Ministry of Finance
GOVERNMENT OF SAMOA

PROCUREMENT OPERATING MANUAL

2026

<u>I, SAOLEITITI MAEVA BETHAM VAAI</u>, Chief Executive Officer of the Ministry of Finance, pursuant to section 127(1) of the Public Finance Management Act 2001 ("Act") **<u>ISSUE</u>** this Procurement Operating Manual Amendment No.2 June 2026 ("Amended Operating Manual") for purpose of conducting of Government or public procurement.

This Amended Operating Manual take effect on the date it is signed.

Given under my hand this ....1st.......... day of ....July..... 2026.

....

(Saoleititi Maeva Betham Vaai)

<u>CHIEF EXECUTIVE OFFICER</u>

FOREWORD

MESSAGE FROM THE CHIEF EXECUTIVE OFFICER

I am pleased to present the Procurement Operating Manual 2026 ('Amended Operating Manual') for the Government of Samoa ('Government'). As the steward of public funds, the Ministry of Finance has a crucial responsibility to ensure that all public expenditures deliver maximize value, align with national development priorities, and uphold the highest standards of fiscal discipline.

The Amended Operating Manual 2026 serves as the authoritative operational framework for all procurement activities carried out by Government Agencies. Public procurement is a critical lever for economic growth, infrastructure development, and effective service delivery. To fulfill this role successfully, Government Procurement systems must be robust, reliable, and modern. The policies and procedures outlined in this Manual have been designed to streamline procurement processes while reinforcing the fundamental principles of sound public financial management.

All procurement activities undertaken by Government Agencies must strictly adhere to the following guiding principles:

- **Value for Money:** Optimizing the use of public resources to achieve the best possible outcomes in terms of quality, cost, and sustainability.
- **Transparency and Fair Competition:** Ensuring that all eligible suppliers, contractors, and service providers have equal, unbiased access to Government bidding opportunities.
- **Integrity and Accountability:** Operating with absolute ethical clarity, maintaining precise documentation, and strictly enforcing established approval thresholds to eliminate waste and prevent corruption.
- **Compliance:** Ensuring full adherence to national procurement policies, financial regulations, and the requirements of applicable development partners and funding agreements.

The Amended Operating Manual 2026 is a mandatory directive for all procurement practitioners, project management units, bid evaluation committees and other stakeholders involved in the procurement cycle. It provides practical, step-by-step guidance covering the entire procurement process, from needs assessment, market analysis and procurement planning through to tendering, contract award, and contract management.

Consistent application of these standardized procedures will strengthen the integrity of Government procurement, promote public confidence, and demonstrate our collective commitment to transparency, accountability and sound economic governance.

Saoleititi Maeva Betham Vaai
CHIEF EXECUTIVE OFFICER
MINISTRY OF FINANCE

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Please Address
all correspondence
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GOVERNMENT OF SAMOA

Office of the Attorney General

26 June 2026

Saoleititi Maeva Betham-Vaai
Chief Executive Officer
Ministry of Finance
APIA

CERTIFICATE OF ENDORSEMENT

REVIEW OF THE PROCUREMENT OPERATING MANUAL 2026

1. I confirm that *Leilua Sosefina Faamausili: Assistant Attorney General - Commercial and International Law Division*, has reviewed the above-mentioned document.

2. I am satisfied that the said document:
   (a) is appropriate as to form and content; and
   (b) makes proper provision for the matters intended to be covered by it

3. Accordingly, once the Ministry has addressed our changes and comments in paragraph 2 and **Annex B** of this letter, the said document is ready for its intended purpose.

Yours faithfully,

(Mauga Precious Chang)
ATTORNEY GENERAL

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SECTION A: INTRODUCTION TO THE OPERATING MANUAL

A.1. Purpose of the Operating Manual

Government procurement shall be conducted in accordance with the procurement guiding principles as set out in the Treasury Instruction K.2.1.

