

**GOVERNMENT OF TUVALU – MEFD – CENTRAL PROCUREMENT UNIT
PUBLIC PROCUREMENT MANUAL**

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ABBREVIATIONS AND ACRONYMS

CPU	Central Procurement Unit
CQS	Selection Based on Consultants Qualifications
CV	Curriculum Vitae
EOI	Expression of Interest
ICS	Selection of Individual Consultants
ITB	Instructions to Bidders
LS	Limited Shopping
OAG	Office of the Auditor-General
OCB	Open Competitive Bidding
OS	Open Shopping
PRC	Procurement Review Committee
QBS	Quality Based Selection
QCBS	Quality and Cost Based Selection
RFP	Request for Proposal
SBD	Standard Bidding Document
SSS	Single Source Selection

INTRODUCTION

This Manual is designed to guide staff of the Government of Tuvalu through the public procurement process now mandated in law. It is designed as a hands-on, step-by-step guide on how to undertake the various procurement transactions that you will encounter. It is not, however, a substitute for the official **legal and regulatory framework** of public procurement in Tuvalu, which is:

Public Procurement Act 2013, effective 31 January 2014.

Public Procurement Regulations, effective 31 January 2014.

Public Procurement Amendment Regulations, effective 19 October 2015

Documents for use in the procurement process, some mandatory and some advisory, are identified in dark red font in this Manual. You can click on the document names to see them on your screen.

The **responsibility** for procurement is determined by its estimated value:

Procurement estimated to cost not more than \$5,000 is called **Minor Procurement** and is undertaken at ministry and department level.

Procurement estimated to cost more than \$5,000 is called **Major Procurement** and is undertaken by the Central Procurement Unit (CPU) of the Ministry of Finance and Economic Development.

Everybody is invited to read and comment on this draft Manual. Please be critical – it is supposed to help all of you understand how the procurement system works and the detailed hands-on steps of carrying out procurement transactions. Please tell us how we can improve it for your better understanding.

Download a copy, add your comments using the "review – comment" function and e-mail to Frank Fiapati (FFiapati@gov.tv) at CPU.

PROCUREMENT PLANNING

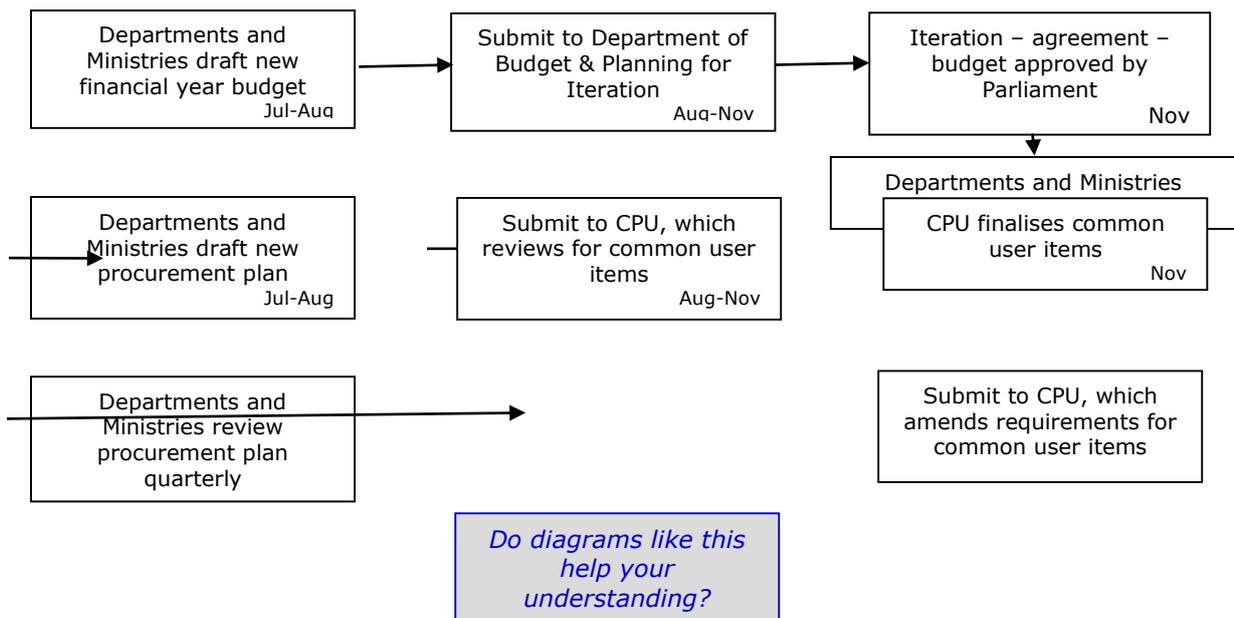
All procurement begins with planning.

