



**GOVERNMENT OF THE KINGDOM OF TONGA**

**CONTRACTING ENTITY PROCUREMENT MANUAL**

**Ministry of Finance and National Planning Tonga**

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# CONTRACTING ENTITY PROCUREMENT MANUAL

## Introduction

Whilst the Central Procurement Unit is responsible for carrying out all procurement with an estimated contract value above \$10,000, the Public Procurement Regulations 2015 require that a procurement unit shall be established in each Contracting Entity to carry out procurement activities that are below that threshold.

This manual is specifically designed for the guidance of such Contracting Entities and their respective procurement units.

It is the responsibility of the Contracting Entities to decide:-

- overall procurement planning and the annual procurement plan
- preparing, in cooperation with the end-user department(s) procurement proposals
- preparing the draft contract documents in accordance with the templates issued by the Procurement Division, seeking advice and guidance from the Central Procurement Unit where appropriate;

Responsibilities of the procurement unit

Where the estimated contract value does not exceed \$ 10,000, the procurement unit shall:

- prepare all requests for quotations and bidding documents in accordance with the templates issued by the Procurement Division;
- publish and dispatch requests for quotation;
- receive and safeguard quotations;
- respond to requests for clarification from bidders;
- organize and record site visits, if any;
- prepare the evaluation report for the quotations for approval by the head of the Contracting Entity;
- administer and implement purchase orders and, in doing so, seek the assistance of the Central Procurement Unit where appropriate;
- seek the approval of the Central Procurement Unit for any proposed variations or amendments to the purchase order;
- maintain the procurement file with complete records; and
- keep a full record of all procurement carried out to be

The Public Procurement Regulations provide a framework of rules that must be adhered to when undertaking procurement in Tonga This manual provides the practical detail that

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Contracting Entities and procurement unit practitioners must have to assist them to make sound judgements on procurement issues on a day to day basis.

### Central Procurement Unit of the Ministry of Finance and National Planning

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Glossary

BOQ	Bill of Quantities
CEO	Chief Executive Officer
CPU	Central Procurement Unit
EOI	Expression of Interest
GOT	Government of Tonga
GPC	Government Procurement Committee
HPD	Head of Procurement Division
ICB	International Competitive Bidding
MOFNP	Ministry of Finance and National Planning
NCB	National Competitive Bidding
PD	Procurement Division
PPR 2015	Public Procurement Regulations 2015
RFP	Request for Proposal
RFQ	Request for Quotation
SoW	Scope of Works
TOP	Tongan Pa'anga
TOR	Terms of Reference
VfM	Value for Money

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# 1 WHAT IS PROCUREMENT?

## 1.1 PROCUREMENT

Procurement is the process of obtaining goods, works and services from an outside source.

Public Procurement Regulations 2015(PPR 2015) defines goods, works and services as follows:

### 1.1.1 Goods

Goods are described in the PPR 2015 as “Objectsofeverykindanddescription,includingcommodities, rawmaterials, productsandequipmentandobjectsinsolid,liquidorgaseous formaswellas services incidentalto the supply ofgoods,ifthevalueofthese incidentalservicesdoesnotexceed thatofthe goodsthemselves.”

Goods are physical products manufactured, in other words items that you can see and touch. It can be items of merchandise, finished products, supplies or raw materials. It may include fixed assets.

### 1.1.2 Works

In the PPR 2015 Works are described as “allworksassociatedwiththe construction,reconstruction, demolition,repair, maintenanceorrenovationofabuildingorstructure,or anyconstructionworks suchasrailways, roads, highways,sitepreparation, excavation,installationofequipmentandmaterials,decoration,aswellas physicalservicesincidentalto works,ifthevalueofthoseservicesdoesnot exceed thatofthe worksthemselves.”

In short, Works are defined as civil engineering.

### 1.1.3 Services

Services are divided into two sections, namely ‘consultancy services’ and ‘non-consultancy services’.

**Consultancy Services** –Are ‘Intellectual and/or professional services and assignments performed by consultants with outputs of advisory, design and transfer of know-how nature.” For example, services as provided by legal, accounting, design or other specialists who produce specialized reports (Outputs) or provide advisory inputs such as procurement advisory services (inputs)

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**Non-Consultancy Services** - “physical services or other labour, time or effort; stand-alone service type contracts (such as security services, catering services and geological services).” Such services may also be contracted as framework contract for what is termed common use items which are usually contracted regularly throughout the year. A typical example of common use items would be office stationary.

Some examples of Consultancy Services and Non-Consultancy Services.

<b>Consultancy Services</b>	<b>Non-Consultancy Services</b>
Procurement Training	Travel Management Services
Design of facilities such as water works	Office Cleaning Services
Financial Reform	Security Services for offices
Advisory Services	Food Provisions for the Prison service

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## 2 WHO'S WHO IN GOVERNMENT PROCUREMENT?

### 2.1 GOVERNMENT PROCUREMENT COMMITTEE

The Government Procurement Committee (GPC) is made up of senior Government officials. It has many functions but one of the most important ones is to review all procurements with a value of TOP 100,000 and above. If satisfied that PPR 2015 has been followed, the GPC will issue a "Letter of No Objection".

Only after the "Letter of No Objection" has been obtained from the GPC may the Notification of Award and letters to unsuccessful bidders be issued.

The Central Procurement Unit (CPU) will submit all the necessary documentation to the Procurement Division (PD) and the PD submits it to the GPC.

The GPC meets once a month.

### 2.2 PROCUREMENT DIVISION

The Procurement Division (PD) is a division within the Ministry of Finance and National Planning (MOFNP). Its main responsibility is to ensure that all procurement governed by PPR 2105 has been carried out correctly, that fair practice has been observed and best value for money achieved.

In doing so the PD reviews all procurement with a value of between TOP 7,500 and \$10,000. If it is satisfied that the process has been carried out correctly and in line with PPR 2015, it will issue an endorsement. Contracts may only be placed once the PD endorsement has been received.

Note that procurements with a value between TOP 7,500 and TOP 10,000 are carried out by the Contracting Entity and submitted to CPU who transmits it to PD for endorsement.

Procurement with a value of TOP 10,000 and above is carried out by CPU.

The PD is also responsible for issuing procurement manuals, templates and regulatory updates as appropriate.

### 2.3 CENTRAL PROCUREMENT UNIT

The Central Procurement Unit (CPU) is the arm of the Procurement Division tasked with carrying out all government procurement with an estimated value of TOP 10,000 and above. For those procurements, the CPU officer will work closely with the Contracting Entity (the party whose budget is being spent and who also signs the contract – see below).

The Contracting Entity is responsible for all technical matters and actively involved in the evaluation process. The CPU is responsible for the administrative side of the procurement process, ensuring the procurement is carried out in line with PPR 2015 and that best value

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for money is achieved. Where not provided by contracting entities, the Central Procurement Unit also provides an Annual Procurement Plan of those major items of expenditure for procurements envisaged to be purchased in any financial year, and also provide details for ad-hoc procurements in the format provided by the Procurement Division.

For Contract where the estimated contract value exceeds \$100,000, the central procurement unit, following approval of the bid evaluation report by the head of the Contracting Entity, submit the file to the Government Procurement Committee for approval

The CPU is also responsible for the procurement of common use items on behalf of all Contracting Entities.

## 2.4 CONTRACTING ENTITIES

Contracting entities are defined as “any Ministry, Department, Division, agency or other unit of the Government or any subdivision thereof, engaging in procurement as well as the Central Procurement Unit; this shall include public enterprises and statutory bodies, as applicable.”

The Contracting Entity is the party which:

- **determines the need (see section 4.2)**
- **provides the funds (whose budget payment will be made from)**
- **provides technical details**
- **assists with technical evaluation**
- **issues letters of award and notification to unsuccessful bidders**
- **signs the contract**

The Head of the Contracting Entity is responsible for procurement, in other words it is his/her duty to ensure that the regulations have been followed. In signing the contract, the Head of the Contracting Entity declares that he/she confirms that the necessary authorization has been obtained from PD.

## 2.5 PROCUREMENT UNIT

Each Contracting Entity has a procurement unit which is defined as “a unit established by a Contracting Entity which is responsible for the procurement of the goods, works, services or consultancy services.”

This unit may consist of one or more officers. The size is decided by the head of the Contracting Entity but the unit shall be consisting of enough officers to ensure the Contracting Entity’s procurement is carried out sufficiently. Such officers shall be trained by the PD.

In cases where the procurement activity of a Contracting Entity is low, a single officer may be nominated to carry out the procurement function. Should the head of the Contracting

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Entity decide that there is insufficient capacity in his office; the procurement may be carried out by the CPU.

### 2.5.1 Duties of the procurement unit

Where the estimated contract value is below \$7,500 the procurement unit is responsible for the entire implementation of procurement and may seek quotations or proposals, evaluate and award contracts using **Request for Quotations** (For Goods, Works and non-consultant services), **Request for Proposals** for Consultant Services and **Limited Bidding** procedures where appropriate.

Where the estimated contract value exceeds \$ 7,500, the procurement unit shall forward the procurement proposal to the Central Procurement Unit for endorsement by the Head of the Procurement Division prior to placing a contract.

Where the estimated contract value does not exceed \$ 7,500, the procurement unit shall:

- prepare all requests for quotations and bidding documents in accordance with the templates issued by the Procurement Division;
- publish and dispatch requests for quotation;
- receive and safeguard quotations;
- respond to requests for clarification from bidders;
- organize and record site visits, if any;
- prepare the evaluation report for the quotations for approval by the head of the Contracting Entity;
- administer and implement purchase orders and, in doing so, seek the assistance of the Central Procurement Unit where appropriate;
- seek the approval of the Central Procurement Unit for any proposed variations or amendments to the purchase order;
- maintain the procurement file with complete records; and
- keep a full record of all procurement carried out to be

Where the estimated contract value exceeds \$10,000or, if requested by the Contracting Entity, the Central Procurement Unit will carry out any the procurement on behalf of the Contracting Entities

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## 3 PUBLIC PROCUREMENT REGULATIONS 2015

### 3.1 SCOPE OF PUBLIC PROCUREMENT REGULATIONS 2015

PPR 2015 applies to all other procurement activities carried out by contracting entities.

Should procurement be required under a donor funded project, and the agreement between Government and the donor requires for the procurement procedures of the Donor.

■ **Note that many donors have agreed to apply the procurement procedures of the Government of Tonga. If you are uncertain, check with CPU. Procurement carried out incorrectly under a donor arrangement will have to be started again to comply with the necessary rules and regulations.**

Public enterprises and statutory bodies may adopt their own rules providing it is consistent with PPR 2015 and have been approved by the Government Procurement Committee (GPC). Failure to submit their own rules and procedures or if it doesn't meet with GPC approval, means that Government procurement rules (PPR 2015) apply.

### 3.2 EXEMPTIONS

Some types of procurement are exempt from PPR 2015, in other words the procurement methods therein do not have to be followed. However, good and fair procurement practice should be maintained and one should always aim to achieve best value for money. Therefore, where possible, competition should be allowed.

■ **Competition occurs where more than one potential company are invited to quote/bid.**

The permitted exemptions are:

- **The procurement or acquisition of fiscal agency or depositary services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and Government bonds, notes and other securities;**
- **Arbitration and conciliation services;**
- **public employment contracts, including statutory appointments;**
- **the procurement of agricultural products made in furtherance of agricultural support programmes and human feeding programmes, including food aid;**
- **the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property;**

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- the supply of military equipment; works, supplies and services directly related to military equipment; or works and services for specifically military purposes; (where those services are deemed to be secret)
- contracts when they are declared to be secret, when their performance must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Kingdom of Tonga or when the protection of the essential interests of the Kingdom so requires.

■ *Whilst the above is exempt, the CPU may assist with carrying out the process. If the procurement officer requires assistance in procuring any of the above, the CPU may be contacted for guidance.*

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## 4 PROCUREMENT BUDGET PLANNING

### 4.1 ANNUAL BUDGET

Before any procurement can be carried out there has to be funds to pay for it. Therefore, procurement planning starts with the annual budget.

The annual budget is an estimate of income and expenditure for a financial year. The expenditure shall reflect all procurement to be undertaken during the course of that financial year and should also include a provision for unforeseen expenditure, as these always occur. Unforeseen expenditure may for example be incurred due to natural disasters (cyclones, outbreaks of diseases, etc.).

The budget identifies funds for specific activities. It is usually for a specific project, or parts thereof, and that lump sum is further broken down in the annual procurement plan.

Annual procurement plans are to be submitted to the CEO MOFNP as a supporting document to the budget application.

- ***Before starting any procurement procedure, it is the role and duty of the procurement officer to ensure that funds are available, not only for the requirement but also for other procurement related costs like advertising.***

### 4.2 ANNUAL PROCUREMENT PLANS

The Contracting Entity is required to submit a draft annual procurement plan together with its annual budget submission to the MOFNP Budget and Corporate Plan Division.

Once the budget has been approved, the Contracting Entity is required to finalize (if required) and submit its annual procurement plan to the Procurement Division (PD).

- ***This must be done as soon as possible but no later than the last working day of July of each year.***

The annual procurement plan is exactly that: a plan of the procurement to be carried out during a financial year. It shows the description of the requirement, the estimated budget, source of funding, procurement method and start and end dates.

In preparing the annual procurement plans, the procurement officer shall pay attention to the following:

#### 4.2.1 Aggregation of goods

Some items could be combined for the purpose of achieving best value for money. For example, where more than one water tank is required, but some are required for delivery

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in August and others in January, one contract may be placed stating the different delivery dates. Savings can be made by buying large quantities at a time and also through combining deliveries of imported items as it reduces transport costs and other charges (economies of scale).

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#### 4.2.2 Artificial division of procurement

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For the purpose of establishing the correct procurement method, a Contracting Entity may not artificially divide an object of procurement with the intention of avoiding the financial thresholds as set out in PPR 2015.

- *For example, if the total estimated value of the procurement falls in a bracket which determines procurement to be carried out by the CPU then the Contracting Entity may not divide it into smaller requirements so that it may carry out the procurement process internally.*
- *Or when there is a time constraint. Certain procurement methods take longer than others. The Contracting Entity may not divide the requirement into two or more separate requirements in order to save time.*

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#### 4.2.3 Division into lots

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Where it is anticipated that the award of several separate contracts may result in best overall value for money, contracting entities may divide requirements, which could be procured as a single contract, into lots.

When dividing into lots the Contracting Entity shall consider the following:

- **Compatibility and inter-changeability between items**
- **That division does not invalidate the provider’s warranty or liability**
- **The cost of maintenance and servicing of similar items**
- **Contract administration resources**

- *This is different to artificial division. As stated above, a requirement may not be divided into lots of the sole purpose of avoiding thresholds.*

### 4.3 ESTIMATED COSTS

A cost estimate is the predicted cost of the requirement. The estimated cost shall include all the costs associated with providing the requirement at the place of delivery (the total amount payable). In other words, if goods are to be imported, the cost of delivery to Tonga (freight) as well as customs duties and clearance charges shall be included. If the item is bought locally, delivery and installations charges shall be included, where appropriate.

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■ ***The estimated costs must not be revealed to any Bidder or potential Bidder at any time during the procurement process.***

It shall also include any costs associated with any form of options or any renewals of contract.

The estimated cost shall be valid at the time the requirement is advertised or quotations are sought. Estimated costs from previous years are no longer valid due to various price increases and could lead to a shortfall in available funds, which could force the contracting authority to buy less than what is actually required.

The estimated costs are drawn from the annual procurement plans. Where appropriate, it is further broken down per item or per group of items, for example medical supplies or stationary items.

■ ***Where cost estimates are required to be further broken down, the specific cost estimate could be obtained in various ways, for example:***

■ ***Market research: Prices may be taken from the internet, advertisements or in-store.***

Records: If similar products have been procured before, the cost plus a reasonable addition for increases may be used. Care should be taken when the requirement includes a commodity where price fluctuations can be big, for example steel and fuel. In such cases it is better to use market research.

**For Works contracts**, the estimated cost shall include both the costs of the works as well as the cost of supplies necessary for carrying out the works.

**For Consultant and Non-Consultant service contracts**, the estimated cost shall include, where appropriate, premiums payable (in case of insurance), fees, commission, travel, accommodation, daily allowances (per diems) and any other costs payable under the contract.

