. Assignments that can be carried out in substantially different ways, such that proposals will not be comparable (for example, management advice, and sector and policy studies in which the value of the services depends on the quality of the analysis).

24.11. The RFP may require submission of a technical proposal only (without a financial proposal), or request submission of both technical and financial proposals at the same time, but in separate envelopes (two-envelope system). Only the financial envelope of the highest ranked technical proposal is opened. The rest are returned unopened to the tenderers, after the negotiations are successfully concluded.

### Selection under a Fixed Budget

24.12. Fixed Budget Selection (FBS) may be used when the assignment is simple, can be clearly defined, and there is only a strictly limited budget available for the services. Consultants are invited to submit their best technical proposal within the fixed budget price and award of contract is made to the highest scoring technical proposal.

24.13. This method is only appropriate when the assignment is simple and can be precisely defined, and when the budget is fixed. The main elements to be considered under this method are the following:

- The RFP will indicate the available budget and request the consultants to provide their best technical and financial proposals in separate sealed envelopes, within the stated budget;



- The TOR must be carefully prepared to ensure that the budget is sufficient for the consultants to perform all of the expected tasks;
- Technical proposals are evaluated and tenderers who pass the minimum technical score will be invited to a public opening of their financial envelopes;
- Tenderers whose technical proposals fail to meet the minimum technical score will have their financial envelopes returned unopened;
- Any financial proposals that exceed the indicated budget should be rejected;
- The consultant who has submitted the highest ranked technical proposal within the budget will be selected for award of contract.

### Least-Cost Selection (LCS)

24.14. This method is more appropriate to selection of consultants for assignments of a standard or routine nature (audits, engineering design of noncomplex works, etc.), where well-established practices and professional standards exist, and when the contract value is small.

24.15. The mains elements to be considered under this method are the following:

- A minimum qualifying score for the required quality is established and stated in the RFP;
- Technical and Financial Proposals are required to be submitted in separate envelopes by the short-listed tenderers;
- Technical envelopes are opened first and evaluated. Those tenders scoring less than the minimum qualifying score are rejected.
- The financial envelopes of the remaining tenderers are opened in public;
- The firm with the lowest price is selected for contract award.

## Selection Based on Consultants' Qualifications (CQS)

24.16. This method may be appropriate for very small assignments where the need for submission and evaluation of detailed competitive proposals is not justified. Main elements to be considered under this method are:

- Information on the consultants' experience and competence relevant to the assignment are requested;
- The firm/consultant with the most appropriate qualifications and references is selected;
- The selected firm is invited to submit a combined technical and financial proposal, and then invited to negotiate the proposal and the contract.

## Single-Source Contracting/Selection or Direct Contracting

24.17. Single-source selection of consultants lacks the benefit of competition in regard to quality and cost. Furthermore, the selection is not transparent, and may encourage unacceptable practices. Therefore, Single-source selection should only be used in exceptional circumstances and approved by the Tender Committee and MD or BOD based on the threshold (see Section Threshold Values and Table 1: Values Applicable for Procurement Thresholds, for threshold approval limits). The justification for Single-source selection must be examined carefully to ensure economy and efficiency. Single-source selection is appropriate only if there is a clear advantage over competitive selection, for instance:

- For tasks that are a natural continuation of previous work carried out by the Consultant;
- Where rapid selection is essential (for example, in an emergency situation);
- For very low value assignments;
- When only one firm is qualified or has the necessary experience for the assignment.

## Selection of Individual Consultants

- 24.18. Advertising is an effective way of securing Expressions of Interest from individual consultants. Therefore, advertising to invite CVs for the selection of individual consultants is required. The evaluation and selection of the individual will not involve a proposal (either technical or financial) but will be based on the assessment of the individual's qualifications for the assignment, judged on the basis of relevant academic background, experience, and, as appropriate, knowledge of the local conditions, such as language, culture, administrative system, and government organization. The individual judged best qualified from a minimum of three (3) relevant candidates will then be invited to negotiate a contract based on the Terms of Reference.

## 25. Section 25 Terms of Reference and Budget Estimate

### The Terms of Reference (TOR)

- 25.1. The Terms of Reference (TOR) are the key document in the RFP. They ensure that both the Procuring Entity and the Consultant are fully aware of the objectives and outputs of the services. Consultant services are expensive, and lack of careful thought, research and preparation of the Terms of Reference by the Procuring Entity, may result in considerable waste of resources.
- 25.2. The Terms of Reference (TOR) should provide sufficient information to enable Consultants to fully understand the services required by the Procuring Entity, and to prepare proposals that are realistic and competitive. The TOR must be complete, precise and clear to minimise request for clarifications from Consultants. They must be prepared by staff with the requisite expertise.
- 25.3. The Terms of Reference will normally contain the following information under the sequential headings:

1. Background. This should be limited to the necessary general background and introduction to the assignment;
2. Objectives. The objectives of the assignment should be specified in clear and unambiguous terms
3. Scope of the Services. The scope of services defines in detail the specific services/duties/activities that the Consultant is expected to perform during the assignment.
4. Deliverables. The Deliverables detail the specific outputs expected from the Consultant. These will include reports, achievements, and other measurable progress indicators. For Lump-Sum Contracts, key deliverables are often defined for use with a schedule of interim part payments.
5. Assignment Reports and Schedule of Reports. The assignment and schedule reports specify the reporting requirements and frequency of reports, and where appropriate, the structure of Reports required. Entities should avoid specifying unnecessary routine reports, since these reports can easily distract the Consultant from more productive work for the Procuring Entity. It should be noted that reports are no substitute for effective personal management of an assignment.
6. Facilities, services and resources to be provided by the Procuring Entity. The facilities, service and resources detail the nature and extent of facilities that will be made available to the Consultants (office accommodation, equipment, support or counterpart staff, etc.), any services (communication, photocopying, stationery, security, etc.) that will be provided, and any other resources or support that the Procuring Entity, or the Government, will make available.

7. Assignment Period. The assignment period indicates the anticipated period of time that the Assignment will take to complete.
8. Assignment Management & Administration. The Management and Administration of the assignment details the management arrangements that will apply to the Consultants during the Assignment (who they will report to, frequency of meetings, etc.).

## Estimating Cost and Budget

25.4. Preparation of a well thought-through cost estimate is essential for earmarking a realistic budgetary resource for the envisaged service. The cost estimate should be based on the Procuring Entity's assessment of the resources needed to carry out the assignment.

25.5. The Cost estimate includes expenses relating to:

- Consultant staff remuneration;
- Travel and transport;
- Mobilization;
- Staff allowances;
- Communications;
- Office rent, supplies, equipment, shipping, and insurance;
- Surveys and training programs;
- Report translation and printing;
- Taxes and duties; and
- Contingencies.

## 26. Section 26 Expression of Interest (EOI)

- 26.1. A request for Expressions of Interest is required to be published on the Government Gazette for any consultancy services prior to the issue of an RFP, and is recommended to be published on the PEs website and the MOF Procurement Portal.

### Pre-Qualification Criteria

- 26.2. Pre-qualification is based upon the capability and resources of prospective Consultants to perform the assignment satisfactorily, taking into account:
- Experience and past performance on similar assignments;
  - Capabilities with respect to personnel and facilities;
  - Required licensing and professional registrations; and
  - Commercial and financial resources.