Applicable to: Ministry and Department Procurement Officers

- Prepare first draft of your Procurement Plan with next financial year’s draft budget (Aug-Sep)
- Include package names with estimated price and bidding date
- Copy to CPU
- Finalise your Procurement Plan after Parliament approves the budget (Dec) and extend to the detail required in the **Specific Procurement Plan**
- Copy to CPU
- Review and update your Procurement Plan every three months through the year
- Copy to CPU

Applicable to: CPU

- Review draft Procurement Plans for common user items
- Review finalised Procurement Plans and finalise packages of common user items
- Review updated Procurement Plans and update lists of common user items
- Publish all Procurement Plans online



STARTING A PROCUREMENT TRANSACTION

MINOR PROCUREMENT ESTIMATED VALUE < \$500

Applicable to: Ministry and Department Procurement Officers

The Procurement Officer may make a direct purchase from a single source and shall complete a Purchase Order and have it signed by the Department Head before doing so.

MINOR PROCUREMENT ESTIMATED VALUE > \$500 BUT < \$5,000

Applicable to: Ministry and Department Procurement Officers

- Complete a Procurement Proposal with all required information for the proposed transaction and have it signed as indicated.
- Send it to CPU.
- When returned by CPU with counter signature, proceed with procurement: see **Inviting Bids and Quotations – Minor Procurement**.

Applicable to: CPU

- Check Procurement Proposal is fully completed and signed and check with Treasury that budget reference and funds available are stated correctly.
- Retain copy of Procurement Proposal.
- Return original to ministry/department Procurement Officer.
- Enter new reference in Contract Register.

MAJOR PROCUREMENT

Applicable to: Ministry and Department Procurement Officers

- Complete a Procurement Proposal with all required information for the proposed transaction and have it signed as indicated
- Send it to CPU
- When returned by CPU with counter signature, proceed with procurement, file.

Applicable to: CPU

- Check Procurement Proposal is fully completed and signed and check with Treasury that budget reference and funds available are stated correctly.

- Retain copy of Procurement Proposal.
- Return original to ministry/department Procurement Officer.
- Enter new reference in Contract Register.
- Decide whether to conduct Prequalification of Bidders. If required, proceed to **Prequalification – Major Procurement**.
- If Prequalification is not required, proceed with procurement: see **Inviting Bids – Major Procurement**

PREQUALIFICATION – MAJOR PROCUREMENT

Applicable to: CPU

See Regulation 26.

Prequalification may be practiced for OS or OCB but should generally be used for only large value works contracts (say AUD 6 million and above), where hiring contractors with previous experience of similar contracts is important, or for highly specialized goods contracts where the goods are made by a limited number of manufacturers in the world.

There are no standard documents for Prequalification as every case is likely to be different. A questionnaire should be defined for interested companies to complete to give their details and previous experience. Typically, a questionnaire for works prequalification would have the following sections with a requirement to submit information shown:

Company Details

Address, copy of Certificate of Incorporation, main line of business, number of years in that business, and the names and contact details of three client or creditor referees prepared to provide references.

Structure and Organization

Company organization chart showing names of directors and key personnel.

Project organization chart.

Construction methodology for this project.

Company policy on environmental management as it relates to this project.

Company policy on Worker Safety and Quality Control procedures including site security, as they relate to this project.

Outline company policy on interaction with local communities and the engagement of local tradesmen, suppliers and businesses for this project.

Resources

The number of Directors and professionally qualified permanent staff (a) at headquarters, and (b) in branch or site offices.

The CV of the Director nominated to direct project implementation.

The names and contact details of at least two client based referees for the nominated Project Director

The names of key staff and tradesmen nominated for key positions, with their number of years of experience.

Indicate the main plant and equipment considered necessary for undertaking the project and whether this plant is already in the Company's ownership or will be purchased or hired.

Experience

A schedule of relevant projects that are either ongoing or have been completed in the last 5 years, giving the project title, location, name and contact details of the client, start and completion date (month/year), total value, your company's role, and a brief description of the main project features.

Financial Capacity

Copies of extracts of the company's audited accounts for the last two financial years, including the balance sheet, profit and loss account and cash flow statement.

Name and address of your company's bankers and a letter from them indicating the value of any loans or lines of credit currently extended to your company.

Names of directors and shareholders who may provide financial support or guarantees to the company and indicate the extent of that support.

Names and contact details of two credit based referees other than your bankers from whom references can be obtained.

Information regarding any litigation, current or during the last five years, in which your company was/is involved, the parties concerned, and the disputed amounts and awards.

If the company indicates that it intends to form a formal joint venture with another company, the above prequalification questionnaire should be given to both companies to complete.

Allow 30 days for applicants to submit their prequalification (Regulation 38(4)). After evaluating the applications using an appropriate alpha-numeric scoring system, a brief report on the evaluation of prequalification applicants should be made, listing those that are considered to be satisfactory for inclusion on the list of bidders.

The brief report should be submitted to the PRC for consideration and approval.

After approval by the PRC, proceed to **Inviting Bids – Major Procurement**.