#### 4.4 TIME FRAMES

Enough time shall be allowed for the procurement process to be carried out efficiently and in line with PPR 2015. Therefore, the procurement process shall be started in good time, taking into account the prescribed bidding periods and other elements of the specific procurement method.

The PPR2015 stipulates, the following, minimum time frames are to be allowed for each procurement method, as detailed below in column 1. This is the time allowed from issuance of advertisement or from Invitation to Bid to the latest submission date.

In column 2, the estimated overall time to complete a procurement transaction is indicated this is from the issuance of advertisement or from Invitation to Bid to award of contract.

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The figures shown in column 2 are calculated taking into account the Bidding periods detailed in column 1 plus evaluation, evaluation reporting, approval and award of contract.

Column 2 is an estimate and does not account for extended evaluation periods (which may occur for complex requirements or for production and delivery times).

Procurement Method	1. Minimum Time frame	2. Overall time Frame
<b>Request for Quotation (RFQ) issued by contracting entities</b>	10 days	25 days
<b>Request for Quotation (RFQ) issued by CPU</b>	10 days	20 days
<b>Request for proposal (RFP)</b>	30 days	55 days
<b>Selective Bidding</b>	20 days	25 days
<b>Restricted Bidding with prequalification</b>	20 days	40 days
<b>Restricted Bidding without prequalification</b>	20 days	30 days
<b>Limited Bidding (incl. direct source)</b>	10 days	15 days

More information on the procurement methods can be found in Section 6.1 to 6.9.

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## 5 THRESHOLDS AND PROCUREMENT METHODS

### 5.1 THRESHOLDS

PPR 2015 states three different types of thresholds to be observed, namely:

- Party responsible for carrying out procurement
- Authorization of procurement carried out
- Procurement methods to be used

The thresholds are summarized as follows:

#### 5.1.1 Party responsible for carrying out procurement

Procurement carried out by:	Value
<b>Contracting Entity</b>	Up to TOP 9,999
<b>CPU</b>	TOP 7,500 and above

These thresholds apply to ALL procurement,

#### 5.1.2 Authorization of procurement carried out

Authorization to be given by:	Value
<b>Head of Procurement Division (HPD)</b>	TOP 9,999 – TOP 99,999.99
<b>Government Procurement Committee (GPC)</b>	TOP 100,000 and above

These thresholds apply to ALL procurement

#### 5.1.3 Procurement methods to be used

The procurement method to be used depends on whether it is for goods, works, services or consultancy services.

All values are given in Tongan Pa'anga (TOP).

Type of Procurement	PROCUREMENT METHOD – Goods, Works and Non-Consultancy Services		
	RFQ	NCB	ICB
<b>Goods</b>	7,500 – 49,999.99	50,000 – 149,999.99	150,000 +

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<b>Services (Non-consultancy)</b>	7,500 – 49,999.99	50,000 – 149,999.99	150,000 +
<b>Works</b>	7,500– 99,999.99	100,000 – 999,999.99	1,000,000 +
<b>PROCUREMENT METHOD – Consultancy Services</b>			
<b>Method</b>	RFP	EOI & RFP	Int. EOI & RFP
<b>Consultancy services</b>	7,500 - 49,999.99	50,000 – 149,999.99	150,000 +

■ *Note that the procurement thresholds start at TOP 7,500. Any purchases with a value below TOP 7,500 may be done ‘informally’ and claimed from MOFNP Treasury by way of cash receipt, as described in Treasury Instructions 2015.*

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## 6 PROCUREMENT METHODS

The following Procurement methods are the only ones to be used on all GOT procurement.

The first three are those most common for small value contracts and are likely to be regularly used by Contracting Entities.

- **Request for Quotations**
- **Request for Proposal**
- **Limited Bidding**

In addition to the above three methods, in Section 6.4 to 6.10 there are other methods of Tender which Contracting Entities will have some involvement although, because of value, are likely to be carried out by the CPU.

### 6.1 REQUEST FOR QUOTATION (RFQ)

This is a simple procurement method for the procurement of small value contracts of goods, works and non-consultant services and it can be completed in the shortest period of time. It is to be used for contracts with an estimated value of \$7,500 up to TOP 50,000 and works with an estimated value of \$7,500 up to TOP 100,000.

Preparation of the RFQ document should include clearly worded specifications.

- **For Goods: the specification should include required operating or repair manuals. Goods shall be of the most recent design and incorporating all recent manufacturer’s modifications. Also important is warranty or guarantee and available service facilities.**
- **For Works: In addition to a detailed Scope of Work, the specification should detail standards, location, working hours, completion required expressed in days or weeks from award, detailed scope of work and contractors insurance cover.**
- **For Non-Consulting Services: It will be a detailed Scope of Work and provide location, working periods, standards and, in the case of services requiring personnel, the expected number of personnel.**

For Contract values from \$7,500 up to \$9,999, the procurement officer shall request a minimum of three quotations.

■ ***Where possible more than three Quotations should be requested from relevant Suppliers to try to ensure the receipt of at least three Bidders and create meaningful competition.***

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Close control by the procurement officer is necessary to try and ensure that at least three quotations are received. The invited supplier should be asked to confirm, in writing whether or not they will present a quotation.

All quotations received by the closing deadline must be included in the evaluation. The Request can be sent by electronic means and quotations can be received electronically. There exists a standard bidding document for RFQ on the MOFNP site. The Bidders are expected to complete and sign Attachment 1. (The quotation) and sign Attachment 2 (Terms and Conditions of Supply). These then form the Bidder's quotation.

The written request for quotations shall contain a clear statement of the requirements of the Contracting Entity as to quality, quantity, terms and time to delivery, as well as any other special requirements.

The minimum Bid response period shall be-

- (a) 10 days where shortlisted Bidders are national only; or
- (b) 14 days where the shortlist includes foreign Bidders.

Late Bids are not considered.

■ ***For such a simple Bidding process a specific date for latest submission is required but not a specific time. Bids received the next day are considered "late" For all other Competitive methods of procurement, Bidders must comply strictly with the latest time as well as date.***

A public Bid Opening is not required and a simple evaluation is only required to identify the lowest priced quotation that meets the delivery and other key requirements.

The PPR 2015 requires for contracts with an estimated value of above \$7,500 that all evaluations are carried out by a committee appointed by the head of the Contracting Entity. (See Sub-Section 7.8.1)

- **Where the contract value is below \$7,500 the Procuring Entity may carry out the Bidding process.**
- **Above \$7,500 and up to \$9,999 the proposal document must be sent to the Central Procurement Unit and it shall be endorsed by the Head of the Procurement Division prior to placing a contract.**
- **Above \$7,500 up to \$100,000 the transaction shall be carried out by the Central Procurement Unit.**

(See Annex C – Standard Request for Quotations)

## 6.2 REQUEST FOR PROPOSAL (RFP)

This method is only used when **Consultancy Services** are required.

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It is common practice, in procurement of Consultancy services to first establish a shortlist of 3 to 6 relevant, capable consultants or consultant firms to be invited to provide proposals. This is done by two means.

- **For small values, (below \$50,000) the Contracting Entity may use his own market knowledge of available consultants who have skills relevant to the specific requirement to establish a short list of 3to6. ("Market knowledge")**
- **For larger values (above \$50,000 up to \$150,000), a request for expressions of interest is published. Consultants or firms respond describing their relevant experience and skills and, following informal evaluation of the responses, a short list of 3 up to 6 is established.**
- **For Contracts that are estimated to exceed \$150,000 a request for expression of interest must be used to establish a shortlist and the request shall be published internationally.**

Terms of Reference (TORs) must be prepared by the Contracting Entity. *Guidance on preparation of TORs can be found at Section 8.2*

The procurement officer publishes a Request for Proposal (RFQ) document and the consultants (individual/s or company/s) respond with Proposals.

The Standard Request for Proposal documents describes the two envelopes, two stage procedures to be used.

In the first stage Bidder present their technical proposal and financial proposal in separate envelopes at the same time. The Technical Proposals are opened publicly and the Bidders names are announced. These Technical proposals are now evaluated using a points system described in the RFP.

*(See also Section 8. Selection of Consultants Services and Section 8.1.7 – Deciding Evaluation Criteria for Consultant Selection)*

Final evaluation of price and technical points varies according to the type of evaluation to be used. The various methods are detailed in Section 8.

Following identification of the lowest evaluated Consultant in accordance with the method used, negotiations follow with the lowest evaluated consultant. These are meant to clarify the fine detail such as methodology and ensure it matches the financial proposal. In addition it ensures both parties understand the requirements of the Terms of Reference.

### 6.3 LIMITED BIDDING

This procurement method includes direct sourcing and it may be used in very specific circumstances only, namely:

- **When the contract may be performed by a particular supplier only (for technical, artistic or reasons of exclusive rights) and no reasonable alternative or substitute exists**

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- Extreme urgency caused by unforeseen events not attributable to the Contracting Entity, for example natural disasters (bad planning is not a reason)
- When a competitive or selective bidding procedure has been carried out and no suitable bids have been received, in which case the requirement of the initial bid may not be changed substantially
- When additional goods or services are required and changing supplier would cause problems with already existing equipment or services and may lead to extra costs
- When additional services not included in the first contract but which are within the objectives of the original bidding documents become necessary to complete the services described therein. Such additional services shall not exceed 50% of the value of the original contract
- For new services which are a repetition of previous (similar) services on a project and awarded through an Competitive or selective procurement method wherein the bidding documents stated that such new services might be awarded through a limited bidding process
- For products purchased on a commodity market
- For prototypes or first product or first service which were developed upon request during the course of, and for, a particular contract for research, experiment, study or development
- Under exceptionally advantageous circumstances available for a short period only and caused by liquidation, receivership or bankruptcy (not routine purchases from regular suppliers)
- All contracts below TOP 3,000

Where limited bidding is carried out, bids shall be invited from one or more bidders. All bids received shall be evaluated to establish compliance with the specifications, terms and conditions stipulated in the bidding document.

■ ***Please note that ‘Direct Sourcing’ is NOT a procurement method under the PPR 2015. Requesting offers from one supplier/contractor only falls in the category of Limited Bidding and may only be carried out under the conditions set out for the Limited Bidding method, as stipulated above.***

#### 6.4 OTHER BIDDING METHODS

Other methods of Bidding that are appropriate for values greater than \$7,500 are described here although under the Public Procurement Regulations 2015, the responsibility for procurement lays with the CPU.

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## 6.5 NATIONAL COMPETITIVE BIDDING (NCB)

This method is used for the competitive procurement of goods, works and non-consultancy services. It means that the requirement is advertised locally but it may also be advertised internationally, depending on market availability.

■ ***Even when the requirement is locally advertised, foreign Suppliers should not be excluded from Bidding if they wish to.***

The advertisement is called a procurement notice and it shall be published as follows:

- **in at least one national newspaper with a wide circulation (to ensure that it reaches sufficient bidders so that there will be sufficient competition in the process),**
- **published on the internet, usually on the websites of the Contracting Entity and the MOFNP Procurement Division,**
- **broadcast over radio or television on stations and programmes most likely to reach potential bidders**

It is to be used when the estimated cost is between TOP 50,000 and TOP 150,000 for goods and non-consultancy services, and between TOP 100,000 and TOP 1,000,000 for works.

## 6.6 INTERNATIONAL COMPETITIVE BIDDING (ICB)

ICB is to be used when the estimated cost is TOP 150,000 and more for goods and non-consultancy services, and TOP 1,000,000 and more for works.

This method is used in the same instance as for NCB but where potentially better value for money is to be obtained by inviting foreign competition. The requirement is to be advertised nationally as well as internationally.

International procurement notices are to be published in at least two English language newspapers or other printed media (for example trade magazines). These should have adequate circulation to attract foreign competition. It may also be published on internet websites which are widely read or considered to reach suitable potential bidders.

## 6.7 RESTRICTED BIDDING

This method for procurement of Goods, Works and Non-consultancy services is used when the requirement is available from a limited number of bidders only, or when the time and cost of having a large number of bids are disproportionate to the estimated value of the procurement. The latter scenario will depend on the nature of the procurement.

The financial thresholds for national and international bidding remain the same as shown in the table in *Section 5 - Thresholds and Procurement Methods*.

## 6.8 TWO STAGE COMPETITIVE BIDDING

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This method is used for large, complex contracts for Production plant and highly specialised installations and is appropriate when the requirement is complex and it is difficult for the Employer to draw up technical specification. It may also be used when, due to the complexity, the Contracting Entity wishes to consider various technical or contractual solutions and to discuss those with the bidders before deciding on the final specifications.

This bidding method is carried out in two stages (phases) In the first stage bidders are requested to submit technical, unpriced, proposals in line with the bidding documents. Clarification meetings are then held with each Bidder who has complied with the first-stage, to refine the specifications. In the second stage the bidders are invited to submit final bids based upon those clarification meetings and including prices.

Evaluation of the second stage takes place to identify the best economic proposal. The financial thresholds for national and international bidding remain the same as shown in the table in *Section 5. Thresholds and Procurement Methods*

■ ***Two-Stage Bidding for goods, works or plant is a complex and lengthy process and procurement staff will almost certainly require skilled assistance.***

## 6.9 SELECTIVE BIDDING

Selective Bidding is used when a requirement is of high value and very complex.

It is a bidding method which includes a pre-qualification process (*see section 7.6.8 Invitation to Apply for prequalification*) used to identify suitable bidders. It differs from the Two Stage Competitive Bidding process in that the potential bidders are required to demonstrate that they have the necessary expertise and assets to carry out the requirement, as opposed to providing possible solutions.

First all the bidders who have responded to the advertisement (Invitation to Prequalify) are issued with prequalification documents and shall submit an application to prequalify. Those applications are then evaluated by the evaluation committee against predetermined criteria (stipulated in the prequalification documents) and all applicants who comply with the criteria shall be invited to participate in the bidding process.

■ ***There is no limit to the number to be invited. All prequalified Bidders must be invited. Only prequalified Bidders may Bid.***

After this step the bidding process is the same as for the other single stage competitive bidding methods.

The financial thresholds for national and international bidding remain the same as shown in the table in (*Section 5 Thresholds and Procurement Methods*).

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## 6.10 FRAMEWORK CONTRACTS FOR PROCUREMENT OF COMMON USE ITEMS

Where procurement entities have to secure regular supplies of common use goods or services, the use of **framework** Bidding and contracting is appropriate. Goods such as office stationery, foodstuff for institutions and services such as office cleaning, security, travel management and other regularly procured items are all termed common use items.

Where the requirement is substantial a Request for Expressions of Interest (REOI) should be issued asking for financial capacity, experience, history of previous Government contracts and other appropriate details to enable the procuring entity to decide a list of Suppliers to be invited to Bid.

Framework Bid documents must contain a detailed description of the goods or services to be acquired. Quantities can be estimated. It is common practice to include historical data regarding quantities, to provide Bidders with an idea of the scope and scale of the requirement.

The duration of Framework contracts and the number of awarded contracts can vary according to the nature and scope of the requirement but must be stated in the Bid document.

If there are a small number of local suppliers and the market turnover is small, it would be better to limit the framework duration to 3 or 6 months with the option to extend. This gives other suppliers in the market a chance to share in future contracts. Additionally, there will be instances where the regular supplies for one Procuring Entity are required at various locations. In such a case contracts could be placed with various suppliers.

Bids must state the number of potential awards as a maximum, the duration of the contract in months and must include phrases that describe the evaluation criteria, mention the Procuring Entities option to extend the contract, mention that quantities are estimated and detail how payments will be made again delivery receipts signed by the recipient.

■ ***It is usual practice that only one extension is granted to a supplier. After the supplier has completed two contract durations, the requirement must be competitively tendered.***

Careful consideration should be given to the number of potential suppliers in any one industry in Tonga. Government is likely to be the largest buyer and awarding a substantial and lengthy contract to one supplier may result in weakening of future sources of supply.

In some cases, framework contracts may not be the best option.