### Advertisement

- 26.3. The request for Expressions of Interest shall be advertised in the same way as for competitive Tenders and shall contain:
- Name and address of the Procuring Entity;
  - Background for the assignment;
  - Scope of the services required;
  - Location and required timescale for the completion of the services;
  - Criteria and procedures to be used to evaluate the qualifications of Consultants;
  - Place and deadline for the submission of EOI (see Appendix 4: Recommended Submission Deadlines)

## Evaluation of EOI and Short-Listing

- 26.4. No formal opening of submissions is required but a formal evaluation of the capabilities of each Consultant is required against the criteria as stated in the advertisement.
- 26.5. The following details of each firm should be assessed in the selection of a short- list of between three (3) and eight (8) Consultants:
- General background of the Consultant;
  - Eligibility in terms of country of origin, turnover requirements and any other conditions stated in the advertisement;
  - Previous experience of similar assignments;
  - Competence and sector related experience of the firm;
  - Relevant experience in Maldives, and other similar countries; and
  - Quality of performance under previous contracts.
- 26.6. Where a large number of Consultants pass the stated qualification criteria, it may not be realistic to invite more than eight (8) to participate in the specific RFP. If so, only the best qualified Consultants should be selected and invited to respond to the RFP.
- 26.7. Applicants who fail to meet the pre-qualification criteria or reach the shortlist should be briefly advised of the reasons. No further correspondence will be entered into regarding applications. On completion of the process and approval of the shortlist by the Tender Committee, the RFP will be issued to the qualified Consultants.

## 27. Section 27 Preparation and Issue of Request for Proposal (RFP)

- 27.1. The Request for Proposals (RFP) shall provide all the information necessary for the (short-listed) Consultants to prepare their proposals. It identifies the evaluation criteria, selection method, and procedures that will be used to evaluate the proposals.

27.2. The standard Request for Proposal includes the following Sections:

1. Letter of Invitation (LOI)
2. Information to Consultants (ITC) (including the Data Sheet)
3. Technical Proposal – Standard Forms
4. Financial Proposal – Standard Forms
5. Terms of Reference (TOR)
6. Standard Forms of Contract

### The Letter of Invitation (LOI)

27.3. The Letter of Invitation states the intention of the entity to enter into a contract for a given assignment and informs the short-listed Consultants that they are invited to submit a proposal for the assignment. It provides basic information regarding the following:

- Name of the Procuring Entity;
- Sources of funds to finance the consulting services;
- Names of the short-listed Consultants;
- Brief description of the objectives and scope of the assignment;
- Method of selection; and
- Date, time, and address for submission of proposals.

27.4. The LOI also instructs Consultants to indicate whether they intend to submit their proposal alone or in association with other short-listed Consultants. This information is necessary to allow the Procuring Entity to invite other Consultants in case one or more short-listed Consultants decline the invitation or decide to associate, thus reducing competition. In these cases, the deadline for submission of proposals may have to be extended.



## Information to Consultants (ITC)

- 27.5. The ITC section contains all the information Consultants need to prepare responsive proposals. It also informs Consultants about the evaluation criteria and sub-criteria, their respective weights and the minimum qualifying mark, in order to provide for a fair and transparent selection process. The ITC should not be modified other than through the Data Sheet. The Data Sheet is the part of the ITC that contains specific information relating to the Procuring Entity and the assignment.

## Technical Proposal - Standard Forms

- 27.6. This section contains the standard forms which are to be completed by the Consultant as part of the technical proposal. The Consultant is required to complete and submit these forms as requirements of the Request for Proposals, which are:

- Technical Proposal submission form;
- Firm's references;
- Comments and suggestions of consultants on the Terms of Reference and on data, services, and facilities to be provided by the Procuring Entity;
- Description of the methodology and work plan for performing the assignment;
- Team composition and task assignments;
- Format of curriculum vitae (CV) for proposed professional staff;
- Time schedule for professional personnel (where applicable);
- Activity (work) schedule.

## Financial Proposal – Standard Forms

27.7. This section contains the standard forms which are to be completed by the Consultant in submitting the financial proposal. The Consultant is required to complete and submit the following in accordance with other requirements included in the Request for Proposals:

- Financial Proposal submission form;
- Summary of costs;
- Breakdown of price per activity;
- Breakdown of remuneration per activity (where applicable);
- Reimbursable per activity;
- Miscellaneous expenses.

## Standard Forms of Contract

27.8. The following are various forms of Contract that a Procuring Entity can use depending on the nature of the assignment:

- Consultant Services - Complex Time-Based Assignments;
- Consultant Services - Lump-Sum Assignments;
- Small Time-Based Assignments;
- Small Lump-Sum Assignments.

## 28. Section 28 Evaluation of Proposals Technical Evaluation Criteria

28.1. The criteria for evaluating the Technical Proposals specified in the RFP should include:

- The firm's relevant experience for the assignment;
- The quality of the methodology proposed;
- The qualifications and experience of the key staff proposed; and

- The extent of participation by nationals among key staff in the performance of the assignment and/or being a local firm wherever appropriate.

28.2. The points for each criterion are aggregated to give the total technical score. The following table shows the normal range of points to be specified for each criterion, which may be adjusted for specific circumstances. The proposed points must be declared in the standard RFP.

**Table 2 - Indicative Weighting of Evaluation Criteria**

Specific relevant experience:	0 to 10 points
Response to the TOR and Methodology Proposed:	20 to 50 points
Key personnel:	30 to 60 points
Participation by nationals/local businesses:	0 to 15 points
Total:	100 points

28.3. The criteria may be divided into sub-criteria to assist the objectivity of the evaluation. For example, sub-criteria under methodology might be innovation and level of detail. It is usual to use sub-criteria for key staff to evaluate their qualifications, technical experience and language capabilities. The number of sub-criteria should be kept to the essential minimum and must be fully detailed within the RFP.

## Consultant's Specific Experience

28.4. The points given to the Firm's experience can be relatively low if this criterion has already been taken into account when short-listing the consultant firms. A large number of points should be given to the response and proposed methodology for more complex assignments (for example, multi-disciplinary feasibility or management studies).

## Key Personnel

28.5. Only the key personnel should normally be evaluated since they will determine the quality of performance. More points should be assigned if the proposed assignment is complex, as described below:

- When the assignment depends critically on the performance of a Project Manager or key specialist in a team of individuals, more points should be allocated for this person.
- Individuals should be evaluated on the following sub-criteria as relevant to the task:
  - General Qualifications: General education and training, professional qualifications, length of experience, positions held, time with the consulting firm, experience in similar countries, etc.;
  - Adequacy for the Assignment: Specific experience relevant to the assignment in the sector, field, subject, process or activity; and
  - Experience in the similar countries/economies (e.g. small island states): Knowledge of local culture, administrative systems, government organisations, etc.

## Minimum Technical Score

28.6. The minimum qualifying technical score to be achieved for a Proposal to proceed to the Financial Evaluation must be specified in the RFP.

## Financial Evaluation Criteria

- 28.7. Only Proposals that have achieved the pass mark for Technical Proposals shall be subjected to financial evaluation. In addition to specifying the weighting for technical and financial scores, the RFP must specify the formula for award of points to each Proposal price. Normally, the lowest priced Proposal receives 100 points and the other Proposals receive points based on dividing their prices by the lowest priced proposal and multiplying by 100.
- 28.8. The standard procedures for correcting arithmetic and other errors in tender prices will apply to adjust the Proposal price before the points are awarded to each Proposal.