INVITING QUOTATIONS – MINOR PROCUREMENT

Applicable to: Ministry and Department Procurement Officers

Procedure: Limited Shopping (Regulation 22)

- Use the Standard Bidding Document (SBD) for **Limited Shopping** and complete all blank sections required for the proposed transaction
- Issue to at least three potential bidders by hand (Funafuti), e-mail or fax
- There is no minimum bidding period stated in the SBD – give a date to the bidder in your e-mail
- Bidders can submit their quotations by hand, e-mail or fax
- Upon receipt of quotations, proceed with evaluation – see **Bid Evaluation**

INVITING BIDS – MAJOR PROCUREMENT

Applicable to: CPU

Procedures: Limited Shopping (Regulation 22)
Open Shopping (Regulation 23)
Open Competitive Bidding – single stage (Regulation 24)
Open Competitive Bidding – two stage (Regulation 25)

May include: See **Prequalification – Major Procurement**. Do first if needed.

- Select the correct procedure according to the financial thresholds for procurement (Regulation 13) and Schedule 1 of the Regulations.
- Request line department/ministry to provide technical specification and bills of quantities for the SBD and insert them into the bidding document.
- Complete other blank sections in the bidding document.
- Decide whether to hold a Pre-Bid Conference and/or Site Visit and, if so, insert the date and location into the bidding document (Note: a Pre-Bid Conference with a Site Visit is usually held only for large civil works bids, say \$5 million and above).
- If the estimated value of the bid exceeds \$25,000, or if the bid is considered by CPU to be technically or commercially complex (amended Regulation 6(4)(a)), submit the completed bidding document TO PRC for no objection prior to calling of tenders.
- Advertise the bids on In-Tend.

If preceded by Prequalification:

- After approval of the prequalified list of bidders by the PRC, complete the bidding document including closing date (Amendment to Regulation 38), send the bidding documents directly to the prequalified bidders.

BIDDING PERIOD

Applicable to: CPU

- There is no minimum bidding period for minor procurement.
- Minimum bidding periods for major procurement are specified in the Regulations (amended Regulation 38(3) dated 16 October 2016). Do not reduce these periods as the bidders themselves must get suppliers' quotations for their bids. They are the minimum periods necessary for obtaining quality bids with keen and competitive pricing.
- The actual bidding period for each and every procurement transaction is specified in the bidding document.
- Organize the Pre-Bid Conference and Site Visit if one is required. Keep written and photographic records of the event and issue a summary report with answers to all questions raised to all bidders, regardless of whether they attended or not.
- Receive and respond promptly to written requests for clarification of the bidding document (Regulation 40(2)). Note that requests will not be entertained if received later than 14 days before the bid closing date.
- If a clarification requires an amendment to the bidding document, prepare and issue the amendment and consider whether an extension of the closing date is advisable (Regulation 40(4)). Include the amended closing date in the amendment if extension is decided.

BID OPENING

Minor Procurement Valued > \$500 but < \$5,000

Applicable to: Ministry and Department Procurement Officers

- There is no formal opening for quotations submitted under Limited Shopping (LS). Proceed straight to Bid Evaluation.

Major Procurement

Applicable to: CPU

- There is a formal process for opening of bids received after Open Shopping (OS) and Open Competitive Bidding (OCB) – see Regulation 47. The time of bid opening shall coincide with the deadline for submission of bids and at least two members of the procuring entity must be present.
- Regulation 47 contains a list of information that shall be read aloud from each bid, and other applicable requirements.

BID EVALUATION

Minor Procurement

Applicable to: Ministry and Department Procurement Officers (LS Minor Only)
CPU (LS Major Only)

- Check that all quotations received have been fully completed with all required information, and have been signed.
- Check that any variations offered to the list of items required are acceptable to your department.
- Discard the quotations that are not fully complete, or those that offer variations that are not acceptable.
- From the remaining quotations, select the lowest priced, complete a purchase order and return to the winning company.

Major Procurement

Applicable to: CPU (OS and OCB Major only)

- **STEP 1 – CHECK CONFORMANCE**

Check each bid received is conforming or non-conforming. It is “conforming” if all the documents required to be submitted have been included with the bid, and those specified to be signed are actually signed. Below is a summary of what should be submitted as a minimum. In some cases, you may have added a requirement in the BDS for other documents to be submitted. Be sure to check for those as well. The highlighted submittals are the most important (see at the end of the indented section).

OS Goods

Signed Bid Submission Form (Section 7).

Signed Bid Securing Declaration (Section 6).

Documentary evidence of compliance with eligibility requirements under Invitation for Bid clauses 4 (a), 4 (c) and 4 (d).

Technical Specifications Statement of Compliance (Section 3).

Completed Price and Delivery Schedule (Section 4).

Signed Declaration of Ethical Conduct (Section 5).

OS Works:

Signed Bid Submission Form (Section 7).

Signed Bid Securing Declaration (Section 6).

Documentary evidence of compliance with IFB clauses 4 (a), 4 (c), 4 (d) and 4 (e).

Priced Bills of Quantities (Section 4).

Signed Work Plan (GCC Section 3).

Signed Declaration on Ethical Conduct (Section 5).

OCB Goods:

Signed Bid Submission Form in accordance with Section 7.

Bid Securing Declaration or Bid Security furnished in accordance with ITB Clause 19.

Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB Sub-Clause 11.1(a).

Completed Price Schedule in accordance with ITB Clauses 12 and 13 and Section 7.

Documentary evidence established in accordance with ITB Clause 14 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted.

Documentary evidence established in accordance with ITB Clause 15 that the goods and related services to be supplied by the Bidder are eligible goods and services and conform to the bidding documents.

Signed Declaration of Ethical Conduct in accordance with ITB Clause 13.2.

OCB Works:

Signed Bid Submission Form in accordance with Section 8.

Signed Bid Securing Declaration or Bid Security furnished in accordance with ITB Clause 16.

Written confirmation authorizing the signatory of the Bid to commit the Bidder;

Priced Bills of Quantities in accordance with Section 7.

Documentary evidence established in accordance with ITB Clause 6 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted.

Signed Declaration of Ethical Conduct in accordance with ITB Clause 3.2

- **STEP 2 – CHECK RESPONSIVENESS**

Put aside the non-conforming bids and check whether the remainder are responsive or non-responsive bids.

- **STEP 3 – EVALUATE CONFORMING AND RESPONSIVE BIDS**

Put aside the non-responsive bids and check the remaining bids for arithmetic errors, correcting all that are found. Compare lowest evaluated substantially responsive bid price with prices

of those eliminated under steps 2 and 3. If any are lower than the lowest evaluated substantially responsive bid, consider giving them a second chance of clarifying their bids so that they become conforming and responsive.

- **STEP 4 – CHECK WITH BUDGET**

Compare with budget – if higher than budget, ask the concerned ministry/department for guidance, meaning either they will have to find more money or CPU will have to negotiate a reduction in scope to suit the budget.

- **STEP 5 – POSTQUALIFICATION**

Final check on whether the lowest evaluated substantially responsive bidder is still qualified for the work (such as, not gone bankrupt or gone out of business). This step cannot be done until we have our register of contractors and suppliers up and running on the website (see Regulation 49).

- **STEP 6 – PREPARE REPORT**

Prepare Bid Evaluation Report, get PRC approval, award contract. The Report can be arranged under the same six step headings, finishing with recommendations.

CONTRACT AWARD

Applicable to: **ALL**

There must be a contract for every transaction.

Price negotiations with a winning bidder are not allowed – see Regulation 50 (unless as the result of contract scope being reduced as part of contract negotiations).

Applicable to: Ministry and Department Procurement Officers (LS Minor Only)

- Contracts comprise a signed **Purchase Order** together with the winning quotation.
- Prepare contract in duplicate, have it signed by the responsible Department or Ministry officer and the winning bidder, give one copy to the winning bidder and retain the other copy.

Applicable to: CPU (LS Major only)

- Contracts comprise a signed **Purchase Order** together with the winning quotation.
- Prepare contract in duplicate and pass to the responsible Department or Ministry officer for organizing signing.

Applicable to: CPU (all OS and OCB)

- The documents forming the contract are listed in the bidding document. Assemble two sets and pass to responsible line ministry or department procurement officer to arrange signing.

PROCUREMENT OF CONSULTANT SERVICES

Applicable to: **All** (principally CPU except for recruitment of individual consultant contracts worth less than \$5,000)

Financial thresholds apply to all methods of recruitment of consultants – please refer to Schedule 1 of the Public Procurement Regulations.

Consultants provide intellectual and professional services and the methodology of recruiting and contracting consultants, either individuals or firms, is different from the processes used to procure goods and works.

Selection of Consultant Firms

The default method for recruitment of consultant firms is the Request for Proposals (RFP) method (Regulation 53) utilizing either (1) Quality-and-Cost Based Selection (**QCBS**), or (2) Quality Based Selection (**QBS**), or (3) Selection Based on Consultants Qualifications (**CQS**). The steps are:

Step 1 – Prepare a brief and concise description of the work that you wish the consultant firm to do (this will be expended later into full Terms of Reference [TOR]);

Step 2 – Advertise the description widely, inviting Expressions of Interest (EOI) from qualified and experienced firms that should include:

- (a) the firm's background and organization;
- (b) a list of similar previous assignments with project name, client's name and contact details, location, duration, summary of work undertaken, capital cost, input of consultant's staff in person-months;
- (c) copies of the last three years of profit and loss statement and balance sheet; and
- (d) the number of professionally qualified employees in each discipline.

Step 3 – Evaluate the EOIs received – remember this is a comparative evaluation as you are looking for the best firms that have applied. There is no fixed points system for evaluation but you may devise one. Typically, you could allocate the four categories above with: (a) 20%; (b) 50%; (c) 15%; and (d) 15%.

Step 4 – Make a shortlist of the firms that submitted the best EOIs. The shortlist should be a maximum of six firms for larger assignments but three is usually sufficient for smaller value assignments.

Step 5 – Prepare and issue a request for proposals (RFP) to shortlisted firms. There is no standard RFP available yet, but there are a few previous examples

that can be used until a standard is prepared. The RFP must specify the following.