The Operating Manual provides practitioners and non-practitioners alike with a clear and concise guide, which is easy to read and understand. It will guide practitioners through their execution of duties, whilst being a source of information to others, for any procurement financed using public funds. The Operating Manual is designed to be the definitive guide for the practitioner.

A.2. Application of the Operating Manual

This Operating Manual and its subsequent revisions supersede and replace all previous Guidelines and Manuals (relating to procurement/tenders) issued by the Government.

The guidance provided by the Operating Manual applies to all procurements carried out by all Government Agencies (procuring entities), using public funds.

The Operating Manual does not apply to:

a). Employment of staff (excluding the engagement of contractors and consultants);

b). Disposals and sales by tender;

c). Investments, loans and guarantees;

d). Gifts, donations, promotional sponsorships for marketing purposes and any form of unconditional grants;

e). Statutory appointments;

f). conciliation, mediation and arbitration services;

g). All services, powers, duties and functions whether it be statutory in nature or otherwise of the Attorney General, including prosecutorial services;

h). Any of the following activities:

   i. **Transactions between departments, government agencies and public bodies:** Where a department, government agency or public body purchases goods, services or works from another department or public body. However, if the department, government agency or public body chooses to use a competitive process, then the Instructions shall apply;

   ii. **Non-contractual arrangement or other assistance:** Any non-contractual arrangement (e.g. a Memorandum of Understanding between two Ministries) or any form of assistance including cooperative agreements (e.g. diplomatic assistance to another Government);

iii. **Procurement under a Conditional grant:** Any form of conditional grant. However, a procuring entity shall not design or structure procurement as a form of conditional grant to avoid applying the Instructions and Operating Manual;

iv. **Procurement financed by development partners:** Any procurement funded by an international grant, loan or other assistance shall comply with an international organisation's procedure where that procedure is inconsistent with the Instructions or the Operating Manual and is made applicable by way of the grant or loan agreement, unless otherwise stipulated in the international agreement or as agreed, in writing, between the parties, for the Government procurement process to apply;

v. **International agreements between countries, international organisations or international institutions:** To enter into an agreement with other countries, international organisations or international institutions is neither a procurement activity nor subject to any procurement process. This opt-out does not extend to contracts resulting (directly/indirectly) from an international agreement covered by the exception in paragraph (h) (iv) or financed through public funds.

vi. **Government's central financial control functions:** Central banking control functions on behalf of the Government such as those carried out by the Central Bank of Samoa (CBS), and the Government debt management functions such as those carried out by the Ministry of Finance (MoF). This means that the specified functions of CBS and MoF are exempt, but any procurement undertaken by either remains subject to the Manual;

vii. **Essential security interests:** Measures necessary for the protection of essential national security interests, or preservation of public order, prevention of health risks, procurement indispensable for national security, the maintenance or restoration of international peace or security, public order, health or morals; and

viii. Any other service or activity added by the Government Tenders Board under the Treasury Instruction K.1.1.

For the avoidance of doubt, any procurement undertaken by a Government office overseas using public funds must comply with the Instructions and the Operating Manual. In the case of a Government owned-company or other Government-owned legal structure set-up overseas, a constitution (or similar document) must be developed and adopted to ensure that our Government's procurement requirements and processes are effected in accordance with the laws of the country where the legal structure is set up.

A.3. Scope of the Operating Manual

The Operating Manual outlines the procedures and methods for public officers engaged in planning and managing the procurement of goods (or goods and related services), works, consultancy services and general services on behalf of the Government, in accordance with its policy on Public

Sector Procurement. It also provides information for suppliers, contractors and consultants to better understand Government procurement policies and to assist them in submitting competitive and responsive bids and proposals, thus meeting the objectives set by the Government.

The Operating Manual covers the entire procurement cycle from conception through to contract completion. It provides guidance on all methods of procurement, the procurement of goods (or goods and related services), works, consultancy services and general services.

The Operating Manual **does not**:

a). cover supply management or stores procedures; and

b). provide procedures for administrative review or the monitoring or audit of public procurement, although they establish the procedures against which reviews and complaints will be made.