The process of Bidding is Competitive in accordance with the thresholds established in the regulations

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## 7 TIME FRAMES

### 7.1 UNDERSTANDING THE TIME FRAMES FOR PROCUREMENT OF GOODS

Because of the lengthy time scales that are required for most procurement transactions, careful planning of procurement is essential if delays to the particular project are to be avoided. Delays in the process may also impact on other parts of an overall project and may even render a project not viable. Knowledge of the time frames involved for the various parts of the cycle is also essential to allow realistic and accurate planning of the necessary resources to carry out the process.

The following are the key time frames for various activities under Competitive Bidding for Goods.

#### **Bid Document Preparation**

- *May be started even before specifications complete but may not be considered completed until complete and final specifications are available.*

#### **Specifications**

- *Must be started as soon as possible*

#### **Notification - Invitation for Bids**

- *Must coincide with the issuance of the Bid document - In other words the document must be ready to be issued on the date the advert is published.*

#### **Bid Document Issuance**

- *Minimum 30 plus days for Bidders to respond to an Competitive Bid*
- *If the requirement is complex more time may be necessary to enable Bidders to prepare their Bid documentation.*

#### **Pre-Bid Meeting-if required**

- *To be held 10 to 12 days after issuance of Bid documents. A site visit may also be arranged to coincide with the pre-Bid meeting.*

#### **Period for Bidders to request Clarification**

- *Bidders are allowed to request clarification until around 10 days before the latest Bid Submission date.*

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## **Receipt and Public Opening of Received Bids**

*The following to be completed within the Bid validity time:*

- Preliminary Evaluation
- Detailed Evaluation
- Evaluation Report
- Internal Approvals
- Notifying the Award
- Contractor Signature and provision of Performance Guarantee

## **Contract Implementation**

- *Advance payment arrangements to be completed promptly in order not to delay commencement of contract, Delivery monitoring, due payments, liquidated damages.*

### **7.2 PREPARING SPECIFICATIONS**

As this area can be time consuming, the preparation of Specifications should be started as early as possible. Consideration should be given to the principle of Economy so that the requirement is not over-specified. Over-specification can restrict competition and may result in fewer Bidders being able or willing to Bid. It can also make evaluation difficult because the evaluation of ancillary technical features can be time-consuming. Probably most important is that the lowest priced Bid may exceed the Budget available resulting in a failure of the Bid. The Specifications should be prepared bearing in mind that Technical substantial responsiveness will have to be decided during evaluation.

- *If the requirement is not complex and the party preparing the specification is not familiar with the technical nature of the requirement, the internet is a good source of specifications. If the requirement is complex or high value it may be necessary to find a specialist to prepare the specifications.*

*(See Section 9 – Specifications)*

### **7.3 BID DOCUMENT PREPARATION**

Preparation of the Bid Document can begin even before the Specifications have been completed.

- *Although it cannot be completed until all specifications are decided and final*

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Bid Document preparation is a fairly simple process and, in most parts of the document that must be modified, there are prompt notes to guide the drafter.

The **Standard documents for Goods and for Works** follow a harmonized approach in that they contain sections that must not be altered (*such as the Conditions of Bidding and the General Conditions of Contract – for Goods*) and other areas where project specific information must be provided (*Specific Conditions of Bidding and Specific Conditions of Contract for Goods or Conditions of Particular Application for Works*).

■ ***When preparing the Specific Conditions of Contract, not all sections can be completed (for example, the name of the Supplier, the value and some key dates) until an award is made and confirmed however the Purchaser should complete as much of the Special Conditions of contract as is possible in order to enable Bidders to cost their proposals accurately and calculate contract risks.***

Given the number and diversity of decisions to be made even in a simple project, it is not within the scope of this Manual to cover all the possible combinations that must be included in a specific Bid document. However practical guidance is provided on aspects where there is a known or established practice. Additionally the Standard Bidding Documents available have numerous advice notes and prompts.

Careful and accurate Bid document preparation is essential for the success of the transaction. It contains all the information that a Bidder could possibly expect including the full contract terms.

As negotiation is discouraged and the Bidder may not alter the value or scope of his offer, the prepared Bid document must be accurate at the time of issuance otherwise delays and disputes are likely and evaluation and contract management becomes more time consuming. Additionally, as the Purchaser may not expect the successful Bidder to reduce his price or increase the scope of the contract, mistakes made during preparation can lead to delays in initiating a contract.

### 7.3.1 Purpose of Bid Documents

The purpose of bidding documents is to:

- ***Instruct Bidders on how to prepare their Bids and submit them.***
- ***Describe in detail the required Goods or Works.***
- ***Inform Bidders of the method and Criteria used for evaluation.***
- ***Define the Conditions of Contract.***

## 7.4 BIDDING ACTIVITIES

### 7.4.1 Notification

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Wide and timely notification of bidding opportunities is essential to encourage the widest possible competition. Notification in procurement projects may consist of any of the following:

- *Request for Bid (Competitive Bid Notification)*
- *Request for Expressions of Interest,*
- *Request for Quotations*

### 7.4.2 Elements of a Request for Bid

The following elements should be detailed in the notification for Competitive Bidding:

- **Source of Funding (For example Government of Tonga has allocated funds under the Transport Support Program)**
- **A Brief description of the requirement sufficient to give potential Bidders an accurate idea of the scope and scale of the requirement and mentioning Lotsif appropriate.**
- **Invitation to view and/or buy documents at a certain place together with the cost of purchasing documents.**
- **The Type of procurement process and the type of Contract (For example CompetitiveBidding and Lump Sum Contract)**
- **If there is to be a Pre-Bid meeting it should be mentioned in the advert withdate, time and place.**
- **If there are any specialized, possibly restrictive qualification criteria these should be mentioned. Forexample; the Bidder must demonstrate that it is a licensed manufacturer (of the required Goods).**
- **The Bid latest time for submission indicating the place, timeand date.**
- **The place, date and time for Public Bid Opening (usually onthe same date and withinnot more than one hour of the latest Bid submission time)**
- **The place where potential Bidders may view or purchase documents, presenttheir Bids and attend Public Bid Opening. This must include all Contact details.**

*(See Annex A - Sample Invitation for Competitive Bids)*

### 7.4.3 Considerations for Notifications

When bidding documents have been prepared for issuance and have received all necessary internal clearances and external approvals, the next action is to advise potential Bidders of the specific Bidding opportunity and invite them to apply for Bid documents. The timing of the advert is important and procurement staff should consider the following points:

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**i) What is the Advertising lead time?** This can be 4 days or more from the time the advert sent to the publication to the time it is published. The latest Bid response date will be stated in the advert and any delay in publishing will eat into the time left for Bidders to respond.

**ii) Is the Bid document entirely ready for issuance?** Interested Bidders should not have to wait for the document once the advert is issued.

■ *It is poor practice to assume that once the advert is issued there is still time to make final modifications to the documents.*

**iii) Confidentiality** -NoBidders should receive advance information or details of the Bid.

No parts of the Bid Documents should be provided to potential Bidders in advance of the advertisement publication date.

■ *Until the minimum legal requirements for advertising have been met, no information should be divulged to any party outside the Entity. On the other hand, once the advert is published, any means may be used to publicize the opportunity further including emailing the notification to prospective suppliers. A record should be kept of companies invited by this means*

**iv) Cost of Documents** -The Procuring Entity has the right to request payment for the Bid document. This should be limited to the costs of reproduction so as not to deter Bidders.

#### 7.4.4 Requirements for Advertising Competitive Bids

Notification should be issued by the following means:

Bids shall be invited:

- (a) through the publication of an announcement of a procurement notice in the case of competitive bidding;
- (b) from the list of pre-qualified bidders in the case selective bidding;
- (c) from a shortlist of bidders in the case of restricted bidding; or
- (d) through the publication of an announcement of bidding proceedings in the case of restricted bidding

#### 7.4.5 Publication of procurement notices

A notice of invitation to bid or to pre-qualify, as the case may be, shall be:

- published in at least one national newspaper which shall be of wide enough circulation to reach
- sufficient bidders to ensure effective competition;
- broadcast over the radio or television, on the stations and programmes and at a time most likely to target potential bidders; and

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- to the extent feasible, published on the internet, including any website established by the Procurement Division.
- Where international competitive bidding is used, the notice shall also be placed in at least two English language newspapers or other printed media with adequate circulation to attract foreign competition or on widely read internet websites.

■ *Where the Contracting Entity considers it is necessary to ensure wide competition, it may send the notice directly to potential bidders after the date of publication of the notice. The Contracting Entity shall keep a record of any bidders to whom the notice is sent directly, which shall form part of the procurement record.*

■ *Until official advertising has been undertaken, no information relating to the requirement can be released to Bidders; after the official advertisement has been published, any other means may be used to inform potential Bidders.*

Prequalification notices, Requests for Expressions of Interest and Competitive Bidding notices must allow not less than 30 days for Bidders responses.

*(See Annex A- Sample Bidding Invitation)*

#### **7.4.6 Issuance of the Bid Document**

Immediately following notification, arrangements should be made to ensure that Bid documents can be issued promptly to all interested Bidders. Where interested Bidders request an electronic copy to be sent, this can be allowed however, in such cases the Bidder must be warned that the Purchaser takes no responsibility for the accuracy and completeness of documents sent by electronic means and; Bids will only be acceptable from Bidders who have made payment for the document.

■ *Where pre-qualification has been undertaken Applicants for pre-qualification will already have paid for the pre-qualification document therefore the Bid documents would be provided free of charge to all companies who were deemed pre-qualified.*

#### **7.4.7 Time for Bidders to Prepare and Present their Bids**

Issuance of notification and therefore availability of bidding documents should be timed to give all Bids reasonable time to respond, to obtain Bid documents, prepare their offer and submit it within the time frame indicated. The time between issuance of the Bid documents and the Bidders submission date must not be less than 30 days and, in the case of complex goods or works Bids, may require up to 75 days.

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- ***The latest Bid Submission date should be timed so as not to fall on a weekend or a Public Holiday.***

*(See Annex A – Competitive Bidding Invitation)*

#### **7.4.8 Invitation to Apply for Prequalification**

Prequalification is a process used to identify potential Bidders who have the experience and financial and technical resources to provide specialised Goods, Works or Service contracts. It is used where **Prequalified Bid Procedures** are *appropriate*. *(See Chapter 6 – Procurement Methods)*

Where pre-qualification is required, a notice inviting companies to apply for pre-qualification document (prior to being invited to Bid) is published in exactly the same way as for Specific Procurement Notices. *(See Annex B - Invitation to apply for prequalification).*

Applicants are given a defined time to respond and, following the latest date and time for submission of applications, the received applications are opened (The opening does not have to be public) and evaluation is then carried out using the criteria stated in the prequalification document.

Following evaluation of the applications (using the criteria stated in the advert and the prequalification document) those that meet the minimum experience and financial and technical resource requirements are deemed Pre-qualified and will be invited to Bid.

- ***Note: All Applicants who have been prequalified, without exception, be invited to Bid.***
- ***Once Applicants have been prequalified, no other applicants can be considered or invited to Bid***

#### **7.4.9 Request for Expressions of Interest**

This is a notification used to request suitably qualified and experienced Consultants or firms to register their interest in being considered for inclusion on a shortlist and potentially invited to provide proposals. The Request should briefly describe the required skills, experience and the information required. An informal evaluation is carried out to establish a shortlist.

- ***In order to create a reasonable degree of competition, but to avoid an unwieldy and complicated evaluation, the number of Bidders shortlisted would not usually be less than 3 and usually not more than 6.***

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(See Annex C - Request for Expressions of Interest)

## 7.5 HANDLING A PRE-BID MEETING

Where the requirement to be procured is complex it is Good Practice to allow for a Pre-Bid meeting. The date, time and venue must be indicated in the Notification and the Bid Document. Pre-Bid meetings are timed to take place around 10 days after the Bid document is issued. This gives Bidders time to obtain the document and formulate any questions they might have. Unless otherwise stated in the Bid document, a pre-Bid meeting is not a compulsory requirement and Bidders who choose not to attend will still be entitled to present a Bid.

- *In some works contracts, difficult or complex site conditions may exceptionally require compulsory attendance at a pre-Bid meeting and a site meeting to ensure that all the Bidders fully understand the site conditions.*
- *In these cases Bidders who do not attend a pretender meeting or send a representative will not be considered. Where applicable this must be clearly stated in the Bid Document as issued.*

Likewise, where the contract is for Works or installations, a site visit may also be appropriate so that Bidders may acquaint themselves with particular site conditions. If a site visit is offered, details should be stated in the Bid document. The site visit can coincide with the pre-Bid meeting.

During the Pre-Bid meeting minutes should be kept detailing the questions raised and the answers given as these will be distributed to all attendees and will also form part of the evaluation report.

- *As a result of the pretender or site meeting it may be necessary to amend the specifications or the Bid document. Under no circumstances should any amendment to the Bid document be agreed during the meeting.*

Where, due to complexity, some questions cannot be answered during the meeting a note should be made in the Minutes. The answer, once decided, can be communicated in writing later, to all Bidders.

The pre-Bid meeting is also an opportunity to remind Bidders, through a short presentation, of the key technical and documentary requirements of the Bid document to try and ensure as many compliant Bids as possible.

## 7.6 HANDLING REQUESTS FOR CLARIFICATION BY BIDDERS

Bidders have the right to seek clarification of the Bidding Documents, provided a request is made at a reasonable time (up to 5 days) before the latest date for submission of Bids. Such requests must be made in writing and responded to promptly (not more than 2 days before latest submission date) in writing.

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- **A reasonable time to allow clarifications would normally be around 10 days before the latest submission date,**
- **Telephone requests for Clarification must not be entertained.**

The text of request for clarification and the Purchaser’s response are then copied to all other Bidders **without revealing the Bidders name**. Should the requests for clarification be numerous, it would suggest that there is one or more fundamental errors in the Biddocument and the Purchaser may decide that an amendment to the document is necessary. If the amendment is likely to be significant in its affect upon the preparation of Bids, the Purchaser should consider extending the time for receipt of Bids by notifying all Bidders who have already purchased documents through an Amendment to Bid.

Any amendment should be numbered, refer to the specific clause or part of the document that is being amended and should always finish withthe words “All other clauses remain unchanged”

- **Any amendment must be distributed promptly to all Bidders who have purchased the Bid document.**

### 7.6.1 Extending the Bidding Period

As a general rule, **if more than one Bidder** requests an extension to the Bidding period, this should be granted. Additionally, as mentioned above if there are any substantial amendments to the Bid (Amendments that are likely to involve the Bidders in significant alteration of their Bids) an extension should also be granted. Generally extensions should be limited to ten days and must be notified to all Bidders by means of an amendment to Bid. The decision to issue an extension should takenbearing in mind the proximity of the original Bid closing date

## 7.7 RECEIPT AND PUBLIC BID OPENING

Following preparation of the Bid document and its issuance, Bidders have a predetermined time in which to respond. For CompetitiveBidding transactions for Goods this is a minimum of 6 weeks. Works, depending on their complexity may require a greater period. At the end of this period, Bids received in time are opened publicly.

This section provides some practical guidance based upon procedures. The process is simple but must be handled professionally, particularly as it is the only process in the procurement implementation cycle that is publicly displayed.

The procedures described here are suitable for “single envelope”, single stage, openings, which apply to most goods and civil works procurement Bids.

- **Two stage Bidding Procedures are common for Turnkey projects and for Consultants services and require two separate opening procedures.**

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(See Section 6.6Two- Stage Competitive Bidding)

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### 7.7.1 Personnel for the Opening Committee

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Careful advance consideration should be given to the personnel who will handle the opening to ensure that the process goes smoothly. Just as every project is different, so every opening is different in both scale and importance. Certainly a Chairman should be nominated and he may need the support of a secretary during the Opening. Other members of the Committee may act as observers.

■ ***Under the PPR 2015, where the procurement value is above \$9,999, the entire process of procurement including Bid Opening is carried out by the Central Procurement Unit. Usually a member of the Contracting Entity would be on the Opening Committee.***

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### 7.7.2 Receipt of Bids

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Bidders are informed that they must present their offers in an inner and then outer envelope. The outer envelope shows the Procuring Entities address and other details stated in the Bid Data. The Inner envelope has the address of the Bidder. If a Bidder presents his Bid late, it is not included in the Bid Opening process but is opened later to the inner envelope which bears the address of the Bidder where it can be returned.