- (a) The selection method, either (1) Quality-and-Cost Based Selection (QCBS), or (2) Quality Based Selection (QBS), or (3) Selection Based on Consultants Qualifications (CQS); refer to Regulations 54, 55 and 56.
- (b) QCBS is the default method. Consultants must submit their proposals in two separate envelopes – technical and financial – simultaneously. For evaluation, they are weighted in the range of 70-90 per cent for the technical proposal and 10-30 per cent for the financial proposal.
- (c) The RFP must specify the detailed method of evaluation that will be used. A points scoring system is usual and you must define the maximum points allocated to each part of the Technical Proposal, for example (a) similar previous assignments – 20%; (b) nominated staff qualifications and relevant experience – 50%; (c) approach, methodology and work plan – 30%;
- (d) The RFP must also specify the required content of the proposals, which are usually as follows.

Technical Proposal content:

- signed submission letter;
- consultant's organization and experience (expanded from the original EOI);
- comments and suggestions on the Terms of Reference;
- description of approach, methodology and work plan for the assignment;
- Work Schedule (as a time-bound bar chart) with timing of submission of deliverables;
- consultant's team composition and how the tasks to be undertaken are divided among the team;
- a table of individual team member inputs in person-months, summated into total team input (by phase of work, if there are phases);
- Curriculum vitae of each member of the team, countersigned by him/her to confirm its accuracy and his/her availability.

Financial Proposal content:

- the requested currency of payment (the default currency is Australian Dollars);
- Remuneration: a list of the personnel named in the Technical Proposal with their monthly remuneration rate, separated for input provided in the field and in the home office, and the total

remuneration based on the person-months of input for each team member stated in the Work Schedule;

- Per Diem: the daily subsistence allowance payable to each team member when away from his/her home base;
- Out-of-pocket expenses: a list of expenses to be reimbursed at actual cost together with their estimated value at the time of proposal submission;
- A summary table of all costs.

- (e) The RFP must state the proposal submission deadline time and date, address, and acceptable delivery methods, and the opening and evaluation procedures.

Step 6 – Answer any written queries received during the time allocated for the consultants to prepare their proposals, ensuring that answers are supplied to all shortlisted firms along with the question, but not naming the firm that raised the question.

Step 7 – Open in public the Proposals received (if split into Technical and Financial Proposals, open only the Technical Proposal first and keep the Financial Proposals under lock and key for the time being). Appoint an evaluation committee of at least three persons, who should evaluate each proposal based entirely on the scoring system defined in the RFP (new criteria not included in the RFP must not be introduced) and prepare a Technical Proposal Evaluation Report (TPER).

Step 8 – Seek approval of the TPER by the PRC after which, if a separate Financial Proposal was required, open in public those submitted by firms who have scored more than the minimum mark for their Technical Proposals.

Step 9 – Award the highest financial score to the lowest priced proposal and a proportionate score to the other financial proposals, weight the technical and financial scores by the percentages specified in Step 5 (b), and the lowest combined score is the first ranked proposal.

Step 10 – After PRC approval of the combined evaluation, invite the first ranked proposer to negotiate a contract. Where cost has been a factor in selection of the first ranked firm, such as in QCBS, costs must not be negotiated. It is permissible, however, to negotiate technical aspect, work plan, inputs of nominated staff, and the result of such negotiation may vary the cost of the winning proposal.

For the QBS method, Steps 1 to 7 above apply. With the first ranked technical proposal approved at **Step 8**, open only the financial proposal of that firm and proceed directly to contract negotiations.

For the CQS method, Steps 1 to 3 above apply. Having received Expressions of Interest under Step 3, the procuring entity shall evaluate them using a scoring system such as in Step 3, and request the highest scoring firm to submit a detailed and combined technical and financial proposal. If the proposal received meets the

requirement of the procuring entity, a contract may be negotiated directly with that firm. If the proposal received is unacceptable, the procuring entity will proceed to request a combined technical and financial proposal from the second ranked firm, and so on until a satisfactory proposal is received and a contract negotiated.

Additionally, there is one non-competitive method of selecting firms called Single Source Selection (**SSS**), which may be utilized in certain restricted situations. Please refer to Regulation 57 and the thresholds in Schedule 1.

Selection of Individual Consultants

The process to recruit an individual consultant is referred to Individual Consultant Selection (ICS). The procuring entity shall prepare detailed TOR and, if the assignment is above the threshold in Schedule 1 of the Regulations, shall advertise for expressions of interest and evaluate them using the same procedure as for CQS above. A combined technical and financial proposal shall be requested from the first ranked EOI, which is then evaluated and, if satisfactory, a contract is negotiated.

For assignments valued below the Schedule 1 threshold, the procuring entity may approach individual consultants directly and negotiate a contract with the most suitable consultant. Refer to Regulation 58 for further details.

CONTRACT MANAGEMENT & ADMINISTRATION

Applicable to: **ALL PROCURING ENTITIES**

Ministry departments are responsible for management and administration of contracts and CPU will provide advice and assistance when requested.