A.4.How to use the Operating Manual

The Operating Manual is presented in different sections and any revisions pertaining to the respective sections will be consolidated with the latest version to be issued and publicized accordingly.

Section A covers the introduction and background to the development of the Operating Manual.

Section B covers the cornerstones of public procurement in Samoa. Section B1 underlines the importance and relevance of the legal framework which now guides public procurement. Section B2 provides guidance on the roles and responsibilities of the Government actors in the procurement environment.

Section C provides more detailed guidance on the techniques and procedures in public procurement.

Section D provides a list of Mandatory Documents and Records.

Section E provides web-links and reference sources which may be useful during the procurement process. It will be important that practitioners contribute readily and regularly for the benefit of the whole procurement community.

Section F acts as a quick reference to further aid navigation around specific subject areas or tasks.

Section G provides the glossary of terms

Section H provides abbreviations and acronyms.

A.5. Structure of the Operating Manual

The Operating Manual endeavors to link relevant sections throughout, with examples to aid learning and experience. Practitioners are encouraged to propose revisions and personal case studies to further strengthen the relevance and application of the Operating Manual.

The Operating Manual aims to make it easier for procurement staff to find and follow the required information by providing:

- reference material in accordance with the new legislative framework governing the Government procurement system to meet international standards and best practices;
- supplements to the Act, Regulations and Instructions;
- references to the Act, Regulations and Instructions, to enable users to quickly find the relevant parts of the legislation;
- a user-friendly procurement tool aimed at providing clear and concise guidance for procurement practitioners in the field of operations;
- understanding where the procedure fits from the highest level of Government procurement reform through to more detailed procurement steps;
- clarification on which methods and types of procurement to apply;
- the purpose of the procedure, to assist users in understanding the importance of following the specified procedure and the reasons for the rules which apply;
- clarity on best practice when breaking down the overall procedure down into a series of small steps, which are easier to follow;
- details of the approvals required, to ensure that the appropriate approvals are obtained at the appropriate time;
- a list of the documents and/or records required for each procedure and the information to be included in each, to assist users in maintaining the required records;
- improved linkages and understanding between procurement specific issues and topics with a specific focus;
- an explanation where there is ambiguity within the process;
- advice for the development of training material.

A.6. Issue and amendment of the Operating Manual

The Operating Manual will be subject to continuous review and updates to reflect amendments in legislation, changing needs, the commercial environment, and the adoption of new and improved procedures and practices. Revised sections of the Operating Manual or additional sections on new subjects will be issued by the Chief Executive Officer ('CEO') of the Ministry of Finance from time to time, and stakeholders will be informed accordingly.

The Ministry of Finance therefore encourages feedback from procuring entities and suggestions from suppliers, contractors, consultants and other stakeholders to assist in the continued development of best practices in public sector procurement in Samoa. Those wishing to propose revisions or submit comments or questions on the Operating Manual or obtain additional information are encouraged to use the Feedback and Suggestion Template in **Section D** of this Operating Manual or contact the following:

Assistant Chief Executive Officer

Procurement Monitoring Services Division

Ministry of Finance

Level 4, Central Bank of Samoa Building

2 Apia City Boulevard

SECTION B: THE PROCUREMENT SYSTEM

B.1. Public Procurement Legal Framework

B.1.1. Public Finance Management Act

The Public Finance Management Act 2001 (“the Act”), which commenced on 2nd March 2001 and a date of assent of 6th September 2001, is:

An Act:
a. To foster and enhance effective and responsible economic and financial management by Government, including adherence to policy; and **b. To provide accompanying accountability arrangements together with compliance with those arrangements; and** **c. To require the Government to produce:** i. Statements of proposed policy; and ii. Confirmation of adherence to fiscal discipline; and iii. Economic and fiscal statements, including economic and fiscal forecasts and updates; and iv. Management information including comprehensive financial statements**.**

In serving the purpose of the Act, section 87 requires compliance by all with the procurement procedures and processes prescribed in respect of the acquisition of goods, services and construction works. As part of this Part XII of the Act, Procurement and Contracts, mandates compliance with the procedures and processes of the Act when entering into a contract for the acquisition, disposal or management of goods, services and construction.