As Bids, modifications or withdrawals are received they are stamped with the time and dates received and are placed in a secure place.

Any further Bids, modifications or withdrawals that arrive after the latest time for submission should also be stamped or marked with the time and date but will be kept aside, to be returned as late Bids.

The Tenderers should have easy access to the opening venue in time for the opening procedure. It is important that all attendees can clearly see the unopened Bid envelopes and witness that they are still sealed and intact.

■ ***In the event that an envelope is found to be Competitive before the Bid Opening date and time, the Opening Committee should reseal the envelope and make a minute, signed by all members that the Bid was Open and was resealed.***

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### 7.7.3 The Opening

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At the exact time stated for Bid opening, (which, to avoid tampering, should be immediately after the latest date and time for submission) the Chairman should announce the beginning of the process. Late Bids are not opened during this public Bid Opening.

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Bidders are entitled, before the last date and time for submission to modify or withdraw their proposal (Not afterwards) The Chairman should have with him a list of the withdrawals or modifications **(that were received in due time)** and, as the Bids are opened, he should refer to the modifications or withdrawals before reading out any details. If the modification involves price it should be announced.

The Bid box is opened in full view and the Bids are taken out and placed on the table.

■ ***It should be possible for attendees to see that no Bids are left in the box.***

Each Bid (copies and originals) can then be opened, one at a time, in full view of the attendees.

#### **7.7.4 Details to be Read out**

The chairman reads out the details gained from the Letter of Bid. These as a minimum should include:

- **The name of the Bidder**
- **Any withdrawals or modifications**
- **The total amount of each Bid. (If the Bidders have been asked to offer for groups or lots, the value of the groups or lots should be read out together with the total value of the Bid)**
- **Any discounts**
- **Any alternative Bid (if alternatives are allowed in the Bid document.)**
- **The presence or absence of a Bid security should also be stated (but preferably not the value of the Security)**

Minutes of the Bid Opening should be prepared detailing the date and time of the opening, the Attendees(*including the Procuring Entity’s staff that was in attendance*) and the details announced. Additionally any questions raised during the Opening Process should be included in the Minutes. The Minutes should be copied to all Bidders and a copy will be required to attach to the evaluation report.

■ ***It is very important to pay particular attention when announcing prices and any discounts as, prices not read out at the Public Opening cannot be considered in the evaluation. Letters of discount discovered after the BidOpening or incorrectly announced prices can lead to complaints from competing Tenderers.***

■ ***The prices should be taken from the Letter of Bid but a further check should be made to ensure that there is no letter contained in the Bid documentation that offers a discount. If the Letter of Bid is unclear the details should be checked against the price schedules.***

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■ ***Under no circumstances should a Bid be rejected during the Bid Opening.***

### 7.7.5 Handling Questions

The Chairman can handle simple questions that may arise during the course of the opening provided they are not too time consuming. If complex questions arise, the Chairman should ask the question to be submitted in writing. A very common question is “When will the result of the evaluation are known?” It is recommended that no attempt is made to forecast a firm date and Bidders are told that they will be informed as soon as possible.

### 7.7.6 Closing the Session

Once all the Bids have been opened and read out, the chairman should announce that the procedure is closed and ask everyone to leave the room. The opened Bids are confidential documents and should be removed to a secure place to await evaluation. *(See Evaluation sub-section 7.10.3 below)*

## 7.8 EVALUATION

Formal evaluation is a critical part of the procurement cycle. The validity period of the offers is meant to allow time to evaluate and award a contract. This imposes pressures on the evaluation team to complete their function as early as possible as requests for extension to validity will enable Bidders to a) justifiably withdraw from the process or b) possibly invoke price escalation clauses. The time spent on the evaluation function can therefore be critical to the whole procurement cycle time frame. The principles and practices are detailed in the Regulations and are applicable for single envelope, single stage Bids.

■ ***A most important principle of Evaluation is that, only the criteria stated in the Bid Document may be used. Therefore it is most important to decide appropriate and relevant criteria when preparing the Bid Document.***

### 7.8.1 Evaluation Committee Composition

The Public Procurement Regulations 2015 require that the Evaluation Committee members shall be appointed by the Head of The Contracting Entity for all procurement exceeding \$7,500. It must have a member of the Procurement Unit and also three other members. It is good practice to have the person who prepared the specifications or scope of works on the committee as well as the person who prepared the Bidding document. All members should sign a declaration of confidentiality and impartiality.

### 7.8.2 Objectives of the Evaluation process

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For the procurement of Goods and Works the aim of the evaluation process is to identify the offer having complied with the commercial requirements, represents the “best value for money” when compared to other Bids for the same or similar goods (or Works) offered on the same terms and conditions of contract - **“The lowest evaluated price”**.

Consultants Selection is the subject (*See section 8. Selection of Consultants services*)

### 7.8.3 Confidentiality

Evaluation is a confidential process and the personnel responsible for the evaluation must take every precaution to ensure that there is no leakage of information. The PPR 2015 requires Evaluation Committee members to sign a declaration of confidentiality and impartiality.

The Evaluation should be started and completed as quickly as possible. From the time the Bid opening process is completed, documents should be kept in a safe place. Only the personnel directly involved in the evaluation should have access to the Bidders proposals.

■ ***Under no circumstances should members of the evaluation committee be allowed to take documents outside the evaluation venue.***

Except when absolutely essential, for clarification purposes, the Evaluation Team should never enter into dialogue with any of the Bidders. Where absolutely necessary any communication must be in writing.

Bidders likewise should be warned that any endeavour to interfere or influence the evaluation could result in rejection of their offer.

### 7.8.4 Stages in Evaluation

- **PRELIMINARY EXAMINATION**

Rejection of Bids that are non-responsive, correction of arithmetical errors, clarification of minor (non-material deviations)

- **ADJUSTMENT AND TABULATION OF BIDS**

*Only for those Bids that have been found to be substantially responsive.*

Equalization of Bids if necessary, currency conversion if appropriate, application of Criteria,

- **DETAILED EXAMINATION AND REPORTING**

Tabulation, ranking of Bids, post qualification, report and recommendation.

## 7.9 PRELIMINARY EXAMINATION

The object of preliminary examination is to filter out those Bids that vary from the commercial and technical requirement of the Bid document by an unacceptable degree.

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Such offers are rejected leaving only those that are “*substantially responsive*”. The substantially responsive offers are then subjected to detailed examination. Evaluation criteria are applied and the offers are compared to identify the lowest evaluated Bid that is substantially responsive to the commercial, financial and technical requirements of the Bid document.

### 7.9.1 Substantial Responsiveness

An offer that is substantially responsive is one, which conforms to all the most important terms, conditions and specifications of the Bid document, without material deviation or reservation

■ “Some aspects of the requirement are vital - some are not”.

### 7.9.2 Material deviation

A material deviation is legally described as;

- **Affecting in any substantial way the scope, quality, or performance of the contract;**
- **Which limits in any substantial way, inconsistent with the Bid document, the Purchaser’s rights or the Bidders obligations under the contract?**
- **A situation where the clarification or rectification of the deviation could alter the competitive position of other Bidders presenting substantially responsive Bids.**

### 7.9.3 Features to be examined

The examination should include but is not limited to -

**Bid Security** - Is the value, validity and wording correct. Failure to comply with the Purchaser’s requirements would be clear grounds for rejection of the Bid.

**Is the Bid form signed?** - Absence of a signature from an authorised officer of the Bidder can result in rejection. Where the authority of the signatory is not clear, clarification should be used.

**Complete Bidding documents** - Some of the required documentation is essential whilst other information can be requested during the evaluation process. Bid Security, Manufacturer’s authorisation and Proof of eligibility are essential and their omission may be grounds for rejection at the preliminary stage.

**Arithmetical errors** - A check should be made at this stage to determine if there are any arithmetical errors in the offer. If inaccuracies are found, the evaluator should correct the total in accordance with the procedure outlined in the Bidding document and recalculate the total Bid price. Unit prices prevail over totals and totals expressed in words prevail over those expressed in figures.

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■ *The revised figures should be advised in writing to the Bidder. The Bidder must accept the adjustment. If he refuses to do so - his Bid will be rejected. Arithmetical inaccuracies are not grounds for rejection, but misleading pricing information should be carefully considered to determine acceptability or rejection.*

■ *If the Contract is a Lump Sum Contract for the entire scope, no adjustment is allowed and the value shown on the Letter of Bid prevails*

**Complete Offer** – If the Bid Document called for complete offers, not partial offers, any Bids that offer part of the requirement would be rejected.

**Delivery** – If there was a specified maximum delivery or completion time Bidders must comply.

■ *No subsequent alteration. Bids that have been declared non-responsive may not subsequently be altered to make them responsive as this would be unfair to the other Bidders. Thus, the omission of some material or key technical feature or commercial requirement cannot be corrected to make a Bid responsive.*

#### 7.9.4 Unacceptable deviations

As stated earlier, some aspects of the requirement are vital - others are not. Some deviations have an inconsequential effect on the requirement and can be considered acceptable. Others are debatable and clarification should be sought. Deciding whether a Bid is responsive or non-responsive is a matter of judgement and experience. Justification for rejection on the grounds of non-responsiveness will have to be provided in the evaluation report. It is important therefore, to ensure that the decision is sound. It is worth repeating that the Bid deemed to be unresponsive or having an unacceptable deviation may not be subsequently made responsive and any request for clarification is not an opportunity for a Bidder to correct some material omission or error.

#### 7.9.5 Examples of Unacceptable Deviations

The following are situations where Bids have been rejected as being non-responsive under various donor organisation rules.

**Absence of a Bid Security-** The absence of a Bid security at the time of preliminary examination is an unacceptable deviation resulting in rejection of the Bid.

**Unsigned Bid** - Absence of a signature from an authorised officer of the Bidder will result in rejection. Where the authority of the signatory is not clear, clarification may be used.

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**Rejection of Key Contract Conditions** – Bidders who do not accept key contract conditions may be rejected. Examples of key clauses that cannot be waived are: Applicable Law, Delivery Requirements, Objection to providing a Performance Guarantee, Objection to Defects liability period.

**Incorrect value of Bid Security** - The amount of the Bid security should be no less than the minimum required in the Bid document. If a lesser amount is shown, the Bid should be rejected.

**Clearly inappropriate technical offer** - Where it is clear, even on preliminary examination, that the Bidder has offered a technical specification that does not approach the requirement; the offer must be rejected as wholly technically non-responsive.

**Price adjustment**- Where a fixed price is called for in the Bid document and a Bidder quotes an adjustable price the Bid should be rejected.

■ ***On the other hand, if the Bid document allows price adjustment and a Bidder offers a firm price, the Bid is deemed to be responsive.***

During detailed evaluation and tabulation the effect of any allowable price adjustment, is not used for comparison of Bid prices.

### 7.9.6 Debatable deviations

Whilst some deviations are clearly unacceptable and cannot be rectified without impacting upon the overall Bid comparison or unfairly disadvantaging other Bidders, others may be debatable. Clarifications used for minor deviations that can be clarified without changing the price or substance of a Bid or adversely affecting the relative position of other Bidders, are acceptable.

The procedure for clarification is detailed in the section below titled **Clarification during Evaluation**, The following are examples of debatable deviations which would require clarification before a final judgement on substantial responsiveness is made.

**Is the wording of the Bid Security Acceptable?** - A draft wording for the Bid security is provided in the Bid document but minor variations are acceptable provided they do not counter any of the terms of the security and do not impose any restrictions on the beneficiary. There should be no wording that in any way restricts the Purchaser’s ability to draw funds from the security. Neither should there be any reference to decisions of third parties.

**Have all the documents demanded in the Bid document been provided** - Some documents are essential to accurate evaluation and others are not. Essential supporting documents such as business registration certificates, business licences and tax clearance certificates must be provided if requested.

Less important technical documents may be subject to clarification.

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**If there are some minor equipment omissions-** Where there are minor or inconsequential omissions such as a spare wheel for a vehicle not quoted the price for such an item may be obtained elsewhere and added to the cost of the deficient Bid for evaluation purposes.

### 7.9.7 Clarification during Evaluation

The Procuring Entity is entitled to seek clarification from Bidders if debatable deviations are found during preliminary examination.

Clarification especially on technical matters can delay the evaluation process. Clarification requests must be actioned as early as possible and should present the Bidder with clearly worded, direct questions that cannot be misunderstood. Bidders are not permitted to alter the substance or price of their Bids after the Bid closing date so clarification cannot materially alter Bids. If inconsequential deviations, exceptions or omissions are found which make evaluation difficult, clarification should be sought

### 7.9.8 Clarification Procedure

Clarification must always be undertaken by letter or fax - **never by telephone**. It is good practice to include clarification correspondence in the evaluation report, demonstrating that clarification has been both sought and achieved.

- **Clarification by telephone or direct meeting should never be allowed. Telephone clarifications can lead to later misunderstandings and Bidders will sometimes treat such an enquiry as an opportunity to ask questions of the evaluator. In some situations Bidders treat the enquiry as a prelude to negotiation.**

Clarifications requests from the Purchaser should address only the specific issue and not make reference to any other Bidders' offers. The letter, fax or email requesting the clarification should specify the time frame in which a reply is required

- **Usually around 2-4 working days maximum depending upon the complexity of the request. Failure by the Bidder to respond in a timely manner to a request for clarification is grounds for rejection of the Bid, if the absence of the clarification request makes evaluation impossible to complete.**

## 7.10 ADJUSTMENT AND TABULATION OF BIDS

The second stage is the adjustment and tabulation of Bids that have already been identified as being substantially responsive. If some of the Bids are deficient in minor elements that are not material deviations, adjustment should be made to enable realistic comparison with the competing Bids. The usual practise is to first identify from the other offers that

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offering the highest price for the particular element or line item and add its value to the deficient offer for the purpose of evaluation.

■ **However, where a complete offer is called for, any omission of key components or line items would be grounds for rejection.**

### 7.10.1 Example of adjustment

Three Tenderers are offering a vehicle. Upon examination one of the Bids (Bid A) has omitted the price of a spare wheel although the offer states that it meets all the criteria in the specifications. The price for the spare wheel is obtained from the two other Tenderers offers and the highest value for the spare is quoted by offer B. This value is added to Bid A for evaluation purposes and comparison of the three Bids can be undertaken.

### 7.10.2 Currency Conversion

International Competitive Bidding allows the use of multiple currencies and, if multiple currencies are allowed, an equitable system of conversion to a common currency has to be decided. The aim is to establish a common currency for the purpose of evaluation only so that Bids may be realistically financially compared. It is usual to decide upon a reference date and source of information that would in normal practice, be fair to Bidders.

■ **Where a single currency is specified in the Bid Document, conversion for evaluation purposes will not be necessary.**

#### *Reference Date*

Usually the date chosen is 2 - 4 weeks before the deadline for submission of the Bids but other reference dates may be used provided they are never too far from the date for submission of Bids.

#### *Reference Source*

The source of information may be the selling rate quoted by the recipient country's Central Bank or any authoritative source such as a financial newspaper in wide international circulation.

### 7.10.3 Application of Criteria

If specific criteria have been included in the Bid document the Bidders prices should, for the purpose of evaluation, be adjusted according to the wording of the criteria.

### 7.10.4 Domestic Preference

Where Domestic Preference is allowed for goods (or works) that originate in the recipient's country this is to stimulate local manufacturing and service industries by reflecting the

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costs equivalent to duties and taxes that may have been paid by local companies to import raw materials. For evaluation purposes, this means that Bids are separated into foreign and local Bids. If the local Bid is the lowest evaluated Bid there is no need to apply preference. If a foreign Bid is the lowest evaluated Bid, a predetermined percentage (usually approximately equivalent to duties applicable for imported goods weighting is added to foreign Bids, increasing the competitiveness of any local Bids

■ ***As a criteria affecting evaluation, if Domestic Preference is allowed, it should be contained in the Bid document.***

Now the converted, adjusted, evaluated prices can be ranked with the Lowest evaluated price being ranked 1 or first.

## 7.11 DETAILED EXAMINATION AND REPORTING

Once the evaluation is complete and the lowest evaluated Bid has been identified, an informal check (post-qualification) should be made on the qualifications only of the lowest evaluated Bid to ensure that a recommendation for award of contract can be made for the lowest evaluated, substantially responsive Bidder who is capable of carrying out and completing the contract.