This is a summary of the principal tasks to be undertaken by procuring entities (line ministries) during the contract implementation stage.

Contract register – CPU will maintain and update the Contract Register but, after contract award, needs feedback from line ministry departments on dates, contract variations, contract closing dates and final total payment made to contractors, suppliers and consultants

Contract effectiveness – a contract may not become effective immediately upon signing and may have additional conditions of effectiveness, which will be specified in the contract. Such conditions of effectiveness may include:

- a specific date before which access to the site cannot be granted;
- receipt by the procuring entity of a **Performance Security**, used only for very large value contracts (CPU will undertake this task since, when used, it will be a condition of signing the contract);
- receipt by the procuring entity of an **Advance Payment Guarantee**, when used (the format of the Guarantee will be in the bidding document);
- receipt by the contractor of the **Advance Payment** (if used, the amount will be specified in the contract document); and
- receipt by the contractor of an acceptable **Letter of Credit**, which is an alternative method of paying contractors; CPU will undertake this task if required.

Contract Supervision and Administration – Goods

1. Check that the supplier has taken out the insurance required in the contract.
2. Monitor any pre-shipment tests and inspections required in the contract are arranged, carried out, reported to the procuring entity and cleared.
3. Monitor progress and check with the supplier on causes of any delays.
4. Arrange pre-shipment inspection of goods at source when specified in the Contract (usually only for specialised mechanical and electrical plant).
5. Receive and inspect goods at the Port of Funafuti and record any shortfall in supply and the condition of any damaged items (with photographs).
6. Issue of Acceptance Certificate (goods contracts).

7. Initiate and supervise any claims against the supplier.
8. Report any failure by the supplier to meet his contractual obligations.
9. Issue the goods to the User Department after delivery.
10. Receive and adjudicate on any claims for extra payment made by the supplier.
11. Authorise Treasury to make progress and final payments to the supplier as specified in the contract.

Contract Supervision and Administration – Works Contracts

This will be undertaken by PWD, including issue of Completion Certificate and Defects Liability Certificate. The duties of the PWD site representative (called **Contract Manager** in the CPU Standard Bidding Document (SBD) prior to 2018 and **Engineer** in the modified SBD being used from 2018 onwards) are specified in detail in the Contract Document.

Contract Supervision and Administration – Consultant Contracts

12. Monitor mobilisation and start-up of services.
13. Provide technical guidance to the consultant as specified in the contract.
14. Monitor progress and determine the causes of any delays in the work.
15. Monitor the input of the consultant's staff and ensure that staff named in the contract are being fielded at the time and for the duration required.
16. Address issues of poor performance by members of the consultant's team including, in extreme cases, substitution.
17. Receive and adjudicate on any claims by the consultant including requests to substitute of any members of the team.
18. Receive and check requests for progress payments and final payment, as specified in the contract.
19. Issue of Completion Certificate and Defects Liability Certificate (works contracts – normally PWD will issue these if supervising the works).
20. Review and comment on the consultant's output (reports, etc.) and ensure that comments are taken into account in the final output.

Contract Variations (Goods, Works and Consultancy Contracts) – the resolution of disputes, additional or reduced requirements, contract variations such as extension of time schedule, expansion or reduction of the scope of work, and claims by contractors for extra payment to offset any of the above occurrences, must all be negotiated with the contractor.

Record keeping – comprehensive records of all events occurring during the execution of a contract must be kept. These will include a copy of the contract, all contractual correspondence including consultants' reports, shipping documents, invoices, contract variations, insurance certificates, inspection records, taking over certificate and warranty certificate.

SUBSIDIARY TOPICS

The remainder of this draft Procurement Manual covers several topics that are referred to in the Act and the Regulations that may not be encountered regularly while undertaking procurement transactions. They are however important and you need to be aware of them.

They are described in the order in which they appear in the Regulations.

PROCUREMENT MONITORING AND OVERSIGHT

See Regulation 5

The Office of the Auditor General (OAG) is required to appoint a Procurement Audit Officer to conduct sample audits of procurement transactions annually, or audits of specific transactions at such time as the Minister may request.

For annual audits, CPU must obtain the OAG's program in advance, prepare for the audit and provide documents that OAG requests before, during or in a reasonable period after, the audit.

AMENDMENT OF PROCUREMENT REGULATIONS

See Regulation 7 (2)

If experience shows that any of the Procurement Regulations can be improved, the CPU must prepare a paper under Regulation 7 (2) (a) describing the background to and reasons for the proposed amendments, and their anticipated benefits, and put before Minister of Finance for his signature and issue.

To date (June 2018), two amendments have been made, simultaneously in October 2015, to: (1) transfer responsibility for contract management and administration from CPU to the originating line ministry and department; and (2) reduce some of the minimum bidding periods slightly.

DEFINING THE OBJECT OF PROCUREMENT

Preparation of Technical Specification in Bidding Documents

See Regulations 27 and 28.

When you prepare a Procurement Proposal, ask yourself first whether you know exactly what it is you want to procure. It is essential that bidding documents contain complete and accurate technical details of what is being procured, to avoid wasted expenditure on “not-fit-for-purpose” goods and materials. Similarly, the terms of reference for a consultant must define precisely the output that you need to move to the next stage of a project.