## Weighting of Technical and Financial Scores

- 28.9. The relative weightings for technical and financial scores must be stated in the RFP. This is usually set at 70-80% for the technical score and 20-30% for the financial score. In this case, the technical score will be multiplied by 80% and the financial score by 20% to give the total score for each proposal.

## 29. Section 29 Contract Types and Negotiation

- 29.1. The type of Contract must be selected when preparing the Request for Proposals and included as a draft with all relevant contract terms and conditions in the RFP.

### Lump Sum (Fixed Price) Contracts

- 29.2. Lump Sum Contracts are used mainly for assignments in which both the content and the duration of the services, and the required outputs of the Consultants, are clearly defined. Their main characteristics are:

- Lump sum contracts are widely used for simple planning and feasibility studies, environmental studies, detailed design of standard or common structures, preparation of data processing systems, etc.
- Payments are linked to defined outputs (deliverables), such as reports, drawings, bills of quantities, tender documents, and software programs.
- Lump sum contracts are simple to administer because payments are due on attainment of clearly specified outputs.

## Time-Based Contract

29.3. This type of contract is widely used for complex studies, supervision of construction, technical advisory services, and training assignments. It may also be appropriate when:

- It is difficult to define the full scope of services, or the input of the Consultants required to attain the objectives of the assignment;
- The length of services can be precisely defined and deliverables are only incidental to the main purpose of the assignment;
- The services are related to activities by others for which the completion period may vary.

29.4. Payments are based on:

- Remuneration: Agreed hourly, daily, weekly, or monthly rates for staff;
- Reimbursable: Reimbursable items using actual expenses and/or agreed unit prices.
- Rates for staff remuneration include salary, overhead, fee (or profit), and, where appropriate, special allowances.

- 29.5. This type of contract must include a maximum amount of total payments (the contract ceiling) to be made to the Consultants. The contract ceiling usually includes a contingency allowance for unforeseen work and duration, and provision for price adjustments, where appropriate. Time-based contracts need to be closely monitored and administered by the Procuring Entity to ensure that the assignment is progressing satisfactorily, and payments claimed by the Consultants are appropriate.

### Retainer and/or Contingency (Success) Fee Contract

- 29.6. Retainer and contingency fee contracts are frequently used when Consultants (banks or financial firms) are undertaking specialist financial activities such as preparing companies for sale, in mergers of firms, or in privatization operations. The remuneration of the Consultant includes a retainer and a success fee, the latter being normally expressed as a percentage of the sale price of the assets.

### Percentage Contract

- 29.7. These contracts are commonly used for architectural services but may be also used in similar circumstances such as for procurement and inspection agents.
- Percentage contracts directly relate the fees paid to the Consultant to the estimated or actual project construction cost, or the cost of the goods procured or inspected.
  - Contracts are negotiated on the basis of market standards for the services and/or estimated staff-month costs for the services.
  - In the case of architectural or engineering services, percentage contracts lack any incentive for economic design or performance. The use of a percentage contract format for architectural services is only recommended if based on a fixed target cost and covers precisely defined services.

## Indefinite Delivery Contract (Price Agreement)

29.8. These contracts are used when there is a need for “on call” specialised services to provide advice or services, the extent and timing of which cannot be defined in advance.

- These are commonly used to retain “advisers” for implementation of complex projects, expert adjudicators for dispute resolution panels, institutional reforms, procurement advice, technical troubleshooting, etc., normally for a period of a year or more.
- The Procuring Entity and the firm agree on the unit rates to be paid, and payments are made on the basis of the time and resources actually used.

## Tender and Performance Security

29.9. Tender and performance securities for Consultants’ services are not recommended for the following reasons:

- Tender securities are not an accepted standard for Consulting services tenders and are likely to discourage participation by international consulting firms.
- Enforcement of tender securities may be subject to dispute, for example when final negotiations fail to reach a satisfactory conclusion.
- Performance securities can be easily abused by the Procuring Entity’s personality clashes or other factors beyond the direct control of the Consultant that may affect achievement under the Contract.
- There is often a strong element of subjectivity rather than objectivity in determining the success or failure of an assignment.
- Securities increase the costs to the consulting industry without evident benefits, and the costs are inevitably passed on to the Client through higher prices.



- 29.10. However, the Procuring Entity may resort to the use of professional indemnity policy.

## Negotiation of Contract

- 29.11. Following approval of the Evaluation Report and recommendations by the Tender Committee, the Procuring Entity shall invite the recommended Consultant for contract negotiations in accordance with the procedure stated in the RFP.

- Negotiation is expected to ensure agreement on all points and to result in an agreed draft Contract. Negotiation may include discussions on the technical proposal, the proposed methodology (Work Plan), staffing and any suggestions that may be made or have been made by the Consultant to improve the TOR. The Procuring Entity and the Consultant shall then establish the final TOR, staffing, scheduling of services and clarify any general financial issues, such as taxes payable and mode of payment.
- The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. Any substitution of key staff by the Consultant will require the offering of an equivalent or better candidate.
- Where the selection process specifies a time-based form of Contract, the Consultant is requested to provide justification of the unit rates quoted for individual staff. Negotiation of staff rates and reimbursable expenses may be discussed in this instance. Financial adjustments to any lump-sum price proposals may only be made through minor modifications to the scope of the proposed services.

- A detailed record of negotiations shall be maintained and signed by the Procuring Entity and the Consultant.
- The final TOR, agreed methodology, and any financial adjustments shall be incorporated in the draft Contract for approval of contract award by the Tender Evaluation Committee, or procurement department as appropriate.

## Award of Contract

- 29.12. See section Threshold Values for the thresholds and Approvals requirements for awarding of Contracts.

## Award Notification

- 29.13. A formal notice of tender award shall be issued to the successful Consultant, who will be required to confirm in writing acceptance of the contract award.
- The Consultant shall be invited to attend contract signing, or where this is not practical, provided with the copies of the Contract for signature and return of the original and two signed copies of the Contract to the Procuring Entity.
  - Failure of the Consultant to confirm acceptance of the award, or to sign the Contract, will constitute grounds for the annulment of the award. In that event, the Procuring Entity may cancel the proceedings and invite the Consultant who submitted the next ranked Proposal for negotiations.

## Notification to Unsuccessful Tenderers

- 29.14. All unsuccessful Consultants should be notified in writing immediately once the Contract has been awarded.

# CHAPTER 8. CONTRACT ADMINISTRATION AND MONITORING

Contract administration pertains to the preparation of procurement documentation, the processing and approval of such documentation, monitoring contract implementation, approving and administering contract variations and modifications, and possibly cancelling or terminating contracts. Weak contract administration along with poor documentation and records management is an invitation to corrupt practices.

## **30. Section 30 Effective Contract Management**

- 30.1. Effective management of Contracts is essential to ensure that the objectives of the procurement process are achieved and that all contractual obligations and activities are completed efficiently by both parties to the Contract.
- 30.2. The point at which a Contractor begins the execution of the Contract responsibilities is dependent on the terms and conditions stated within the Bidding Documents and Contract Documents and the signing of the Contract documents by those authorised to sign.
- 30.3. There are many post-contract issues that need to be dealt with, monitored and resolved before the Contract reaches its conclusion including:
  - Contract Effectiveness;
  - Delivery and Inspections of Goods;
  - Insurance Claims;
  - Payments to the Supplier or Contractor;
  - Performance Monitoring for Services and Works;
  - Contractual Disputes;
  - Delays in Performance;
  - Claims for Damages;
  - Initial and Final Takeover of construction works;
  - Installation and Commissioning of Equipment;
  - Acceptance of Consultants' Deliverables;
  - Release of Performance Securities and Retentions;
  - Contract Closure.