■ ***Any Bidder who does not meet or exceed the minimum qualification requirements must not be awarded a contract.***

If there has been prequalification of the recommended Bidder it is still necessary to carry out a post-qualification check on the Lowest Evaluated Bidder to ensure that the financial and technical capabilities of the recommended company have not changed during the time since the offer was made.

When there **has not** been prequalification, it is essential, before making an award of contract, to verify that the recommended Bidder has the necessary capabilities by examining the qualification information provided in response to the Bid Document.

### 7.11.1 Evaluation Report

There is a **standard Evaluation Report format** available together with a **User Guide** which must be completed at the end of the evaluation process. This format describes the Bidding steps, the Bid Opening and the evaluation process in detail. The report should include, as annexes, the following documents:

- **A copy of any addenda to the Bid document that were issued.**
- **A copy of the Pre-Bid meeting minutes if a Pre-Bid meeting was held**
- **A copy of the Bid Opening Minutes**
- **A copy of any Clarification correspondence**
- **Optionally a copy of a preliminary examination matrix if one was prepared**

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■ ***For the requirement is in any way technically complex, it is good practice to provide a matrix as an attachment to the Report showing each of the key commercial requirements and indicating how the Bidders met or did not meet them.***

At the end of the evaluation report the Evaluation Committee will make a recommendation for an award of contract to the first ranked Bidder. The report should be signed and dated by all Evaluation Committee members.

■ ***The Report's details must continue to remain confidential.***

### **7.11.2 Approval of the Evaluation Report**

Where the estimated contract value exceeds \$7,500, the procurement unit shall forward the procurement proposal to the Central Procurement Unit and it shall be endorsed by the Head of the Procurement Division prior to placing a contract. If the estimated contract value exceeds \$ 100,000, the central procurement unit shall, following approval of the bid evaluation report by the head of the Contracting Entity, submit the file to the Government Procurement Committee for approval.

### **7.11.3 Rejection of all offers**

There are occasions when all the received Bids are rejected due to non-responsiveness or because the lowest priced Bid value exceeds the total amount of funds available. Should all the received offers fail the examination for substantial responsiveness or exceed the amount of funds. Such a situation suggests weaknesses in the technical specifications, the commercial terms or unrealistic budgetary estimates by the Purchaser. These weaknesses could include specifications or terms that are completely unrealistic or unachievable and which are impossible to be fully complied with. Under PPR 2015, the reasons for failure should be analysed, appropriate corrections made to the specifications or Bid terms and a new Bidding process must be started.

## **7.12 AWARD OF CONTRACT**

As well as allowing time for evaluation, the offer validity time period is meant to allow time for placement or award of contract. The bulk of this period is likely to have been spent in the evaluation process leaving a reduced time to place a contract. The Contract, which was in draft form in the issued, Bid Document, can now be completed with details such as the value, the Contractors name and key dates. The formalised documentation and procedures contained in the Bid Document are designed to make contract placement a relatively simple function.

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### 7.12.1 Contract Initiation

Once necessary approvals have been received from internal sources (necessary Contracting Entity and GPC approvals the Procuring Entity may then notify the successful Bidder that he has been awarded a contract.

In the case of contracts awarded by way of competitive bidding and in the case of any contract with a value in excess of \$ 7,500, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 days have passed following the giving of that notice.

If the successful Bidder fails to sign or to provide the performance guarantee, his Bid Security must be seized. The Purchaser must then identify the next lowest evaluated Bid, post-qualify him and make an award of contract.

In the case of contracts awarded by way of competitive bidding and in the case of any contract with a value in excess of \$ 7,500, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 days have passed following the giving of that notice.

■ ***The Bid Securities from all Bidders including the winning Bidder must not be returned until the winning Bidder has signed the Contract and provided a performance guarantee.***

Good procurement practice dictates that, at the time of award of contract, the awarded Bidder shall not be expected to

- **Reduce his prices or**
- **Undertake to do more work or provide more goods than were requested in the original Tenderer;**
- **Modify his Bid.**

■ ***The Instructions to Bidders section of the Standard Bidding Document for Goods has wording that informs Bidders that, at the time of Contract Award, the Contracting Entity has the right to vary the quantities up or down by a percentage stated in the Bid Data Sheet. The Purchaser may decide that changes to the quantities awarded may be necessary because the budgeted procurement costs may be exceeded or, where increased quantities would be desirable if the lowest evaluated Bid comes in below budget.***

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## 8 SELECTION OF CONSULTANTS SERVICES

### 8.1 INTRODUCTION

The selection of procurement of Consultancy Services follow a markedly different procedures to the procurement of Good, Works or Non-Consultancy Services. This section will describe the specialised procedures required.

#### 8.1.1 Competitive Selection of Consultants

Following receipt of the Procurement Proposal, a system of short listing is used for identifying Bidders who have the relevant experience and appropriate qualifications for the project. First a Request for Proposals (REOI) is published. This requests interested parties to provide details of their experience, qualifications and suitability for the project.

The responses are analysed (Not a formal process) and a short list is decided comprising 3 up to 6 qualified and capable consultants (*See Section 8.1.6 Request for Expressions of Interest*)

- **Under the RFP (Request for Proposals system) for contract values below \$50,000a short list of 3 up to 6 capable potential, Bidders is established from market knowledge or other sources of information.**
- **Below \$150,000 a short list of Bidders is established by advertising a Request for Expressions of Interest (REOI) locally and from the responses, a short list of 3 up to 6 capable,potential Bidders is decided.**
- **Where the Contract value is above 150,000 REOI adverts should be both local and International and a short list of 3 up to 6 is established.**

Once a short list is decided, the RFP can be issued only to those shortlisted. A Standard RFP for Consultants Services is available on the MOFP Procurement Site.

The Public Procurement Regulations 2015 contains the following methods of evaluation for Consultancy Selection:-

- **Quality and Cost Based Selection - (QCBS)**
- **Least Cost Selection –(LCS)**
- **Fixed Budget Selection - (FBS)**
- **Selection of Individual Consultants - (SIC)**
- **Single Source Selection (SSS)**
- **Selection under Community Service Organizations -(CSO)**

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Unlike Goods and Works where the emphasis is on price, Consultancy services generally consider quality more important than price. Because quality is very difficult to evaluate, points are used and the evaluation is carried out by a committee whose individual scores are averaged to arrive at a consensus.

**Typical evaluation criteria would be -**

- **(a) the consultant’s relevant experience for the assignment,**
- **(b) the quality of the methodology proposed,**
- **(c) the qualifications of the key staff proposed, and**
- **(d) transfer of knowledge, if required in the TOR.**

Under QCBS, FBS and LCS procedures, Firms that may have been prequalified or, who responded to a Request for Expressions of Interest (REOI), are sent an RFP document by the Procuring Entity and invited to present their proposals. They are asked to present separate technical and financial proposals at the same time. The Technical envelopes are opened, (the financial envelopes are not at this stage opened) a technical evaluation is undertaken by a committee who mark individually. Their individual marks are averaged to arrive at a consensus. Firms are expected to achieve a predetermined minimum technical mark stated in the RFP (typically this would be a minimum of around 70 to 75 points out of 100). Those who fail to achieve the minimum qualifying mark have their Financial; proposal returned unopened and are not considered further.

Those who achieved the minimum mark have their financial proposals opened publicly and the prices read out together with the technical score previously established by the Evaluation Committee.

**Quality Cost Based selection-(QCBS)**the Price Score is calculated by awarding the lowest priced proposal the maximum score and the other proposals are awarded points in inverse proportion to the lowest priced. The Evaluation Committee now combines the technical and financial points to identify the Proposal that has scored the highest number of points.

**Selection under Fixed budget**

Evaluation of all technical proposals shall be carried out first as in the QCBS method. Then the priced proposals are opened in public and prices read out aloud. Proposals that exceed the indicated budget shall be rejected. The Consultant who has submitted the highest ranked technical proposal among the rest shall be selected and invited to negotiate a contract.

**Least-Cost Selection (LCS)**, In the RFP for Least Cost;a minimum qualifying mark for the quality is established on the basis that all proposals above the minimum compete only on cost. This minimum

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qualifying mark would usually be 70 points out of a hundred and must be stated in the RFP. Evaluation of all technical proposals shall be carried out first as in the QCBS method. Technical proposals are opened first and evaluated. Those securing less than the minimum qualifying mark are rejected and the financial proposals of the rest are opened in public. The firm with the lowest price shall then be selected.

### 8.1.2 Other methods of Consultant Selection

In addition to the Competitive Selection Procedures, the following methods of selection are allowed under the PPR 2015.

**Single Source Selection (SSS)** – As the name suggests this allows employing a single consultant or firm without competition. This is method is allowed only in exceptional circumstances such as:-

- *(i) for tasks as continuation of previous completed assignment;*
- *(ii) where a rapid selection is essential (as in emergency);*
- *(iii) for small assignments of less than \$7,500;*
- *(iv) when only one consultant is qualified or has experience of exceptional worth for assignment; or*
- *(v) owing to a catastrophic event there is an emergent need of the services; or*

**Selection of Individual Consultants (SIC)** - This method may be used when:

- *(i) the qualification and experience of the individual are the paramount requirement;*
- *(ii) teams of personnel are not required; and*
- *(iii) no outside professional support is required.*

For the Selection of Individual Consultants (SIC), the Contracting Entity shall prepare the TOR, requesting information on the consultants’ experience and competence relevant to the assignment, establish a short list, by undertaking a REOI and select the Consultant with the most appropriate qualifications and references. The selected Consultant shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

**Selection of Community Service Organizations (CSO)**- This method may be used where involvement and knowledge of community needs, local issues, and community participation are paramount in the preparation, implementation and operation of community development projects;In respect of selection amongst Community Service

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Organisations (CSO), for assignments that emphasize participation and considerable local knowledge, the short list which can be established by means of REOI may comprise entirely CSO's.

QCBS evaluation procedure shall be followed, and the evaluation criteria shall reflect the unique qualifications of CSO's, such as voluntarism, non-profit status, local knowledge, scale of operation, and reputation.

The Contracting Entity may select the CSO on a single-source basis, provided that it can be demonstrated that:-

- **(i) for tasks as continuation of previous completed assignment;**
- **(ii) where a rapid selection is essential (as in emergency);**
- **(iii) for small assignments of less than \$7,500;**
- **(iv) when only one consultant is qualified or has experience of exceptional worth for assignment; or**
- **(v) owing to a catastrophic event there is an emergent need of the services; or**
- **(d) Selection of individual consultants (SIC): This method shall be used when:**
  - **(i) the qualification and experience of the individual are the paramount requirement;**
  - **(ii) teams of personnel are not required; and**
  - **(iii) no outside professional support is required**

### **8.1.3 Negotiation of Consultant Contracts**

Once a Consultant or firm having achieved the highest number of combined Financial and Technical points is identified, a recommendation is made to call that particular consultant/or Firm for Negotiations. Negotiation is face to face. Negotiation is not an opportunity for crude bargaining but rather an opportunity to clarify the inputs and outputs required and ensure that both parties fully understand the Terms of Reference.

Negotiations usually include discussions of the TOR, the methodology, staffing, the Contracting Entity's inputs and special conditions of the contract. These discussions shall not substantially alter the original TOR or the terms of the contract.

Sometimes the methodology or the staffing schedule does not match with the financial proposal and visa-versa. In such cases there may need to be some minor adjustments However; no major changes can be made. It is a chance for the Consultant to clarify the tax regime and to ensure full understanding of the Contract he will be signing. Clear and detailed notes should be kept of any changes to the TOR's, staffing schedule, financial proposal and contract conditions. At the end of the negotiations, both parties shall initial the contract.

In the rare event that the negotiations fail to result in an acceptable contract, the Contracting Entity shall terminate the negotiations and invite the next ranked firm for negotiations. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations

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are commenced with the next ranked firm, the Contracting Entity shall not reopen the earlier negotiations. After negotiations are successfully completed, the Contracting Entity shall promptly notify other firms on the short list that they were unsuccessful.

#### 8.1.4 Award of Contract

In the case of contracts awarded by way of competitive bidding and in the case of any contract with a value in excess of \$ 7,500, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 days have passed following the giving of that notice.

#### 8.1.5 Consultant Contracts

Two Contract types are available; Lump Sum and Time Based.

**Lump Sum** – this type of contract is appropriate where the assignment requires a clearly defined output such as the production of a major report or study. The Consultant will be paid as each major report or output is completed. These are simple to administer because there may be only two or three payments for example;

##### Example only

1) 15 % Advance payment.

*Note; Advance payments must only be made against an advance payment guarantee.*

2) 20% against payment of an inception report

3) 30% against presentation of draft report

4) 35% against presentation of the Final Report

**Time Based** – This type of contract is appropriate where the consultant is providing an input. Payment is made monthly, against time sheets. An example of inputs would be would an advisor who is based in a Ministry and providing continuous assistance. This type of contract requires close supervision and, as the payments are regular monthly amounts more time is spent in administration.

##### General Conditions of Contract

The General Conditions of Contract detail the respective contractual obligations of the parties. The wording in this section must not be altered. Necessary alterations or specific contractual information must be detailed in the Special Conditions of Contract.

##### Special Conditions of Contract

This is the specific contractual information and should be adapted to suit each Proposal. Some information such as the name of the supplier etc can only be filled in following award

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of contract however where contractual terms are likely to be an influence to the Consultants in costing his Proposal, relevant information should be provided.

### 8.1.6 Requests for Expressions of Interest (REOs)

For most methods of consultants' selection the use of REOs and Shortlisting is required.

The REOI is an advert which provides a broad outline of the project and requests interested Consultants or Firms to respond and provide details of their relevant experience and qualifications. The criteria for shortlisting vary according to the nature of the project and what will be required of the Consultant.

This does not have to be exhaustive but should seek to give the potential Bidders some idea of how relevant their skills and experience might be and whether it is worthwhile to provide an expression of interest.

A date is given for submission of EOI (for most purposes 20 days is sufficient) which are then subject to an informal evaluation. Depending on the number of responses, it is sometimes necessary to first establish a "Long List" and then reduce this further down to a minimum of 3 up to 6 for the shortlist.

All the potential bidders on the shortlist will be the only ones to be invited to Bid. After the shortlist has been decided no other Bidders may be added.

### 8.1.7 Deciding Evaluation Criteria for Consultants Selection

It is mentioned elsewhere in this manual that careful preparation of bidding documents saves much time and resources later in the procurement process. This is particularly true of Consultants selection where numerous decisions have to be made during preparation. One of the more difficult decisions is how to allocate points for technical evaluation. The Public Procurement Regulations 2015 state that the evaluation should use the following criteria

- **the consultant's relevant experience for the assignment,**
- **the quality of the methodology proposed,**
- **the qualifications of the key staff proposed, and**
- **transfer of knowledge, if required in the TOR.**

The PPR 2015 also says;each criterion shall be marked on a scale of 1 to 100 and then the marks shall be weighted to become scores. The weights to be used shall be appropriate to the specific assignment and shall be set out in the bidding documents.

The following table is provided to guide Contracting Entities on how to allocate the technical points to the various criteria and the **Standard points** show the usual range of points for most purposes.

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Type of assignment	Consultant's relevant experience	Quality of Methodology Work plan	Staff qualifications	Training (optional)	Total points
<b>Standard Points</b>	5 to 10	20-50	30-60	Max 10 (See note 1)	100
Technical assistance/ training	5-10	20-35	50-60	0-10 (Note 1)	100
Design	5-10	30-45	40-50	0-10	100
Implementation/ supervision	5-10	20-35	50-60	0-10	100

Note 1. Where training is a particular key requirement of the TOR's this may be increased to reflect its importance and other criteria decreased accordingly.

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## 8.2 TERMS OF REFERENCE

Terms of Reference are the “ specifications” for consultant’s contracts. They answer the questions “**What, Why? AndHow**”?

The following considerations must guide the preparation of the TOR:

- TOR should contain sufficient background information on the project to enable consultants to present responsive proposals.
- TOR, in particular the scope of work, should be consistent with the available budget.
- TOR should take into account the organization of the Borrower, its level of technical expertise.