The originating line ministry and department are responsible for preparing the technical specification, technical schedules and bills of quantities for bidding documents, and terms of reference for recruitment of consultants. Should a ministry or department not have the required technical knowledge to do so, it should be prepared to recruit a suitably experienced consultant to assist in the task.

ELIGIBILITY AND QUALIFICATION CRITERIA FOR BIDDING

See Regulations 29 and 32.

Works and Goods bidding documents and Requests for Proposals for Consulting Services appointments, must specify any non-negotiable conditions of eligibility for bidding companies (Regulation 29). There are presently no specific exclusions based on countries of origin and incorporation but that might occur if and when Tuvalu bans trading or commercial relations with any country. Countries sanctioned by rulings of the United Nations may also be banned from trading with Tuvalu on confirmation by the Government. Specific companies debarred by international organizations such as the World Bank or the Asian Development Bank may also be prohibited from bidding for contracts in Tuvalu.

This basic eligibility for bidding in Tuvalu should be cross-checked regularly with Government orders and, where prohibitions exist, bidding documents must list countries and companies that are temporarily or permanently debarred.

Qualification criteria (Regulation 32) are important in ensuring that only companies with appropriate resources and experience are allowed to bid. The Instructions to Bidders and Bid Data Sheet in the bidding documents for Works and Goods must contain a list of basic criteria that each bidding company must satisfy in order for its bid to be qualified for consideration. Criteria may include a company's recent annual turnover as a multiple of the contract estimate, the number of similar contracts successfully undertaken in the previous five years, specific manpower resources, cash resources and access to a line of credit.

Evidence must be submitted with each bid and should be evaluated by the procuring entity on a pass or fail basis before bid prices are considered.

CONFIDENTIALITY

See Regulation 31.

There is strong emphasis on confidentiality during a procurement transaction, specifically between a procuring entity and a bidder or potential bidder. A procuring entity shall not disclose any information if that would prejudice essential security interests of Tuvalu, would impede fair competition, would be contrary to the law or impede law enforcement, or would prejudice the legitimate commercial interests of the bidder or potential bidder.

DISQUALIFICATION

See Regulation 34

If information in a bid concerning the bidder's qualifications is found to be false, misleading, materially inaccurate, or materially incomplete, the bidder shall be disqualified.

DOMESTIC PREFERENCE

See Regulation 41.

The Regulations permit CPU to design and recommend the Minister to introduce a domestic preference in bid evaluation and contract award. This means in practice that bids submitted by Tuvaluan companies would be given a financial margin of preference during bid evaluation and could be awarded a bid even if not the lowest evaluated responsive bid.

Such a scheme is an encouragement to the development of a national manufacturing sector or civil works contracting sector and is accepted internationally when national bidders in relatively low income countries are in direct competition with international bidders from relatively rich countries. It would work by loading the bid prices of international bidders, for bid evaluation purposes only, by a percentage, usually between 10% and 15% depending upon the national income level.

Thus if the domestic preference is 10%, an international bidder's price of \$100,000 would become \$110,000 for evaluation purposes. If a competing national bidder bids \$107,000 and there is no domestic preference, the international bidder would win by \$7,000. With domestic preference, the national bidder would win by \$3,000.

There is no domestic preference at present. At the time the Law and Regulations were drafted, Tuvalu had no manufacturing sector and its national contracting sector was insignificant.

CANCELLATION OF PROCUREMENT PROCEEDING

See Regulation 42.

There are several reasons why a procurement proceeding may fail, as listed in Regulation 42. However, cancelling a procurement proceeding should be avoided as far as possible, especially after bids have been called, as interested companies will have incurred expense to no avail. All cancellations require the reasons to be stated in writing, signed by the Minister and distributed to all bidders if bidding has commenced.

UNSUCCESSFUL PROCUREMENT

See Regulation 43.

An unsuccessful, or failed, procurement proceeding is one where no responsive bids are received or the proceeding is otherwise unsuccessful. Regulation 43 requires that the reason for failure must be investigated and corrected in bidding documents before re-bidding, and lists nine factors that must be investigated. The findings must be considered in determining whether changes to the bidding documents, the method of procurement or the advertising of the proceeding should be made before the proceeding is rebid.

BID SECURITY

See Regulation 45.

It has been traditional in international procurement for bids to be accompanied by a Bid Security, usually a bank guarantee of about 2% of the bid price. A Bid Security is taken as proof of a bidder's genuine intent to win a contract. Bid securities are forfeited if a bidder is ranked first but declines to sign a contract.

An alternative to a Bid Security is a Bid Securing Declaration, which is a signed acknowledgement by a bidder that, if he is ranked first and fails to sign a contract, he will be debarred from bidding for any Government contracts for a prescribed time, usually at least two years.