- 30.4. If a bidder for goods or works fails to provide the performance security or refuses to attend signing the contract as requested, the PE will call the proceeds of the bidder's bid security or execute its bid securing declaration as appropriate, and award the Contract with the next best evaluated bidder.
- 30.5. In the event that the Bidding Documents allow for an advance payment and the Supplier, Purchaser or Contractor wishes to avail of the advance payment, the Supplier, Purchaser or Contractor will be paid the advance as per the Contract. The advance payment guarantee must be in the form and amount laid out in the Bidding Documents. The advance payment will be amortised (reduced pro-rata) against the future payments until it is completely off-set at the rate described in the Bidding Documents and Special Conditions of Contract. The advance must be off-set before a maximum of eighty percent (80%) of the Contract amount is paid to the Contractor or Supplier.

## Principles of Contract Administration

- 30.6. In planning and carrying out Contract Administration and Contract Monitoring functions, a number of fundamental principles should be kept in mind.

## Fairness

- 30.7. While it is incumbent upon the Procuring Entity at all times to protect public interest, successful contract administration depends significantly on treating the Supplier, Purchaser or Consultant concerned fairly. This means, for example, avoiding attempts to force the Supplier, Purchaser or Consultant to do work or accept conditions not provided in the Contract. Attempting to squeeze unpaid work out of a Contract may cause the Supplier, Purchaser or Consultant concerned to attempt to recover the costs of that work in other ways (e.g., by “front-loading” tenders with greater overhead than would normally be charged). Moreover, unfair practices in Contract administration may ultimately serve to discourage qualified Suppliers, Purchasers or Consultants from participating in public procurement or disposal, thus reducing competition.

## Timeliness

- 30.8. One of the main problems in Contract implementation is delay. The procuring Entity should do everything that it can to minimize delay, not only by carefully monitoring the progress in the performance of the Supplier, Purchaser or Consultant, but also by ensuring that the Procuring Entity itself does everything it can to facilitate timely implementation of the Contract and to avoid contributing to delays. For example, Contract interpretation questions, and on-site questions, should be handled without delay, so as to allow work to progress without delay. Site access, as well as any facilities and any equipment to be provided by the Procuring Entity, should be made available without delay. In addition, the Procuring Entity might be instrumental in assisting the Supplier, Purchaser or Consultant in obtaining approvals and licenses that might be required under the applicable law. From a systemic point of view, it is always helpful if excessive and parallel approval requirements can be consolidated or economised in some other fashion, without sacrificing public interest.

## Communications

- 30.9. Effective Contract administration relies heavily on the availability of open and reliable channels of communication between the Supplier, Purchaser or Consultant and the Procuring Entity. Implementation of the principle of open communications, which can help to solve many problems before they develop into significant obstacles to successful Contract implementation, requires the Procuring Entity clearly to designate an official with whom the Supplier, Purchaser or Consultant can have direct, unimpeded communication. That official may be, for example, the project manager.

## Contract Administration Planning

- 30.10. Like other aspects of the procurement process, contract administration requires proper planning. While the contract administration plan cannot be finalised until the award of the Contract, the planning of contract administration should be part of the procurement planning exercise carried out prior to the initiation of the procurement proceeding.
- 30.11. Steps linked to the planning of contract administration include:
- a) As an initial step, becoming closely familiar with the contents of the procurement file, in particular the procurement contract, for it is the contract that should serve as a roadmap for contract administration activities; it may be helpful also to review the record of the procurement proceedings, in particular the tender evaluation reports.
  - b) Reviewing of the past performance of the Supplier, Purchaser, or Contractor in order to inform the planning of contract administration for the current Contract;
  - c) Setting up the contract administration procedures;

- d) Ensuring that forms for various procedures are in place (e.g., forms for measurement and assessment of work);
- e) Identification of reporting requirements applicable to the Procuring Entity, at the national level, as well as to any funding agencies;
- f) Identifying the required personnel, and delegating contract administration functions to them, including in particular the project manager, if applicable; this step includes formation of the multidisciplinary contract administration team (legal, administration and finance, procurement, engineering and design, operations official and document management), which may be similar to or even based to one extent or another on the procurement planning team;
- g) Developing a contract administration plan, in particular for higher value and complex procurement, including:
  - I. Contract milestones and deliverables;
  - II. Procedures for reporting by the Supplier, Purchaser or Contractor;
  - III. System for technical monitoring and quality assurance;
  - IV. Procedures for inspection and acceptance;
  - V. Procedures for financial management and monitoring;
  - VI. Listing, in proper sequence, of all contract administration tasks for each phase of contract implementation.
- h) Giving notification to the Supplier, Purchaser or Contractor, as the case may be, of the designated representatives of the Procuring Entity, their functions, and any limits on their authority to bind the Procuring Entity;



- i) Identification of applicable laws and regulations of particular relevance to the Contract at hand (e.g., environmental and labour laws);
- j) Identification of the appropriate enforcement authorities for those applicable laws and regulations (including for those laws and regulations for which enforcement authorities other than the Procuring Entity would have primary responsibility, with a view to avoiding duplicating of the work of those enforcement authorities, who are likely to be better equipped and trained);

## Conference following Signature of Contract

- 30.12. Depending upon the nature of the procurement, and particularly in the case of procurement of significant works, it may be advisable to conduct an orientation exercise of some sort in order to ensure that the parties to the procurement contract have a shared understanding of various aspects of the way forward in the implementation of the contract. Issues that may be discussed at an orientation meeting include, for example, the Contractor's mobilisation plan, site hand-over, and Contractor's personnel issues.
- 30.13. The success of an orientation exercise depends significantly on proper planning and the preparation of an agenda. Another key aspect of planning is to ensure that the key personnel from both sides of the table participate in the exercise.

## 31. Section 31 Contract Performance Monitoring

### Monitoring Quality of Performance

- 31.1. Monitoring of the quality of the performance of the procurement or sale Contract is aimed at identifying problems in the implementation of the contract, preferably before they arise, or if they have already developed, in time for the problems to be remedied.
- 31.2. The procurement contract should stipulate inspection procedures at other stages in the performance of the contract. Indeed, it should address the question of inspections and their timing, and should empower the Procuring Entity to conduct inspections and testing that it deems necessary. The procuring Entity should notify the Supplier or Contractor in a timely manner of the identity of its representatives for the purpose of inspection.
- 31.3. As with other aspects of contract administration, the extent to which monitoring of performance is required, and the modalities of that monitoring, vary from procurement to procurement depending upon a variety of factors. Those include, in particular, the following:
  - Nature of the procurement;
  - Type of inspection approach utilised in standard commercial practice;
  - Whether design, function or performance specifications are applicable;
  - Extent to which the Procuring Entity may rely on the Supplier or the Contractor's own procedures for quality assurance procedures;
  - Supplier, Purchaser or Contractor's experience and performance in the past;
  - Contractual procedures for progress reporting;
  - Extent of the performance risk;
  - Financial solidity of the Supplier, Purchaser or Contractor.