Terms of Reference consist of the following elements as a minimum.

### BACKGROUND

- This is a short history of the project and gives the consultant background to aid his understanding. It answers the question - **WHY?**

### OBJECTIVES

- These are very important. They should be concise and do not have to be very long but they must be carefully worded to ensure that the consultant will fully understand what the client wants to achieve.
- Objectives answer the question – **WHAT?**

■ *Under the procedures for Consultants Selection, there is scope to negotiate some aspects of the TORs but the objectives must never be changed.*

### SCOPE OF WORK

- This information answers the question – **HOW?**
- This should describe how the client expects the work to be undertaken. It should include such detail as:-
- Where the assignment is to take place, home office, locally, or a mixture of both. If up country travel is likely to be involved this should be mentioned.
- The approach that the Client expects to the various parts of the assignment. Remember that the consultant is expected in his offer to perhaps suggest an alternative approach.
- Who the consultant will answer to. Who will be counterparts? Who are the stakeholders?
- Expected outputs. What reports or surveys are required and in what form and what number of copies and to whom are these given? Alternatively what are the expected inputs?
- If this is an input assignment will you require an inception report, monthly reports, interim reports and a final report?

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- **Expected key staff specializations that should be offered with minimum qualifications or experience requirements.**
- **Expected time frame**

## 9 SPECIFICATIONS

### 9.1 WHAT IS A SPECIFICATION?

A specification is a clear and accurate description of the requirement. It tells the bidder exactly what is required, to ensure that the buyer (Contracting Entity) receives the right product or service, at the right time and place.

It shall also include the technical criteria against which the evaluation committee will assess the offer for technical compliance.

Therefore, specifications are an integral part of the procurement package. Procurement cannot be carried out without a specification. Even a simple RFQ procurement requires a specification.

Specifications may be simple, just a few words to describe an off-the-shelf item accurately, or complex, for example where design or building is required. Where a specification is more than a simple description for off-the-shelf items, it is a separate document which is incorporated into the bidding documents. The section on specification content refers to these.

The use of brand names in a specification is strictly prohibited. In an instance where there is no other way to describe a product accurately, the brand name shall be followed by the words "or equivalent".

References to standards shall where possible be made to international standards, or otherwise national standards incorporating international standards.

There are various types of specifications but the below are the most common ones. For example, when a sample product is used as a specification, the specification is called a Product Specification.

### 9.2 TECHNICAL SPECIFICATION

The specification most commonly used to describe goods is called a Technical Specification (it clearly describes the technical qualities of the product).

It sets out exactly what is required (a detailed description) and can be used to measure the accuracy of the items supplied. By nature it has to be written in words.

It shall include:

- **Purpose and objectives of the object of procurement**

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- A full description of the goods, i.e. a list of the goods and the quantities required and any incidental services or works, for example delivery, installation, commissioning, maintenance, repair, user training and the provision of after-sales services
- A functional description of the requirement, including any environmental or safety features
- Delivery and completion schedule
- Drawings
- Performance parameters, including timescales and any indicators/criteria by which performance can be judged
- Process and material descriptions
- Dimensions, symbols, terminology, packaging, marking and labeling requirements
- Inspection and testing requirements
- Any applicable standards

An example of a technical specification is discussed further on in this section.

### 9.2.1 Terms of Reference (TOR)

Specifications relating to Consultant services and non-consultant services are called Terms of Reference. Service contracts are for tasks to be carried out. Consultant Contracts are for intellectual and advisory services. The Terms of Reference describe these tasks clearly and in detail.

*For non-consultancy services it shall include:*

- Background to the required services
- Objectives of the services and targets to be achieved
- List of specific tasks and duties
- Deliverables and outputs for the assignment
- Role, qualifications and experience required for key staff
- Management and reporting lines for the supplier, including administrative arrangements and reporting requirements
- Any facilities, services or resources to be provided by the Contracting Entity
- Inspection or quality testing arrangements or indicators of successful performance
- Duration and completion schedule

*For consultancy services it shall include:*

- Objectives, goals and scope of assignment
- If training is required it should be specifically outlines with details of numbers and staff to be trained

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- **Background information, including a list of any existing relevant studies and basic data**
- **List of services and surveys necessary to carry out the assignment**
- **Deliverables or expected outputs**
- **Role, qualifications and experience of key staff**
- **Management and reporting lines for the service provider, including administrative arrangements and reporting requirements**
- **Indicators of successful performance**
- **Duration of assignment in man months and period of completion**

### 9.3 SCOPE OF WORKS (SOW)

The specification for Works contracts is called the Scope of Works. It is a clear description of the works that are to be carried out and all related aspects.

It shall include:

- **A description of the scope of works which may include design, construction or installation of equipment**
- **Purpose and objectives of the works**
- **Duration or completion schedule of works**
- **Details of supervision requirements, working relationships and other administrative arrangements**
- **Drawings and/or design requirements**
- **Specifications (e.g. for material) and standards**
- **Bill of Quantities (BOQ) or equivalent document**
- **Inspection and testing requirements**

Where procurement is carried out by CPU it is the responsibility of the Contracting Entity to provide the specifications. It shall be attached to the procurement proposal when it is Content of a specification

Considering the above points on required information for specific types of procurement, below follows a step by step content guide for written specifications. These steps are a general guideline but you should compare it to the specific requirements for each type of procurement and make it appropriate to your requirement.

#### *Scope*

The scope is a summary of the extent and limitations of the requirement specified, in other words what the successful bidder will be required to do under the contract. This may include:

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a statement as to whether the contractor is to supply the requirement, or is also to install and commission, and provide training or documentation;

anything the contractor is **not** required to do or provide which might otherwise normally be considered to be part of the requirement. For example, equipment or software which will be available to or must be used by the contractor; and

the period of the contract.

**Statement of Requirements**

A full description of each element summarised in the scope, including a description of the outputs (for services), or functionality and performance requirements (for goods), and details of the performance measures and benchmarks that will be monitored during the period of the contract, i.e. required results, conformance verification, etc.

The Statement of Requirement may group requirements under headings as “Essential” or “Desirable”. Failure to match any of the requirements under the “Essential” category is likely to result in the offered product or service being declared non-compliant and therefore excluded from further evaluation. “Desirable” requirements may support “essential” requirements or may be “wished for” features adding functionality, interoperability or providing scope for enhancement in the future. If the offer does not contain the “desirable” requirements it does not make the product non-compliant.

A Statement of Requirements for Services could also include:

- **sale of assets and transfer of personnel;**
- **the handover process;**
- **the transition process to a replacement service provider.**
- **A Statement of Requirements for Goods will include:**
- **design and performance criteria**
- **acceptance testing**

The following may be included in the specification, as appropriate:

*Other and/or reference documents*

A specification may refer to other documents in order to avoid duplicating some or all of those documents. The specification must contain an attachment listing the names of each document and how to obtain copies of them. Possible documents include other specifications, standards documents, Codes of Practice, Acts of Parliament and government directives.

*Service conditions and environmental factors*

If the physical environment in which the required products will operate or be located will affect the output, design or performance, the specification must explain those environmental conditions.

*Quality requirements*

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All quality requirements must be stated clearly. Reference shall be made to local or internationally recognised standards where possible.

**Training**

Should the requirement include training to be carried out, full details of the required training and its objectives shall be stated.

If there are documents to be provided under the contract, for example a report, it shall be clearly stated.

**Implementation**

When there are any specific implementation requirements it shall be clearly stated, including any environmental or storage factors which may or will impact on the implementation.

Environmental and ergonomic factors may include:

- **Operating and storage conditions**
- **The need for interchangeability or compatibility with existing equipment systems, etc.**
- **Availability of energy and other resources**
- **Intended users of the product and their ergonomic requirements**
- **Personnel safety aspects**
- **Servicing or maintenance requirements or limitations**
- **Any particular conservation requirements, for example, the recovery and recycling capability of goods after they have fulfilled their useful life and encourage tenderers to put forward ideas that are energy-efficient and environmentally friendly**

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**9.3.1 Example of a Technical Specification**

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Title	Desk Top Computers
Reference Number	ICT 1.2015
Introduction	The Ministry of Finance and National Planning (Tonga) wishes to procure 10 x desk top computers for use in its Central Procurement Unit (CPU).
Statement of Requirement	Desk top computers, quantity 10 Processor: At least Intel 1.6Ghz or equivalent Disk size: At least 160 GB Memory: At least RAM 2GB Network card: LAN Required USB Ports: At least 2 CD/DVD Recorder: Required Graphics: At least 256 MB Operating System: Microsoft Windows 7 Home Premium QWERTY Keyboard Mouse

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	Monitor: 19 inch Surge Protector Uninterruptable Power Supply (UPS) Installation is not required
Required Results	For use mainly for working in Microsoft Word, Excel and printing to a network printer. Ability to access Internet and send and receive e-mail.
Quality Requirements	Manufacturers Standard
Training Requirements	None
Documentation	Handbook written in English language
Warranty Requirements	1 year on-site
Other Requirements	Pre-installed Microsoft Operating System Microsoft Office 2007 Anti virus software

Please note: this is an example only. When preparing a technical specification you should make it specific to your requirement (fill in the details of the requirement). It does not have to follow the above format.

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## 10 RECORD KEEPING

### 10.1 THE IMPORTANCE OF RECORD KEEPING

For reasons of transparency and accountability it is important that all records are kept securely in one place. It also assists in the auditing process.

The term “record” in this instance refers to all correspondence and documents relating to a specific procurement process. It is not only the bidding documents and offers received but includes all correspondence, minutes of meetings, reports and any other documents relating to a procurement process.

Should there be any verbal communication, it too shall be noted in the file. (Note here that verbal communication is prohibited in the bidding process therefore the procurement officer shall not engage in conversation, but the bidder’s attempt is to be recorded.)

Procurement is a confidential activity and all documents and information relating to a procurement process shall be treated as such.

#### 10.1.1 Paper Records

Paper records should be kept in one file and clearly marked with the name and reference number of the procurement. This not only allows your colleagues access to complete information in your absence but makes it a clear and transparent process.

The file should consist of sub-divisions for each step of the procurement process. The sub-divisions are listed further on in this section.

Records shall be kept in a chronological order, in other words by date sent/received. This allows for ease of reference and transparency.

Files shall be kept in such a manner that its contents are secured. If the content is not secured in some way it could easily fall out and important original documents may be lost.

As mentioned before, all procurement is confidential and therefore it should be kept in a safe and secure manner. Documents should not be lying around on desks for anyone to see. Filing should be kept up to date.

#### 10.1.2 Electronic Records

Electronic records follow the same principles as paper records. Each procurement process should have its own folder, with subfolders for the various phases of the process.

Folders shall be made by the financial year and may further be broken down by project or division.

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### 10.1.3 Reporting to the Procurement Division

Contracting entities are required to submit quarterly reports to the Procurement Division, listing all the procurement carried out for that period.

The quarters will follow the financial year and are as follows:

July – September

October – December

January – March

April – June

Reports shall be submitted within two weeks of the end of each quarter.

### 10.1.4 Sub-divisions for files

As stated above, all GOT procurement records shall be kept in the same manner, as prescribed by PD.

All files shall contain the following sub-divisions, in the order as stated below:

## 10.2 DESCRIPTION OF REQUIREMENT

This section shall contain all those documents that relates to the identification of the requirement, namely description and quantity, specifications, delivery details, budget, cost estimates, correspondence between the procurement officer and technical staff, etc.

### 10.2.1 Vendor details / Procurement Notices

For RFQ:

Market research

Selection from vendor databases

Final list of vendors to whom invitations to participate will be sent, and their full contact details

For Bids:

Publication of Procurement Notice

Responses to Procurement Notice

### 10.2.2 Invitation to Quote / Bid

This section shall contain a complete RFQ or set of bidding documents, including any attachments e.g. drawings, specifications, etc.

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### 10.2.3 Clarifications

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Any clarification requests received during the process and the responses issued, and any other relating documents which may include clarifications requested by the procurement officer from the technical staff.

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### 10.2.4 Quotations/Bids Received and Evaluation

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All the quotations/bids received in response to the procurement invitation as well as documents relating to the evaluation phase shall be contained in this section. It includes bid opening protocol, clarifications sought on offers, signed declarations, evaluation grids and the signed evaluation report.

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### 10.2.5 Contract

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All documentation that relates to the award of the contract, including the Notification of Award and letters to unsuccessful bidders, the signed contract and any other correspondence or documentation on this subject.

In complex procurement the fifth section for bids received and evaluation may become rather large. In order to make it easier to work with the procurement officer my further divide this into sections for all the bids received the evaluation proceedings and evaluation report. If required, further subdivisions may be inserted at the procurement officer's discretion, providing that each section relates to a specific part of the process and not various parts.

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## 11 COMPLAINTS AND APPEALS

Bidders have certain conditional rights to ask for review of procurement activities.

In the first instance the Bidder must address his request to the Head of the Contracting Entity with details of his complaint or reasons for such a request.

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### 11.1.1 Before bid opening

In the event of alleged improprieties which are apparent prior to the bid opening, the application for review will be considered only if it has been submitted before the bid opening to the Head of the Contracting Entity.

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### 11.1.2 Before contract signature

Before a contract is signed, notification of award is sent to both the successful and unsuccessful bidders. The unsuccessful bidders are given 10 calendar days (2 weeks) to lodge a complaint, should there be one. The application shall be submitted in writing to the Head of the Contracting Entity. Complaints that are submitted after this period will not be entertained.

Complaints shall also not be entertained if it is submitted more than 14 calendar days after the bidder became aware of circumstances giving rise to the complaint, or when the bidder should have become aware of the circumstances, whichever was first.

Complaints shall clearly state the specific act or omission which is alleged to contravene PPR 2015 and the bidding documents. Without this an application cannot be entertained.

If the complaint is not resolved by agreement from both parties, the Head of the Contracting Entity shall suspend the procurement proceedings (unless urgent considerations of public interest require the procurement to continue). The Head of the Contracting Entity shall issue a written decision within 5 calendar days (1 week) after submission of the complaint, stating the reasons and correcting measures (if the complaint is being upheld).

If the written decision is not issued within 5 calendar days (1 week) of submission of the complaint, or if the complainant is not satisfied with the decision, the complainant may follow it up with a written complaint to PD. This must be done within 10 calendar days (2 weeks) from the date when the written decision was due or within 10 calendar days (2 weeks) from the date when the decision was communicated to the complainant.

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### 11.1.3 After contract signature

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When a contract has already started (entered into force), any application for review shall be submitted in writing to the HPD within 10 calendar days (2 weeks) of when the complainant became aware of the circumstances or should have become aware of the circumstances, whichever was first.

#### 11.1.4 Applications for review to PD

In other words, the complainant may appeal to PD against:

- the decision of the Head of the Contracting Entity, and
- no decision from the Head of the Contracting Entity within the allocated time frame, and
- when the contract has already entered into force, providing it is done within the time frames stated above.

Applications for review sent to PD will be handled by an Independent Expert of suitable qualification appointed by GPC upon nomination from PD in consultation with the Attorney General’s Office. PD shall advise the parties of the name of the Independent Expert within 7 calendar days of receiving the application for review. PD shall also notify the bidder of the date of commencement of its activities (known as the date of establishment).

The Independent Expert shall make a written decision, stating the reasons for the decision, within 10 days after the date of selection. That decision shall be binding on all parties.

PPR 2015 dictates on which grounds the Independent Expert may dismiss an application and which remedies may be taken, including compensation to the complainant.

Procurement proceedings remain automatically suspended until the expert’s decision is issued in writing, unless the Contracting Entity can convince the Independent Expert that such suspension would cause disproportionate harm to the public. This means that the procurement procedure may continue but no contract may be finalized until the written decision of the Expert.

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## 12 DEBARMENT PROCEDURE

Under the Public Procurement Regulations there is a process for debarment. This means that a Bidder who has engaged in a “prohibited practice” may be conditionally barred from participating in Bidding for public procurement contracts.