There have subsequently been a number of amendments to the Act in respect of public procurement and these shall be read and construed as one with the Act.

B.1.2. Treasury Instructions

The Financial Secretary has issued Treasury Instructions 2013 (‘the principal Instructions’) and subsequent amendments in accordance with section 127 of the Act. The Instructions apply to all Government departments, Government agencies and public bodies and their respective employees concerned with the handling of public money, stores or property.

The Treasury Instructions Amendment 2026 (‘2026 Amendments’) provided the application and institutional arrangements for all Government procurement except the non-procurement activities specified in A.2. of the Operating Manual, and which included provision for a framework arrangement and a complaints procedure. The Treasury Instructions Amendment 2026 further provided a revised Procurement Independent Complaints and Review Procedure (PICRP) which took into account new developments including a review of the initial draft of this Operating Manual and further review of the principal Instructions.

The principal Instructions may be amended in writing by the Financial Secretary or the Chief Executive Officer of the Ministry of Finance.

In the event of a conflict:

a). between the Act, Treasury Instructions and this Operating Manual, the **Act prevails**; and

b). between the Treasury Instructions and this Operating Manual, the **Treasury Instructions prevails**.

B.1.3. The Operating Manual

The Operating Manual further implements the requirements and institutional arrangements in the Act and Instructions by providing guidance on all aspects of public procurement.

B.1.4. Forms

The Government may develop and issue standard forms of contracts, bidding documents and any other procurement related documents for use by procuring entities.

The forms provided by the Ministry of Finance are mandatory for all procuring entities.

The forms provide standard drafts for documents and records, which:

- are compliant with the rules and procedures contained in the Act, Instructions and Operating Manual; and
- include the basic contractual provisions and safeguards required by Government in the execution of public procurement and the use of public funds.

The use of documents with standard formats and clauses should:

- simplify the drafting of bidding documents, contracts and records of procurement;
- minimize the time required to approve documents and records;
- reduce bidders' time and effort in responding to bids; and
- facilitate the monitoring and auditing of public procurement activities.

B.1.5. Procurement Independent Complaints and Review Procedure

The Procurement Independent Complaints and Review Procedure (PICRP) is a legally binding process. Further details on the application of the PICRP is provided under **Part K.10 (Procurement Independent Complaints and Review Procedure) of the Instructions**.

B.1.6. Other Legislation

It is essential as part of their overarching responsibilities that procuring entities must be mindful of, and adhere to, the relevant laws of Samoa when planning or implementing any procurement.