31.4. Various approaches to quality monitoring may be considered, including:

- Relying on the Supplier, Purchaser or Contractor's quality monitoring procedures – an approach that might be more appropriate in the case of procurement of commercially available items;
- Random inspections;
- Complete inspection (i.e., 100% of all work or output);
- Inspection during the production process.

31.5. It should be noted that reliance on the quality monitoring procedures of the supplier or contractor should not prevent the procuring entity from resorting to its own testing or inspection when it is deemed necessary to do so. The procurement contract should in any case reserve to the procuring entity the right to do so. Moreover, part of the monitoring responsibilities of the contract administration team should include monitoring the application of the supplier or contractor's own quality assurance procedures.

## Monitoring Progress of Performance

31.6. Another of the main "controls" exercised in contract administration is the monitoring of the implementation of the procurement contract from the standpoint of the agreed fulfilment schedule. In a works contract, this may be done on the basis of a program submitted by the Contractor showing the order and timing for the contractual activities. If updated periodically at stipulated intervals, the programme can be used to track progress in various aspects of contract implementation and can serve as part of the documentation for progress payments.

- 31.7. In practice, procurement contracts, in particular in the works and services sectors, establish reporting requirements to be fulfilled by the Contractor, referred to as “progress reports” (particularly in services sector). Such reports describe, for example, the progress that has been achieved during the period covered in the implementation of the contract and steps that may need to be taken by the Procuring Entity to remove any obstacles to further implementation. At the same time, the contract administration should not necessarily rely exclusively on written reports from the Supplier or Contractor. Those reports may be supplemented by site visits (for works) and other forms of obtaining information on actual progress.
- 31.8. Another aspect of the “time control” exercised in contract administration is the responsibility of the Procuring Entity in certain circumstances to extend the time allowed for performance of the contract (e.g., when a change order is issued rendering the original completion date unfeasible).

## Defects in Performance

- 31.9. Determining whether performance of contractual obligations, in particular those of the Supplier, Purchaser or Contractor, are defective depend in the first place on whether the performance rendered is in line with the technical requirements and descriptions set forth in the procurement/sale contract.
- 31.10. The types of remedies available to the Procuring Entity will depend in particular on the gravity of the defects, set in the context of the nature of the procurement/sale at hand. Again, the Contract should be helpful in determining whether a given defect is serious in nature. For example, in the context of a works contract, a defect that prevents the works from attaining the performance parameters set forth in the procurement contract (e.g., as to production capacity, or quality of the output of the facility, increased utilisation of inputs beyond limits set in the contract) may be deemed serious.

31.11. Apart from the nature of a defect, other factors may impact upon the rights of the parties and the steps to be taken in the face of defective performance. Those factors include:

- a) The stage at which a defect is discovered. Defects may be discovered at various stages in the implementation of a procurement Contract, and even beyond. For example, defects may be discovered:
  - I. During manufacturing or construction;
  - II. Upon failure to carry out required performance tests;
  - III. Failure to pass performance tests;
  - IV. Defects discovered following acceptance, but during the warranty period and notified to Supplier/Contractor;
- b) Whether a defect is curable or incurable, in which cases different solutions apply.

31.12. It may be noted that the procurement contract may require a Contractor to cure defects that are not the responsibility of the Contractor. The Contractor would be entitled to reasonable compensation for the extra work involved.

## Delay in Performance

31.13. Delay in performance of the procurement/sale contract is a problem that should be foreseen by the contract so that the remedies available to a party when a delay is attributable to the other party are known and understood by both sides. The extent to which remedies for delay need to be specified, and the detail and content of those provisions in the contract, depends on the nature of the procurement or sale. As a general rule, however, it is desirable to specify the remedies for delay in the contract, as that promotes transparency, predictability and compliance.

- 31.14. One should distinguish at the outset of encountering a delay problem between excusable and inexcusable delays (in particular force majeure or delays occasioned by the acts or omissions of the other party).
- 31.15. Typical delays by a contractor, for example, include delay in commencement of work, delay in completion of a component part of the works by a binding milestone date, and delay in completion. Delay in the implementation of the contract can be attributable not only to the Supplier, Purchaser or Contractor's side of the contract, but can also be the responsibility in some cases of the Procuring Entity. Delays attributable to the Procuring Entity may include, for example:
1. Delay in giving a Contractor access to the site;
  2. Delay in providing the design or other information required in order to implement the procurement contract;
  3. Failure to provide materials or equipment as called for in the procurement contract in a timely fashion;
  4. Delay in taking over and acceptance of works;
  5. Delay in taking delivery of goods, or taking over goods/equipment;
  6. Failure to make payment due under the Contract in a timely fashion.
- 31.16. Provisions on remedies often provide that, before exercising any other remedy, the aggrieved party is obligated to give notice to the other side of the delay in performance, giving an additional period of time to cure the problem.
- 31.17. A typical contractual remedy available to a Procuring Entity for delay (for example delay by the Contractor in a works contract) is commonly referred to as "liquidated damages". Pursuant to a liquidated damages clause in a Contract, the party subject to the clause is required to pay to the other party a sum stipulated in the Contract for each unit of delay (i.e., each, day, week or other unit of time stated in the contract). The Contract typically would provide for incremental payment and set an overall ceiling on the total amount that may be paid under a liquidated damages clause.

- 31.18. One of the main advantages of a liquidated damages clause is that it enables the parties to avoid negotiating or litigating the amount of damages to be paid upon the occurrence of the contingencies covered by the liquidated damages clause. In addition, the clause also promotes predictability in the implementation of the contract by allowing a party to know what the limit will be for its liability with respect to the contingency covered by the clause. It should be noted that payments under the liquidated damages clause do not relieve the Supplier, Purchaser or Contractor of its contractual obligations.
- 31.19. While it may be self-evident, it is nevertheless worth emphasising that a Procuring Entity should not apply remedies for delay when the delay is attributable to actions or omissions of the Procuring Entity.
- 31.20. In calculating what should be the amount set in the contract to be charged for delay, the Procuring Entity might wish to take into account relevant factor such as: cost of inspection and superintendence, and other losses such as cost of substitute facilities, and rental of buildings and facilities.

## Warranty Obligations

- 31.21. The procurement Contract should include provisions on the obligations of the Supplier or Contractor as regards the guarantee (warranty) covering the goods or works provided under the procurement contract. With respect to the procurement of goods, the Supplier's obligations concern:
- a) The supply of new and unused supplies, unless otherwise stipulated in the procurement contract (which might be the case if, for example, on environmental protection grounds, the procuring entity is interested in purchasing used items or items containing recycled materials);
  - b) The supply of the most recent model, incorporating all recent technical improvements;

- c) The absence of defects arising from design, materials and workmanship;
- d) Fitness for the intended purpose and usability without infringing industrial or intellectual property rights;
- e) Warranty coverage of spare parts and accessories;
- f) Supplier's responsibility to fix good defects or damage covered by warranty;
- g) Recommencement of warranty for repaired or replaced goods;
- h) The "self-help" rights of the procuring entity (including deductions from amounts due to the supplier) if the supplier does not fulfil the warranty obligations.