### 12.1 GROUNDS FOR DEBARMENT

A person or a company may be debarred for any of the following:

- (conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity;
- conviction for an offence involving corruption;
- conviction for engaging in anti-competitive practices, whether or not involving collusion; or
- deliberate neglect or failure without good cause to perform a contract in accordance with its terms of so serious a nature as to justify suspension or debarment on condition that such neglect or failure: that
- has resulted in the termination of the contract by the Contracting Entity; or
- has led to the imposition of liquidated damages or other remedies foreseen in the contract for such acts or omissions; or Regulation 42 Public Procurement Regulations 2015
- has been identified in a judgment of a court of law in respect of a case brought by the Contracting Entity for breach of contract.

A person may also be debarred for unethical conduct including:

- offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in connection with a procurement;
- offering to pay or paying a bribe whether in the form of a payment, gratuity, offer of employment or otherwise by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a contract; and
- knowingly soliciting or obtaining confidential information, or attempting to obtain confidential information, in relation to a procurement for the purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a bid, proposal, quotation or offer in relation to an emergency procurement.

No Contracting Entity shall award a contract to a bidder which has been debarred

### 12.2 DEBARMENT OFFICIALS

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The head of each Contracting Entity shall appoint a Debarment Officer and this is usually its chief legal officer. The debarment officer investigates allegations of prohibited practices and proposes whether a bidder should be debarred or not.

The Chairman of the GPC shall establish a Debarment Committee whenever an allegation is brought to it by the Debarment Officer. The Debarment Committee shall consist of three people namely the CEO of MOFNP (Chair), legal officer from the Attorney General's office and the head of the Contracting Entity proposing the debarment, or a delegated representative. HPD shall provide secretariat services.

The Debarment Committee will study the evidence and decide whether debarment is appropriate. If so, a Notice of Debarment is issued. The decision will be by majority vote and the chairperson has the casting vote.

The full debarment procedure is described in Appendix 1 of the Public Procurement Regulations.

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**12.3 ANNEXES**

- A. Invitation to Bid standard format
- B. Request for Expressions of Interest
- C. Request for Quotations

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Annex A

**Standard Invitation to Bid**

**INVITATION TO BID**

Bid Reference

[Brief Description of Goods required]

The Ministry of >>>>>>> has allocated funds for the procurement by Competitive Bidding for the provision of certain Goods and it intends to apply the proceeds of these funds for eligible payments under any subsequent contract.

The Contracting Entity now invites sealed Bids for the provision of (describe goods and any associated service plus required delivery time (expressed in weeks or months from award of contract) and destination.

Where there are very specific, specialised qualification requirements (for example – “Bidders will be required to provide evidence that must demonstrates that they are a dedicated manufacturer of the Goods required’.) These should be stated here.

Prospective tenderers may obtain further information from, and inspect and acquire the tender documents at, the following office: *(State place and contact details including individual who is distributing documents)*

[If documents are to be charged for, the following wording should be used, otherwise remove (Bids must be accompanied by evidence of a payment of ..... *If approved suppliers for limited Bidding are used delete this sentence.*

Bids must be enclosed in a sealed envelope which must be marked as follows:

Bid Number .....

Supply of .....

Address where Bids are to be delivered.....

The Envelope must be clearly marked with the following words; “Ministry Of .....Bid No >>>-  
[Description of goods required “Do not open before >>>>Hours >>>>200>”

A pre-bid meeting will be held at..... on ..... (If it is intended to hold a pre-bid meeting then the date, venue and a contact person should be stated here together with a contact details for arrangements. If no pretender meeting is to be held then delete this sentence).

Bids must be delivered to the offices of *(State address for delivery together with contact details), by [same date and time as above]* at which time they will be opened in the presence of those Bidder’s representatives who choose to attend.

Late, telegraphic, electronic and faxed Bids will not be considered.

The documents specified in the Instructions to Bidders including a copy of current tax clearance certificate and Bid security must be enclosed in the Bid envelope. *(The requirement for a Trading Licence and tax clearance certificates does not apply to foreign suppliers).*

The Contracting Entity does not bind itself to accept the lowest or any Bid.

For further information contact the following:

Name address and contact details of Contracting Entity

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Annex B.

**Request for Expressions of Interest**

**REQUEST FOR EXPRESSIONS OF INTEREST  
(CONSULTING SERVICES)**

[NAME OF PROJECT]

Assignment Title:

Reference No.

the Ministry of *(State the Ministry or Institution)* has received funding from the Government, and intends to apply part of the proceeds for the following consulting services.

The consulting services (“the Services”) include **[insert brief description, implementation period, etc.]**

The Contracting Entity of the Ministry of **[state Ministry]** now invites eligible consulting firms (“Consultants”) to indicate their interest in providing the Services. Interested Consultants should provide information demonstrating that they have the required minimum qualifications and relevant experience to perform the Services. The short-listing criteria are: **[insert criteria related to required qualifications and experience of the firm (See section 8.1.6 of the CPU Procurement Manual 2015)]**

Consultants may associate with other firms in the form of a joint venture or a sub-consultancy to enhance their qualifications.

A Consultant will be selected in accordance with the **[insert selection method]** method set out in the Public Procurement Regulations 2015.

Further information can be obtained at the address below during office hours **[insert office hours if applicable, i.e. 08.30 to 16.30 hours]**

Expressions of interest must be delivered in a written form to the address below (in person, or by mail, or by fax, or by e-mail) by **[insert date]**.

**State Name of Contact, address, telephone and email**

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Annex C.

### Invitation for Quotations

*DELETE THIS GUIDANCE NOTE AND ALL PROMPTS IN RED IN THE RFQ BEFORE ISSUANCE*

#### Appropriate use of The RFQ document

RFQ is appropriate where the procurement is for readily available commercially standard goods, not specially manufactured to the particular specifications of the contracting entity; and

when the estimated value of the procurement is between:

- \$ 7,500 and \$ 100,000 in the case of works, and

- \$ 7,500 and \$ 50,000 in the case of goods and non-consultant services.

Where non-consultant services are required, detail of the scope, scale and duties must be provided and the price schedule (Attachment 1.) must be suitably modified to enable bidders to provide consistent proposals.

#### Notes on preparation

- Where the contract value is below \$10,000 the Procuring Entity may carry out the Bidding process.
- Above \$7,500 and up to \$10,000 the proposal document must be sent to the Central Procurement Unit and it shall be endorsed by the Head of the Procurement Division prior to placing a contract.
- Above \$10,000 upwards the transaction shall be carried out by the Central Procurement Unit.

A public Bid Opening is not required and evaluation is not a complex operation.

It is a simple document that may be faxed or sent by electronic post to Bidders.

Preparation of the RFQ document should include clearly worded specifications.

- **For Goods** the specification should include any required operating or repair manuals. Goods shall be of the most recent design and incorporating all recent manufacturer's modifications. Also important is warranty or guarantee and available service facilities.

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- **For Works** In addition to a detailed Scope of Work, the specification should detail standards, location, working hours, completion required expressed in days or weeks from award, detailed scope of work and contractors insurance cover.
- **For Non-Consulting Services**- It will be a detailed Scope of work and provide location, working periods, standards and, in the case of services requiring personnel, the expected number of personnel.

The shortlist shall include sufficient Bidders to ensure effective competition, but in any case, no less than three quotations shall be obtained. It may therefore be prudent to seek 4 or even 5 suppliers to try to ensure that at least three responses.

The minimum Bid response period shall be-

- 10 days where shortlisted Bidders are national only; or
- 14 days where the shortlist includes foreign Bidders.

The Bidders are expected to complete and sign Attachment 1. (The quotation) and sign Attachment 2. (Terms and Conditions of Supply). These then form the Bidder's quotation.

This Page and any notes or guidance in red print should be removed before issuance.

Procurement Staff should adapt the RFQ depending on the type of goods or works to be procured.

For Goods Transport costs should be shown separately.

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*Date of Issue*

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**Bid Ref**

**Date** [*Date issued*]

**INVITATION TO QUOTE**

To:

\_\_\_\_\_

This Invitation for Quotations comprises [*State total number of pages including Specification*]

Gentlemen:

1. The Government of The Kingdom of Tonga has allocated funds for eligible payments under the contract for which this invitation for quotation is issued.
- 2 You are invited to submit your price quotation(s) for the supply of the following items:

(i) [*Adapt as appropriate*] \_\_\_\_\_

(ii) \_\_\_\_\_

The required Specification is attached and will form part of the Purchase Order

3. [*The Purchasing Officer must choose one of the paragraphs below and delete the other as appropriate*]

You may quote for any or more items under this invitation.

**Or**

You must quote for all the items under this Invitation.

4. Your quotation in the required format (**Signed Attachments 1 and 2**) should be addressed and submitted to:

\_\_\_\_\_

Telephone : \_\_\_\_\_

Email: \_\_\_\_\_

5. Your quotation in duplicate and in English language, should be accompanied by adequate technical documentation and catalogue(s) and other printed material or

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pertinent information (in English language) for each item quoted, including names and addresses of firms providing service facilities in Tonga where appropriate.

6. The deadline for receipt of your quotation (s) by the Purchaser at the address indicated in Paragraph 4 is: *[Fill in date which should be not less than 10 days from the issuance of the document for National Tendering]*

7. Quotations by electronic means are acceptable.

8. Your quotation(s) should be submitted as per the following instructions and in accordance with the Terms and Conditions of supply attached. Please be sure to sign both your quotation (Attachment 1.) and the Terms and Conditions of Supply (Attachment 2.) and return the same to the Purchaser.

(i) PRICES AND DELIVERY: The prices should be quoted in Tongan Pa'anga for delivery DAP to *[State place of delivery]*. Prices must be quoted in TOP and include all taxes, duties and levies applicable at the present time including Consumption Tax (CT).

Delivery is required by *[State here if a particular delivery is required. If not state "Indicate your earliest possible delivery"]*

**Your quotation must include your delivery time stated in weeks from receipt of award**

(ii) EVALUATION AND AWARD OF ORDER: Offers determined to be substantially responsive to the technical specifications will be evaluated by comparison of their prices. The award will be made to the firm offering the lowest evaluated price and that meets the commercial and technical requirements.

(iii) VALIDITY OF THE OFFER: Your quotation(s) should be valid for a period of 60 days from the date of receipt for quotation(s) as indicated in Paragraph 6 of this Invitation to Quote.

(iv) OTHER DOCUMENTS REQUIRED: The following documents must accompany your quotation:-

- Declaration of Eligibility in the form provided signed by the Bidder
- Certified Copy of current Tax Clearance Certificate
- Full contact Details (telephone/Email and full address)
- Copy of business Registration
- *[Indicate any other required documents including any qualification evidence]*

9. Further information can be obtained from:

*[Provide contact details of Contracting Entity]*

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

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Email address

10. Please Confirm by telex or electronic post the receipt of this invitation and whether or not you will submit the price quotation(s).

**Attachment 1.**

**To : Ministry of State *which Ministry or Institution* .....**

Dear Sirs

We present herewith our quotation including attachment 2 for the undernoted items. We undertake to hold this quotation valid for a period of 60 (sixty) days following the latest submission date. If we are favoured with your acceptance of our quotation we undertake to begin delivery immediately and comply with all requirements, specifications, delivery, terms and conditions of supply detailed in the attached Terms and Conditions to which we affix our signature.

**Quotation**

*This form should be adapted appropriately for the type of purchase*

Item No.	Goods, Works or non-consultant services	Unit Price DAP	Delivery in Weeks from Receipt of Award DAP	Total in TOP
<b>Total for Goods (excluding CT)</b>				
<b>Total CT</b>				

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<b>Total Offer Price including CT</b>	
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In the event of a discrepancy between the unit price and the total, the unit price shall prevail.

**DAP is Delivered at Place according to INCOTERMS 2010**

**Signed for the Bidder**

**Date**

**Full name, Address of Bidder with Contact details**

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**Attachment 2.**

**Terms and Conditions of Supply**

**Project Name:** \_\_\_\_\_ **Purchaser:** *State the Ministry*

**Contract No:** *[Should be same as Bid]*

**1. Prices and Schedules for Supply**

<u>S.No.</u>	<u>Item No.</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Price</u>
--------------	-----------------	-----------------	-------------------	--------------------

**Delivery Time**

*Adapt this part as appropriate for the type of purchase. If you are specifying a delivery or completion time rather than allowing the firm to quote a delivery time you should state "Delivery time : Delivery/Completion should be completed by {no of weeks } from acceptance of your quotation"*

*[Note: In case of discrepancy between unit price and Total derived from unit price, unit price shall prevail]*

**Associated Services** *If appropriate detail here the nature of any extra services such as testing, mounting, assembling – Otherwise delete.*

2. **Fixed Price** The prices indicated above are firm and fixed and not subject to any adjustment during contract performance.
3. **Country of Origin:** A certificate of origin will be required for each item. *(Where the item is to be locally tendered state here "Not required")*
4. **Payment** or your invoice will be made 100% against a valid Receipt signed and issued by a representative of the Ministry receiving the goods or services evidencing delivery together with your invoice for payment. Payment will be made within 30 (thirty) days of the receipt of the aforementioned documents.
5. **Warranty:** Goods offered should be covered by manufacturer's warranty for at least 12 months from the date of delivery to the Purchaser. Please specify warranty period and terms in detail.
6. **Packaging and Marking Instructions:** *[Specify any required special instructions]*
7. **Required Technical Specifications** *[This should be modified as appropriate and a detailed specification provided as a further attachment to this Attachment 2.*

The Supplier confirms compliance with above specifications. In case of deviations the supplier must list all such deviations.

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8. **Failure to Perform:** The Purchaser may cancel the Purchase Order if the Supplier fails to deliver the Goods, in accordance with the above terms and conditions, in spite of a 21 day notice given by the Purchaser, without incurring any liability to the Supplier.
9. **Eligibility:** The Contracting Entity requires all Bidders to meet the following criteria, to be eligible to participate in public procurement-
  - (c) that the Bidder has the legal capacity to enter into the contract;
  - (d) that the Bidder is not insolvent, in receivership, bankrupt or being wound up, its affairs are not being administered by a court or a judicial officer, its business activities have not been suspended and it is not the subject of legal proceedings for any of the foregoing;
  - (e) that the Bidder has fulfilled its obligations to pay taxes and social security contributions;
  - (f) that the Bidder has not, and its directors or officers have not, been convicted of any criminal offence related to their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
  - (g) that the Bidder does not have a conflict of interest in relation to the procurement requirement.
10. **Corrupt, fraudulent Practices** -Bidders should be aware that a Bidder who engages in corrupt, collusive, fraudulent or coercive or obstructive practices will have their proposals rejected and may further be subject to the prosecution under the laws of Tonga.
11. **Termination** - The Purchaser may, by written notice sent to the Supplier, terminate the Purchase Order in whole or in part at any time for its convenience:
  - (i)if the Supplier fails to perform the Goods within the time period(s) specified in the Purchase Order; or
  - (ii)if the Supplier fails to perform any other obligation(s) under the Purchase Order; or if the Supplier, in either of the above circumstances does not cure its failure within a period of (5) five calendar days after receipt of a notice of default from the Purchaser specifying the nature of the default(s); or
  - (iii)if the Supplier, in the judgment of the Purchaser, has engaged in any corrupt or fraudulent, collusive, coercive or obstructive practices in competing for or in executing the tasks under this Purchase Order;
12. **Applicable Law** -This Purchase order and any goods, services or works supplied are subject to the Laws, Regulations and norms of the Kingdom of Tonga.

Name of Supplier \_\_\_\_\_

Address of Supplier \_\_\_\_\_

Authorized Signature \_\_\_\_\_

Place:

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Declaration of Eligibility

All Bidders must meet the following criteria, to be eligible to participate in public procurement

***Bidders must provide a signed declaration on their company letterhead in the following format. If the Bid is being presented by a joint venture or consortium all members must sign the declaration***

Dear Sirs

Re Bid Reference .....

In accordance with the eligibility requirements of the Procurement Regulations and the Bid documents we hereby declare that:-

- (h) We, including any joint venture partners or consortium partners are a legal entity and have the legal capacity to enter into the contract;
- (i) We are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended and we not the subject of legal proceedings for any of the foregoing;
- (j) We have fulfilled our obligations to pay taxes and social security contributions;
- (k) We have not, and our directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (l) That we do not have a conflict of interest in relation to the procurement requirement.