The issue with bid securities has been the difficulty experienced by procuring entities (contract executing agencies) to encash them when an overseas bidder defaults and his bid security has been issued by an overseas bank. Successful claims rely on the existence of correspondent banking, where an onshore bank in the procuring entity's country will assume the risk of a bid security issued by an overseas bank.

The National Bank of Tuvalu does not act as a correspondent bank and is unable to take on the risk of claims against bid securities issued by overseas banks.

Therefore, bid securities have not been required on any bids to date in Tuvalu and the Bid Securing Declaration has become the standard safeguard.

NEGOTIATIONS

See Regulation 50 (1).

There shall be no negotiation between the procuring entity and a bidder for goods, works or non-consulting services, except for (1) direct contracting, (2) if the bid is much higher than the estimate and can be reduced by a reduction in the scope of the contract.

PERFORMANCE SECURITY

See Regulation 52.

The Regulations follow international practice in providing for a winning bidder to provide a Performance Security of, usually, 10% of the contract price against the risk of his failure to undertake the contract. A performance security is usually issued by a bank and allows direct claims on the funds by the government employer, supported by evidence, if the contractor defaults. The funds will usually cover the direct costs of the employer terminating a contract and calling for new bids for a replacement contractor.

The difficulty for Tuvalu is the same as for a Bid Security (Regulation 45) – the absence of correspondent banking will make access to the funds extremely difficult. To date, no contracts have been accompanied by a Performance Security.

For high value contracts to be signed by international contractors, a Performance Security is recommended but the arrangements for a Tuvaluan ministry to access to the funds will require to be written into the security issuer prior to it being signed.

PERFORMANCE RECORDS MANAGEMENT

See Regulation 63.

The CPU is responsible for keeping and maintaining comprehensive procurement records. It maintains a Contract Register (presently in Excel format) and enters the basic details of all new major procurement contracts as they are signed, as well as Procurement Proposal details of all minor procurement contracts. Thereafter, during contract implementation, line ministries and departments are responsible for providing information to CPU on a monthly basis, including progress payments, claims for extra payment, contract variations, contract amendments, contract closing date and total final payment.

However, that feedback from line ministries and departments to CPU has been irregular and the contract register has not been kept up to date during contract implementation stage.

Regulation 64 explains comprehensively what records should be kept and how they should be arranged. Extensive record keeping is the foundation for analysing the procurement system and making changes improve its performance and functionality.

DEBRIEFING OF UNSUCCESSFUL BIDDERS

See Regulation 66.

All unsuccessful bidders may request the procuring entity to debrief them on the reasons for their application for prequalification, or their bids, failing to win. This is strongly encouraged as it assists bidders to produce better bids next time and contribute to keener competition. The debriefing must be provided in writing and not provide details of any other bids other than information that is publicly available from bid openings or published notices.

FRAUD AND CORRUPTION

See Regulation 67.

The Government has a zero tolerance policy of corruption and shall reject a proposal for award of a contract, or cancel a contract already awarded, immediately upon evidence of corrupt behaviour comes to light. A Declaration on Ethical Conduct must be signed by all bidders and be submitted with their bids, and also included in all awarded contracts.

Regulations 68 and 69 deal with Government officers who breach any provisions of the Regulations, who shall be dealt with under provisions in the Public Procurement Act and General Administrative Orders.

DEBARMENT

See Regulation 70.

In addition to legal proceedings for fraud and corruption, there are non-legal remedies that can be applied to individuals and companies, which involve debarment from bidding for Government contracts for a specified period. The clause shall come into force when a Procurement Suspension and Debarment Procedure has been issued by the Central Procurement Unit under regulation 7 (2) (e). As at August 2018, that Procedure has been prepared by CPU, vetted by the Office of the Attorney General and is currently awaiting approval of the Minister. It provides for debarment for a maximum period of two years.

CONFLICT OF INTEREST

See Regulation 71.

Civil servants directly or indirectly involved with any stage of a procurement proceeding in which they, their families or close associates may have an interest, is obliged to declare a potential conflict of interest and immediately recuse himself or herself from any further involvement in that procurement proceeding and administering the contract resulting from that proceeding.

PUBLIC DISCLOSURE OF PROCUREMENT PROCEEDINGS

See Regulation 72.

Public disclosure improves transparency and improves public confidence in the procurement system. An extensive list of procurement information that is required to be published on the CPU website and on public notice boards within one week of it becoming available, is provided.

COMPLAINTS AND APPEALS

See Regulations 73 to 78.

A Procurement Complaints and Appeals Procedure has been prepared by the CPU and, as at August 2018, is with the Minister awaiting approval and disclosure to the public. The Procedure describes procedural aspects – how complaints may be made, by whom and to whom, and the stages of consideration and appeal by the complainant if not satisfied with the outcome of consideration.

Regulations 74 to 78 describe: (1) who has the right to complain; (2) the first review, which is by the procuring entity; (3) Review Panels to consider further if the complainant is dissatisfied, comprising legal professionals and persons with experience of public procurement but not Public Officers; (4) the procedure of asking the Minister to convene a Review Panel; and (5) how the Review Panels function and how their findings and recommendations are presented for further action by the Minister.