31.22. In the procurement of works, the concept of a guarantee applies as well. In the works context, the Contractor guarantees to repair any defects in the works arising during the period stipulated in the procurement contract ("defects liability period").

## Other Aspects of Monitoring

31.23. The Procuring Entity's monitoring of contract implementation should also include keeping track of the carrying out of contract administration activities themselves (e.g., inspection and quality control, payment, documentation, acceptance procedures).

31.24. Part and parcel of the monitoring process in contract administration is the resolution of problems in the progress of implementation that may be detected. Resolving such problems may require a mix of steps including in particular, investigation, contract interpretation and an assessment of the impact of the problem.



## 32. Section 32 Management of Payment

- 32.1. One of the main functions in contract administration has to do with the handling of payment due to the Supplier, Contractor or Consultant under the procurement contract. The requirements should be in the terms and conditions of payment and stipulated in the procurement Contract. The general principle to be applied, in accordance with the detailed provisions in the procurement Contract, is that the Procuring Entity shall pay the Supplier, Contractor or Consultant upon the submission of proper invoices, the prices set in the procurement Contract for goods, works, or services rendered and accepted, subject to any applicable deduction.

### Advance Payment

- 32.2. In procurement contracts of various types, it may be provided that an initial payment is to be made at the outset (e.g., upon signature of the procurement contract). In particular in the context of works procurement, that initial payment (referred to as an "advance payment") is intended to facilitate the Contractor's mobilisation of resources (equipment, material, labour) required in order to commence work.
- 32.3. In order to mitigate the risk associated with the advance payment, the procurement contract should make it clear that the advance payment funds are to be utilised solely for the intended purpose. Moreover, it is typically the case that the making of the advance payment is contingent upon the Contractor providing to the Procuring Entity an advance payment guarantee. The purpose of the advance payment guarantee is to secure the obligation of the Contractor to utilise the advance payment solely for the intended purpose.

- 32.4. Another aspect of the advance payment procedure that is important for Procuring Entities properly to administer, is the process of recouping the advance payment. Because of the nature of the advance payment, it is the standard practice that the amount of the advance payment should be recouped over the course of the progress payments made to the Contractor at various stages in the fulfilment of the procurement contract. In order to do so, a certain percentage is deducted from each progress payment.

### Progress (or Partial) Payments

- 32.5. A procurement contract, in particular a works contract based on the measurement (unit rates) approach, may structure payment so that it is linked to progressive stages in the implementation of the contract. Such a performance-based payment scheme should be based on the principle that payment is linked to the following types of milestones:
1. Performance measured by objective, quantifiable methods such as delivery of acceptable items, work measurement or statistical process controls;
  2. Accomplishment of events defined in the contract performance plan;
  3. Other quantifiable measures of results.
- 32.6. In accordance with the above principles, progress payments might be based, for example, on percentage of completion.
- 32.7. Under such a progress-payment scenario, the Contractor would be required to periodically to submit payment certificates (e.g., on a monthly basis) which state the estimated value of the work performed. The project manager then checks the Contractor's statement and certifies the amount to be paid.

## Invoices

32.8. The payment process under a procurement contract typically is triggered by the submission of an invoice. One of the contract administration functions of the Procuring Entity is to verify that that invoices have the required contents. The following are possible required elements of an invoice, depending upon the nature of the procurement:

1. Identification and coordinates of the Supplier, Contractor or Consultant, including the relevant officer to be contacted should the need arise;
2. Procurement contract number;
3. Description, quantity and price of the goods, works or services delivered;
4. Shipping and payment terms;
5. Inclusion of any supporting documentation as may be required by the procurement contract;
6. Payment instructions;
7. Proper authentication (e.g., signature).

32.9. If the Procuring Entity is in possession of an invoice that is defective, the Procuring Entity should notify the Supplier, Contractor or Consultant of the defect without delay so that it can be corrected.

## Retention Money

- 32.10. A technique that Procuring Entities may utilise as an alternative or as an adjunct to a performance security is the retention of a portion of each payment that becomes due under the procurement contract. That procedure is utilised typically in works contracting. In international practice, some portion of the retention money (e.g., 50 percent) is released upon provisional acceptance, with the remainder released at the end of the defects liability period. The technique of a retention guarantee may be used to provide security to the procuring entity if it agrees to release the retention money at an earlier stage.

## Disbursement

- 32.11. The identification and authority of officials charged with disbursement of payment is a key part of planning and implementing contract administration. Other aspects include aligning and coordinating the payment process with procedures for monitoring and assessing progress and quality of implementation.

## 33. Section 33 Other Contract Management Elements

### Contract Modifications

- 33.1. Modifications of the procurement/sale Contract may concern a variety of aspects, including, for example, time period for performance, technical aspects, quality and quantity, and contract price. The procurement contract addresses the question of price revision and contract amendment generally.

- 33.2. Contract amendments may be concluded with the agreement of both parties. However, procurement contracts typically empower the Procuring Entity unilaterally to order changes in the performance required from its counterpart party under the procurement contract. That approach reflects various considerations including the need to enable public entities, acting in the public interest, to adjust to changes in programmatic needs and priorities, and to technological changes, to promote economy and efficiency in public procurement, and to provide a mechanism by which positive adjustments can be made during the course of the implementation of the procurement contract upon the suggestion of the Supplier, Contractor or Consultant.
- 33.3. Looking firstly from the standpoint of the contractual relationship in the procurement contract, it is important, from a contract administration viewpoint, that variations are properly handled and do not become a source of abuse or needless contention in the implementation of procurement contracts. A widely recognized principle is that contract variations are appropriate and obligatory to be carried out if they are “within the general scope” of the procurement contract. Changes ordered that fall outside the general scope of the contract are more likely than not to lead to contentious disputes and ultimately diminish confidence in the fairness of the procurement system.
- 33.4. From the standpoint of protecting the competitive character and integrity of the procurement system, it is important that variations not be used in a manner that has the effect of circumventing the fundamental requirement that procurement should be carried out on the basis of competition. Stepping outside of the basic parameters of a procurement contract by way of variations means that substantial amounts of goods, works or services are being procured on a single-source basis.
- 33.5. Thus, it can be seen that improper resort to variations may give rise to private sector parties to procurement contracts, who are reluctant to carry out work outside of the scope of the procurement contract, or by third parties, legitimately object that procurement contracts have been improperly extended in circumvention of competition requirements.

- 33.6. At the same time, the contract administration team should be vigilant against unscrupulous Suppliers or Contractors who have submitted unrealistically low bids and then attempt to obtain additional payment by way of contract variations that are precipitated in the course of contract implementation. Vigilance is also required as contract variations represent a major potential source of corruption in the procurement process.
- 33.7. A distinction needs to be drawn between variations that potentially raise the types of issues mentioned above and administrative changes to the contract that do not affect the obligations of the parties, as well as other changes foreseen in the contract such as exercise of options clauses.
- 33.8. A contract variation that results in a price change less than 15% of the value of the contract, and in considering the above, maybe made with the authorisation of the CEO of the PE. A contract variation that results in the price change of more than 15% of the contract will require approval from the BOD of the PE. PEs should ensure proper documentation of the justifications for such variations.

## Assignment and Sub-Contracting

- 33.9. "Assignment" involves the transfer by a party to a contract of its rights and obligations under the contract to a third party. "Subcontracting" involves the engagement by a party to a contract of a third party to perform part of its obligations under the contract. Either of those practices might be encountered in the course of contract administration. Both types of practices are widely known in commercial circles.