**Signed .....**

**Date**

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## Specifications as part of Attachment 2

### Specifications

#### ***The Ministry is responsible for providing the Specifications***

*Specifications are meant to encourage competition and should not be restrictive. They should also aid evaluation by making technical responsiveness easy to recognize and decide.*

*The use of brand names is restrictive and not allowed unless there is a sound justification such as proprietary equipments or spare parts.*

*Requirements should be generally divided into the following areas*

***Key specifications*** – These are specifications that must be adhered to therefore it is important to clearly state maximum or minimum levels. For example if around 30 kW is required then a reasonable range should be specified. If a very specific maximum or minimum output is required then this should be very clearly specified indicating **the maximum and minimum level** that is acceptable. In this case, anything above or below the specified levels would not be acceptable

***Non-Key Specifications*** –These are specifications that are not critical. No two manufacturers present precisely the same specifications and on those areas that are not critical variations can be accepted.

*In cases where **the goods are equipment**, the specification should clearly define that the equipment or supplies must comply with Tonga environmental and safety regulations and must be capable of operating in the conditions prevalent in Tonga.*

*Any special packing or packaging requirements should be stated here.*

*In the case of **Works**, reference must be made to relevant current building and environmental regulations in Tonga. Bidders for works should also be asked a copy of current to provide tax clearance certificate, copy of registration and Certificate of Compliance if they are in possession of one.*

***Services*** should clearly define the duties required including time frames, duration, and location together with, to whom the supplier of the services must report.

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Annex D

**Request for Proposals Document for Small  
Consultancy Assignments Least Cost Selection  
and Fixed Budget Selection for values \$7,500 to \$50,000**

All guide notes and prompts in red must be removed before issuing the document

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## Information for Procurement Staff

This document has been prepared for use by staff charged with the procurement of small consultancy assignments (\$7,500 to \$50,000) for the Government and is one of a suite of new tendering documents.

This guide note refers to the small Consultancy Request for Proposals which is appropriate for small simple assignments and in most cases Least Cost Procedures or Fixed Budget Procedures will be used.

- There is a separate detailed guide to accompany the large consultancy standard Request for Proposals.
  
- **Least Cost Selection-** This is used for transactions which are of a routine nature where the practices are well established. Typically, it would be appropriate for the following assignments.
  - Standard accounting Audits
  - Engineering design and supervision of simple projects
  - Repetitive operations and maintenance works
  - Simple surveys
  -
  
- **Selection under fixed budget (FBS):** This method shall be used when the assignment is simple and can be precisely defined, and when the budget is fixed.

### The Procedure

The procedure is close to that used for Quality Cost Based but with some marked difference.

Consultants shall normally be selected through the publication of a notice inviting expressions of interest and development of a shortlist. Details of short-listing procedures are contained in the regulations in detail.

A shortlist may be developed without publication of a notice inviting expressions of interest where-

- the services are only available from a limited number of consultants;
- there is insufficient time for publication of a notice in an emergency situation; or
- the estimated value does not exceed the threshold specified in the regulations. i.e. 50,000 \$ TOP

Following development of a shortlist of 3 to 6 companies or individuals the Request for proposals document is issued only to that shortlist.

Consultants should be allowed a reasonable time in which to prepare their proposals and deliver it to the procuring entity by the latest date for submission.

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- 30 days where the shortlist includes national Consultants only;
- 45 days where the shortlist includes foreign Consultants.

Where the shortlist has been developed without using expressions of Interest on the grounds of urgency the response time may be reduced to a minimum of 7 days.

Proposals are provided in two envelopes, a technical proposal and a financial proposal. The Technical Proposal is opened and evaluated.

The following table is provided to guide Contracting Entities on how to allocate the technical points to the various criteria and the **Standard points** show the usual range of points for most purposes.

	<b>Consultant's relevant experience</b>	<b>Quality of Methodology Work plan</b>	<b>Staff qualifications</b>	<b>Training (optional)</b>	<b>Total points</b>
<b>Type of assignment</b>					
<b>Standard Points</b>	5 to 10	20-50	30-60	Max 10 (See note 1)	100
Technical assistance/ training	5-10	20-35	50-60	0-10 (Note 1)	100
Design	5-10	30-45	40-50	0-10	100
Implementation/ supervision	5-10	20-35	50-60	0-10	100

Note 1. Where training is a particular key requirement of the TOR's this may be increased to reflect its importance and other criteria decreased accordingly.

Those consultants who fail to achieve a predetermined minimum mark have their unopened Financial Proposals returned to them.

The Financial Proposal envelopes of those who achieved or exceeded the pre-determined qualifying mark have their financial proposals opened publicly and their technical marks are announced together with the prices contained in the financial envelope.

In the case of **Fixed Budget Selection** - The Consultant achieving the lowest price below the budget is awarded a contract subject to completion of satisfactory negotiations.

In the Case of **Least Cost Selection** -The Consultant achieving simply the lowest price is awarded a contract subject to completion of satisfactory negotiations.

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**The Document**

The Request for Proposals includes the following sections:

- Section 1 - Letter of Invitation
- Section 2 - Instructions to Consultants
- Section 3 - Technical Proposal
- Section 4 - Financial Proposal
- Section 5 - Terms of Reference
- Section 6 – Contract
- Attachments

- Technical Proposal Form
- Financial Proposal Form
- Contract Form

The Contract format contained in this document is Lump Sum which is usual for small value transactions as it is simple to administer.

There are guide notes in red print in almost every section. This guide, the covering page and notes in red should be deleted before this document is used.

In the evaluation section of this guide there are some typical points for quality. These may suffice for most small assignments where you are inviting a predetermined list of consultants however they may need to be adapted for different types of assignment.

There are guide notes or prompts for those areas that need to be completed by the procuring entity.

All guide notes and prompts in red must be removed before issuing the document

Procurement Unit staff should also consult the Manual for Contracting Units which has more detail on Procurement of Consultants Services.

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**Request for Proposals  
FOR CONSULTANTS SERVICES**

**RFP Ref. [>>>>>>>>]  
[Title of Consultancy]**

*State title and address of Procuring Entity*

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*[State issue date]*

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# REQUEST FOR PROPOSALS

*[State Title of Consultancy required]*

## 1. Letter of Invitation

The Ministry of *[State Ministry]* has allocated funds for the provision of consultancy services and now invites proposals to provide the following consulting services:

*[State title of Consultancy in Bold letters]*

More details on the required services are provided in the Terms of Reference.

### 1.1 Contents of the RFP

This Request for Proposals includes the following sections:

Section 1 - Letter of Invitation

Section 2 - Instructions to Consultants

Section 3 - Technical Proposal

Section 4 - Financial Proposal

Section 5 - Terms of Reference

Section 6 – Contract

Attachments

Technical Proposal Form

Financial Proposal Form

Contract Form

## 2. Corruption, collusion, fraudulent practices

Consultants should be aware that a Consultant who engages in corrupt, collusive, fraudulent or coercive practices will have their proposals rejected and may further be subject to prosecution under the laws of Tonga.

“Corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public officer in the procurement process or in contract execution;

“Collusive” practices means a scheme or arrangement between two or more Consultants, with or without the knowledge of the procuring entity, designed to establish tender prices at artificial, non-competitive levels;

“fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;

“Coercive practices” means harming or threatening to harm, directly or indirectly, persons, or their property, to influence their participation in a procurement process or affect the execution of a contract.

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Following technical evaluation Consultants whose proposals falls below the minimum required quality score of 75 (seventy five) points will have their financial proposal returned unopened and their proposals will not be considered further.

#### 6. Opening of Financial Proposals

Consultants whose technical proposals achieve or exceed the qualifying quality mark of 75 (seventy five) points will be invited to attend the opening of their financial proposals where the technical mark achieved and the total value of the financial proposal will be announced.

The Consultant whose tender is the lowest evaluated price will be invited for negotiations.

#### 7. Negotiations

Negotiations may relate to-

- minor alterations to the terms of reference, methodology and staffing;
- minor amendments to the Special Conditions of Contract;
- mobilization arrangements, the work-plan and completion schedule; and
- inputs required from the procuring entity.

Negotiations shall not substantially alter the scope of work, the contract conditions or the rates except where changes are required to reflect any agreed changes to the technical proposal.

Following the conclusion of satisfactory negotiations the parties will initial all pages of the contract and the successful Consultant will be invited to sign the Contract.

#### 8. Preparation of Technical Proposals

Consultants must complete and sign the Technical Proposal forms and return this with their proposal. The Technical Proposal shall contain the following details:

Specific Experience of the Consultants relevant to the assignment

Consultants should list other similar assignments undertaken in the last two years

Approach and Methodology suggested for the assignment.

Consultants should describe their intended approach and methodology to the assignment and provide a detailed time frame and the key and support staff inputs they will use. They should also state what support or counterpart facilities they would require from the Client to complete the assignment. Consultants may suggest an alternative approach to that stated in the Terms of Reference provided the stated Objectives can still be achieved.

Key Staff Qualifications

Consultants shall provide a list of assigned staff and detailed curriculum vitae for each of the assigned key staff. There shall be no changes to staff proposed for the assignment.

Declaration of Eligibility

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This document which forms an attachment to the Technical Proposal must be provided on the Consultants Letterhead and signed by the Consultant. If the tender is being presented by a joint venture or consortium all members must sign the declaration.

#### 9. Preparation of Financial Proposal

Consultants must complete and sign the Financial Proposal form and return this with their proposals. The Financial Proposal should contain a lump sum amount that includes all costs including but not limited to fees, overheads, management costs, travel, report reproduction, secretarial support services and including all applicable taxes in Tonga. The Financial Proposal shall be priced in Tonga currency only.

All Consultants must take note that a withholding tax of 15% on the gross amount paid shall be levied on payment made to non-Tongan residents companies/contractors in respect of services performed in Tonga and 10% on Tongan resident companies/contractors unless the company/contractor has a tax exemption certificate from the Commissioner of Taxes (Refer to Income Tax Order No. 21 of 1975 as amended)

#### Terms of Reference

[Terms of Reference should include as a minimum

Background – a brief history which describes why the services are needed.

Objectives – It is very important that this is concise. It does not have to be long but should be very clear. The objectives will never be changed even if the consultants make recommendations to that effect.

Scope of work – this is meant to give the consultant an idea of what you expect them to do, what phasing, where they are to do it and who they report to including details of any required reports or outputs. This will assist them to decide an accurate work plan and pricing.

Reporting Requirements – Type, number, time scale to produce, if approval need from Contracting Entity.

#### 10. The Contract

The contract shall be a Lump Sum contract as attached to this RFP and Consultants must include all costs including any taxes applicable in Tonga. No changes may be made to the contract without the agreement of both parties in writing.

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## Attachment 1. Technical Proposal Submission Form

[Location, Date]

To: [Name and address of Client]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Proposal. We are hereby submitting our Proposal, which includes our Technical Proposal and a separately sealed Financial proposal.

We hereby declare that all the information and statements made in this Proposal are true and accept that any misinterpretation contained in it may lead to our disqualification.

Our Proposal is binding upon us and shall remain valid for 60 days.

We undertake, if our Proposal is accepted, to initiate the consulting services related to the assignment not later than the date agreed and indicated in the contract...

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: \_\_\_\_\_

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

Name of Firm: \_\_\_\_\_

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

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**Attachment to Technical Proposal Submission form**

**Declaration of Eligibility**

In accordance with the requirements of the Procurement Regulations issued in accordance with the terms of Section 26 of the Finance and Audit Act No. 18 of 1967 all Consultants must meet the following criteria, to be eligible to participate in public procurement

*Consultants must provide a signed declaration on their company letterhead in the following format. If the tender is being presented by a joint venture or consortium all members must sign the declaration*

Dear Sirs

Re Tender Reference .....

In accordance with the eligibility requirements of the Procurement Regulations and the tender documents we hereby declare that:-

- (m) We ,including any joint venture partners or consortium partners are a legal entity and have the legal capacity to enter into the contract;
- (n) We further declare that we are not insolvent, in receivership, bankrupt or being wound up, our affairs are not being administered by a court or a judicial officer, our business activities have not been suspended and it is not the subject of legal proceedings for any of the foregoing;
- (o) We declare that the we have fulfilled our obligations to pay taxes and social security contributions;
- (p) We have not, and its directors or officers have not, been convicted of any criminal offence related to our/their professional conduct or the making of false statements or misrepresentations as to their qualifications to enter into a contract within a period of five years preceding the commencement of the procurement proceedings; and
- (q) That we do not have a conflict of interest in relation to the procurement requirement.

**Signed** .....

**Date**

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## Attachment 2. **Financial Proposal Submission Form**

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[Location, Date]

To: [Name and address of Client]

Dear Sirs:

We, the undersigned, offer to provide the consulting services for [Insert title of assignment] in accordance with your Request for Proposal dated [Insert Date] and our Technical Proposal. Our attached Financial Proposal is for the sum of [Insert amount(s) in words and figures<sup>1</sup>]. This amount is inclusive of all local taxes.

Our Financial Proposal shall be binding upon us for a period of 60 days from latest date for submission.

We understand you are not bound to accept any Proposal you receive.

We remain,

Yours sincerely,

Authorized Signature [In full and initials]: \_\_\_\_\_

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

Name of Firm: \_\_\_\_\_

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

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**CONTRACT FOR CONSULTING SERVICES**

**CONTRACT**

THIS CONTRACT ("Contract") is entered into this *[insert starting date of assignment]*, by and between *[insert Client's name]* ("the Client") having its principal place of business at *[insert Client's address]*, and *[insert Consultant's name]* ("the Consultant") having its principal office located at *[insert Consultant's address]*.

WHEREAS, the Client wishes to have the Consultant perform the services hereinafter referred to, and

WHEREAS, the Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

- 1. Services**
- (i) The Consultant shall perform the services specified in Section 5 "Terms of Reference," which is made an integral part of this Contract ("the Services").
  - (ii) The Consultant shall provide the personnel listed in his proposal to perform the Services.
  - (iii) The Consultant shall submit to the Client the reports in the form and within the time period specified in the terms of Reference.

**3. Payment**

A. Ceiling

For Services rendered pursuant to Section 5 the Client shall pay the Consultant an amount not to exceed *[insert amount]*. This amount has been established based on the understanding that it includes all of the Consultant's costs and profits as well as any tax obligation that may be imposed on the Consultant.

B. Payment

100% Payment shall be made in Tonga currency no later than 45 days following receipt and acceptance of the Consultant's Report and recommendations together with his invoice for services rendered

**4. Project Administration**

A. Coordinator.

The Client designates Mr./Ms.*[insert name]* as Client's Coordinator; the Coordinator will be responsible for the coordination of activities under this Contract, for acceptance and approval of the reports and of other

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deliverables by the Client and for receiving and approving invoices for the payment.

**B. Reports.**

The report required in the Terms of Reference shall be submitted in 3 hard and 1 soft copies and its acceptance by the Client will constitute the basis for the payments to be made under paragraph 3.

- 5. Performance Standards**      The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity. The Consultant shall promptly replace any employees assigned under this Contract that the Client considers unsatisfactory.
- 6. Confidentiality**      The Consultants shall not, during the term of this Contract and within two years after its expiration, disclose any proprietary or confidential information relating to the Services, this Contract or the Client's business or operations without the prior written consent of the Client.
- 7. Ownership of Material**      Any studies reports or other material, graphic, software or otherwise, prepared by the Consultant for the Client under the Contract shall belong to and remain the property of the Client.
- 8. Consultant Not to be Engaged in Certain Activities**      The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, shall be disqualified from providing goods, works or services (other than the Services and any continuation thereof) for any project resulting from or closely related to the Services.
- 9. Insurance**      The Consultant will be responsible for taking out any appropriate insurance coverage.
- 10. Assignment**      The Consultant shall not assign this Contract or sub-contract any portion of it without the Client's prior written consent.
- 11. Law Governing Contract and Language**      The Contract shall be governed by the laws of Tonga and the language of the Contract shall be English.
- 12. Dispute Resolution**      Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication/arbitration in accordance with the Procurement Regulations.

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FOR THE CLIENT

Signed by \_\_\_\_\_

Title: \_\_\_\_\_

FOR THE CONSULTANT

Signed by \_\_\_\_\_

Title: \_\_\_\_\_

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