- 33.10. While sub-contracting in particular is widely practiced also with respect to public procurement contracts, sub-contracting and assignment are typically subject to restrictions. Assignment is particularly subject to restriction or prohibition, since it may readily be understood as running counter to the fundamental public procurement premise that the procurement contract should be awarded – and performed – by the bidder that emerged victorious from the competitive procurement procedure.
- 33.11. Sub-contracting is only permitted with the written consent of the Procuring Entity and the Contractor is not released from liability for the performance of the procurement by virtue of the sub-contracting.

### Stop Work Orders

- 33.12. Procurement contracts may authorize the Procuring Entity to issue stop-work orders. The circumstances that typically give rise to stop-work order include:
- a) The inability of the Procuring Entity to provide site access, equipment, or other property or services in accordance with the contractual schedule;
  - b) The need to suspend manufacturing and to adjust the manufacturing process or tools due to quality considerations;
  - c) The need to contemplate the possibility of modifying the technical specifications;
  - d) Contestation/grievances by other bidders, until such grievances can be addressed;
  - e) An Investigation by Anti-corruption Commission or another investigative authority relating to the particular contract

- 33.13. Issuance of stop-work orders is not a step to be taken lightly, in view of the potentially disruptive effect on the procurement process. It is therefore necessary to consider whether less disruptive, more cost-effective measure might be an option. If a stop-work order is unavoidable, it is necessary to be as specific as possible as what portions of the contractual performance are subject to the stop-work order and what portions are not subject to the order.
- 33.14. In cases of urgency, the procurement contract may authorize stop-work orders to be delivered orally, subject to prompt confirmation in writing.

## Replacement of Personnel

- 33.15. One of the fundamental principles of public procurement – one that due to various circumstances is quite frequently tested in practical application - is that the winning bidder must employ, in the implementation of the procurement contract, those key personnel that were listed in the successful tender, and on the basis of whose listing the award of contract was made. Failure to apply that principle would subject the procurement process to manipulation by unscrupulous bidders, and diminish fairness and competition in the procurement process.
- 33.16. When the use of substitute personnel is unavoidable, the substitute personnel must have the same or greater qualifications than the personnel being replaced, and the substitution of the personnel must be approved in advance by the Procuring Entity (e.g., the procurement contract might provide that substitutions are subject to approval by the Project Manager).



## Remedies

- 33.17. A remedy is a measure that a party may take in response to non-compliance by the other party with the terms of the contract. While contract remedies are generally specified in applicable law, the remedies intended to be available to the parties in the event of a breach of contractual obligations should be identified in the procurement contract.

From the standpoint of the Procuring Entity, the main types of remedies include:

1. Notice of, and period to cure, the defective performance;
2. Rejection of the defective performance and withholding of payment until satisfactory performance is provided;
3. Remedies pursuant to applicable express or implied warranties;
4. Correction of the Supplier or Contractor's defective performance by the Procuring Entity (e.g., by way of substitute performance), with any costs incurred by the Procuring Entity (including that of replacement performance) to be on the account of the defaulting Supplier or Contractor;
5. Acceptance of minor defects with reduction of price;
6. Termination of the contract;
7. Payment of damages, which, in the case of delay, may take the form of liquidated damages.

## Settlement of Contract Disputes

### Claims

- 33.18. A "claim" can be understood as a demand by a party to the Contract for compensation, or perhaps for some other sort of relief (e.g., adjustment of the contract), on the grounds that the party has an entitlement to the relief requested.

- 33.19. Thus, the Procuring Entity may claim against its counterpart for defective performance, or additional costs incurred due to the need to re-procure. However, the possibility of lodging claims under a contract is a two-way street. Claims may be lodged not only by the Procuring Entity, but also by the other party to the procurement or sale contract (i.e., the Supplier, Purchaser or Contractor).
- 33.20. There are several main principles as regards to the procedures for making claims. Those include:
1. Timely notice. The procurement contract should impose a notice requirement designed to prevent tardiness in the making of claims. For example, pursuant to the FIDIC conditions of contract, a Contractor's claim for additional payment must be filed within 28 days of the occurrence of the event giving rise to the claim.
  2. Contemporary records. It is a widely recognized principle that a Contractor must produce "contemporary record" (i.e., records made at the time of the occurrence of the event giving rise to the claim) in order to support the claim.
  3. Substantiating the claim. The procurement contract may require the Contractor to provide the detailed information concerning the claim within a stipulated period of time following the notice of claim; if the problem is of an ongoing nature, the Contractor may be required periodically to update the information.

## Fraud

- 33.21. Contract claims is another area that requires the particular vigilance of the contract administration team, as it may present ample opportunities for fraud. If the Contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the Contractor, the Procuring Entity should not pay the claim to that extent, and should refer the matter to legal counsel.

## End of Activity Report

- 33.22. The preparation and submission of an End of Activity Report to the Tender Evaluation Committee, or its other ad-hoc Committees, is a mandatory requirement for all Procuring Entities. On completion of a contract, the Head of Technical Department will prepare a detailed End of Activity Report, with a copy for the contract file, whereby the performance of the Contractor shall be assessed. It will include the Contractor's adherence to contract instructions, responses to progress enquiries, timely completion of delivery and quality of the work carried out and shall be the basis of the performance appraisal.

## Documentation

- 33.23. A particularly important "administrative" function in the bundle of contract administration activities is the production, collection and maintenance, in an updated manner, of various types of documents related to and generated in the course of, contract implementation and administration. Those documents include, in particular:
- a) Contract documents;
  - b) Records tracking progress in the implementation of the procurement contract (e.g., time schedules and bar charts of detailed schedules in works procurement; dispatch, delivery and inspection documents in goods procurement);
  - c) Minutes of meetings held by the Project Manager;
  - d) Financial records;
  - e) Progress reports from the supplier, contractor or consultant, and internal Procuring Entity reports.

## Contract Close-Out

33.24. This final step in the contract administration process takes place following the completion of the Contract, including any lingering period during which the Supplier or Contractor remains responsible (e.g., the defects liability period). Upon the conclusion of the Contract close-out exercise, steps such as the following will have been carried out:

- All the supplier or contractor's claims will have been settled;
- All outstanding payments made;
- Securities discharged;
- Any retention money released; and
- Performance evaluation completed.

# CHAPTER 9. HANDLING OF COMPLAINTS AND PROTEST

Even after the procurement or sale Contract has been awarded and signed, it is possible for a party to address a complaint to the Procuring Entity. This Chapter provides a brief description of the process, its format and conditions.

## **34. Section 34 Complaint Mechanism**

- 34.1. An efficient system to address complaints and protests from Suppliers and Contractors, as well as from professional bodies and the public, is a fundamental requirement for a good public procurement system to achieve transparency. An efficient and fair system would contribute to perception of integrity and consequent trust in the public procurement system.
- 34.2. For this reason, these Guidelines describes the complaint process, however in general terms and centred on Suppliers and Contractors. Notwithstanding, the SBDs and conditions of contract shall establish more specifically and depending on the nature of the procurement, the review of complaints when a contract has already been awarded and signed.

### **Format of the Complaint**

- 34.3. A complaint means a written objection, submitted by one or more of the Suppliers, Purchasers or Contractors (the complainant) within five working (5) days, regarding a solicitation, contract award or proposed contract award for goods, works or services.
- 34.4. The complaint must be received in a written form and should contain the following information:
  - 1. Company name, address, contact person name, telephone number, fax number, email address.
  - 2. The nature of the problem, and if applicable, identifying the part of the regulation or rule that is believed to have been broken.

3. Description of the background leading to the problem; statement of breach of Tender/Contract; relevant dates and times; Tender/Contract reference number.
4. The supporting and provable facts.
5. Any Debriefing that was requested, dates, time, and PE representative.
6. The Procuring Entity's representative(s) originally contacted to review the problem and the results of those discussions.
7. Listed in detail, the action that is requested.

34.5. Prior to formally presenting a written complaint, Suppliers or Contractors are strongly encouraged to contact the Procuring Entity to discuss their concerns. It has often been found that there are minor errors, omissions or other inadvertent actions that can be clarified and corrected, to the satisfaction of the complainant.

### **Procuring Entity Register of Complaints**

34.6. Every Procuring Entity shall maintain a register of complaints in which all information such as date of receipt of complaint, date of reply, etc., shall be recorded.

## **35. Section 35 Review of Procurement Process**

35.1. Any Supplier, Purchaser or Contractor that claims to have suffered, or may suffer, loss or injury due to a breach of a duty imposed on the Procuring Entity by the legislation applicable to public procurement may seek a review of the procurement process. However, the following shall not be subject to a review process:

- The selection of the method of procurement used;
- The choice of a selection procedure;
- The limitation of procurement proceedings to National Competitive Tendering; or

- A decision by the Procuring Entity to reject tenders, proposals, offers or quotations.

35.2. A complaint shall, in the first instance, be submitted in writing to the Procurement Grievance Committee of the Procuring Entity.

### Review by the Procurement Grievance Committee of Procuring Entity

35.3. The Grievance Committee of the Procuring Entity shall not entertain a complaint unless it was submitted within five (5) days after the Supplier, Purchaser or Contractor submitting it became aware of the circumstances giving rise to the complaint, or when that Supplier, Purchaser or Contractor should have become aware of those circumstances, whichever is earlier.

35.4. The Grievance Committee of the Procuring Entity shall, within ten (10) days after the submission of the complaint, issue a written decision:

- a) Stating the reasons for the decision;
- b) If the complaint is upheld in whole or in part, indicating the corrective measures that are to be taken;
- c) Copy of the decision shall be sent to the CEO of the PE within three (3) days of the decision.

35.5. If the Grievance Committee of the Procuring Entity does not issue a decision within ten (10) days, the Supplier, Purchaser or Contractor submitting the complaint is encouraged to submit their complaint to ACC.



# Appendix 1a: Statement on Ethical Conduct and Fraud and Corruption (applicable to Evaluation Reports)

We the undersigned confirm that:

- 1. During the procurement process and the evaluation of bids and proposals, that we have adhered to the ethical standards set out in the SOE Procurement Procedure Guidelines for Goods, Works and Services.
- 2. We have gained in the execution of our duties, no benefit either monetary or in kind from any outside agency, bidder or consultant other than the official remuneration that we have received as an employee of the PE
- 3. To the best of our knowledge that no colleague, associate or relative has received any benefit monetary or in kind from any outside agency, bidder or consultant other than official remuneration.
- 4. We are unaware of any fraudulent, corrupt, collusive or coercive practices that have taken place during this procurement process and fully understand our moral and ethical obligation to report such should we be aware of it.
- 5. No conflict of interest exists either on our part or the part of the bidder or consultant recommended for an award of contract, or as far as we are aware the part of our immediate colleagues, associates and relatives.

Name	Position	Signature	Date

## Appendix 1b: Declaration on Ethical Conduct and Fraud and Corruption (applicable to the Private Sector)

[The Bidder shall fill in and submit this form with the Bid]

We the undersigned confirm in the preparation of our Bid that:

1. Neither we, nor any of our employees, associates, agents, shareholders, consultants, partners or their relatives or associates have any relationship that could be regarded as a conflict of interest as set out in the Bidding Documents.
2. Should we become aware of the potential for such a conflict, will report it immediately to the Procuring Entity.
3. That neither we, nor any of our employees, associates, agents, shareholders, partners, consultants or their relatives or associates have entered into corrupt, fraudulent, coercive or collusive practices in respect of our bid or proposal.
4. We understand our obligation to allow the Procuring Entity to inspect all records relating to the preparation of our bid and any contract that may result from such, irrespective of if we are awarded a contract or not.
5. That no payments in connection with this procurement exercise have been made by us or our associates, agents, shareholders, partners or their relatives or associates to any of the staff, associates, consultants, employees or relatives of such who are involved with the procurement process on behalf of the Procuring Entity, Client or Employer.

Authorised Signature: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

## Appendix 2a: Summary of Evaluation of Contract Award Sample Reports

### GOODS AND WORKS

Name of Procurement:		Date of this Notice:	
Bid/Contract Description:		Scope of Contract:	
Procurement Method:		Contract Signature Date:	
<b>Awarded Bidder</b>			
Name of Awarded Bidder	Bid Price at Opening	Final Bid Price	
<b>Evaluated Bidder(s)</b>			
Name of Evaluated Bidder (s)	Bid Price at Opening	Final Bid Price	
<b>Rejected Bidder(s)</b>			
Name of Rejected Bidder (s)	Bid Price at Opening	Final Bid Price	

### SERVICES

Name of Procurement:			Date of this Notice:		
Bid/Contract Description:			Scope of Contract:		
Procurement Method:			Contract Signature Date:		
Name of Consultant/Firm	Technical Score	Financial Score	Financial Proposal Amount	Total Score	Final Ranking
Remarks:					

## Appendix 2b: Contracts Register Sample Report

Sr. No	Type of Procurement	Name, Description of Procurement Package	Estimated Cost (as per approved PP)		Procurement Method	Total No. of bids received	List name's of all bidders/ consultants who submits proposals	Contract identification no.	Contract Amount		Contract signing data	Name and address of Contractor/ Supplier	Remarks
			Currency	Amount					Currency	Amount			
1	Goods												
2	Goods												
3	Works												
4	Works												
5	Services												
6	Consulting Firm												
7	Consulting Firm												
8	Individual Consultant												

# Appendix 3: Procurement Plan Sample Format

Name of Procuring Entity:

Procurement Plan Year:

Serial No	Contract No	Description of Goods/Works/ Services	Status	Total Estimated Cost (MVR)	Method of Procurement	Procurement Responsibility	Estimated Date of Invitations for Bids	Contract		
								Contract Signed	Contract Completed	Remarks
			Plan							
			Revised Plan							
			Actual							
			Plan							
			Revised Plan							
			Actual							
			Plan							
			Revised Plan							
			Actual							

## Appendix 4: Recommended Submission Deadlines

Type of Procurement	Period
Restrictive Tender (applicable to both EOI and RFP/RFQ stages)	Minimum seven (7) days to thirty (30) days from the date of the invitation to bid or the date of availability of Bidding documents, whichever is later
Open Tender (applicable to both EOI and RFP/RFQ stages)	Minimum seven (7) days to thirty (30) days from the date of the invitation to bid or the date of availability of Bidding documents, whichever is later
General advertisements (RFQ or Shopping)	Minimum one (1) day to seven (7) days