B.2. Procurement Governance and Institutional Arrangements

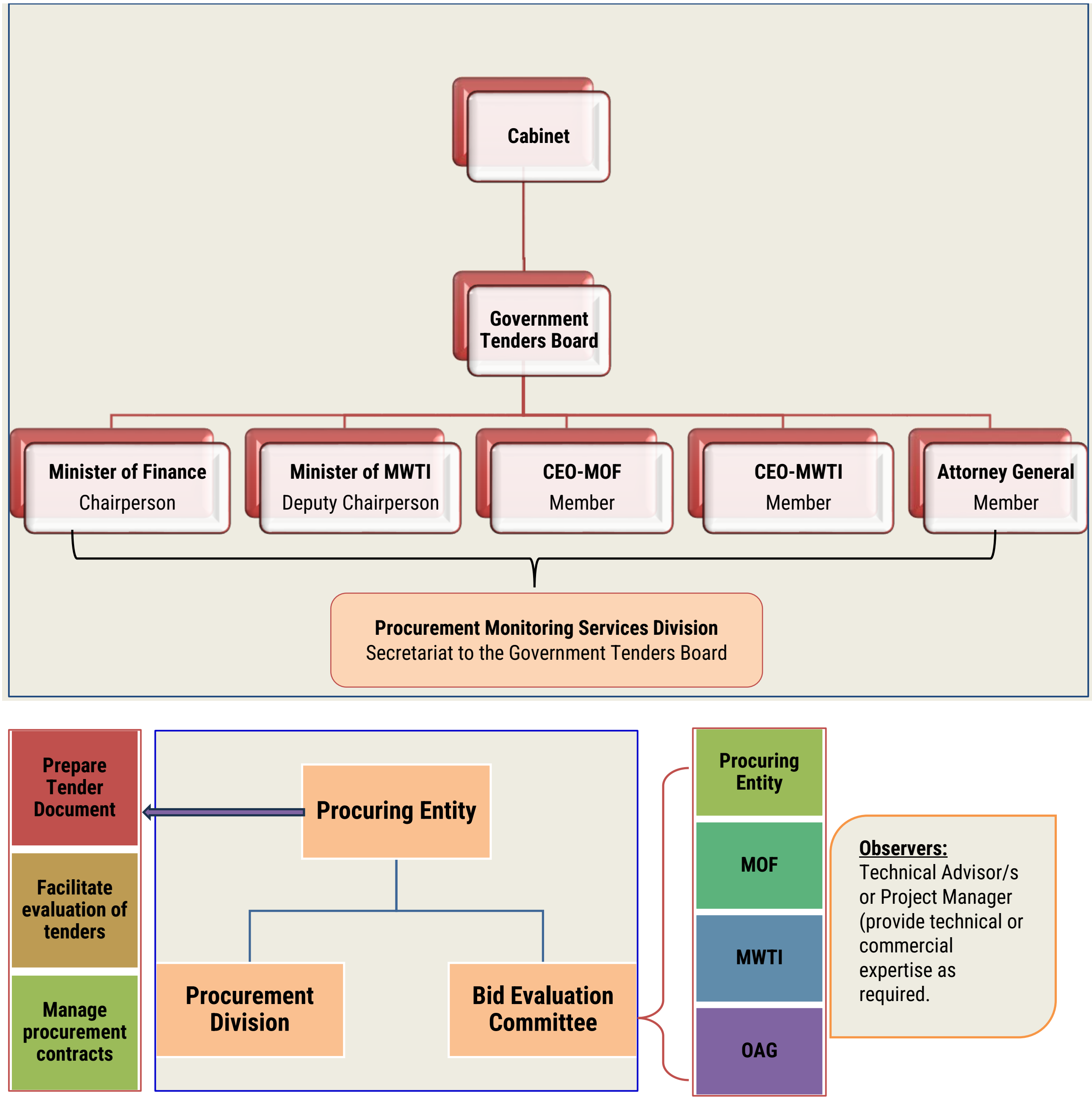


Figure 1: Organizational Chart

B.2.1. Cabinet

The Cabinet is responsible for approving public procurement valued above SAT$500,000. The Cabinet's prior approval is also required before the relevant thresholds and approval levels are effected, as well as the Procurement Suspensions and Debarment Procedure.

B.2.2. Government Tenders Board

The Government Tenders Board ("Tenders Board") is established pursuant to section 88 of the Act.

The Tenders Board has specific obligations and responsibilities under the Treasury Instructions and the Operating Manual, including approval of the PICRP issued by the Ministry of Finance. Further details on the implementation of the process can be found at **Part K.10 (Procurement Independent Complaints and Review Procedure) of the Instructions**.

The PICRP requires the appointment of an Independent Adjudicator who is appointed by the Tenders Board. The Tenders Board Secretariat shall also act, for administration purposes, as Secretariat to the Independent Adjudicator.

B.2.2.1. **Independent Adjudicator**

An Independent Adjudicator shall be appointed by the Tenders Board to review an actual bidder's application as part of the Right to Review under the PICRP. An alternate Independent Adjudicator may be appointed if the Independent Adjudicator is absent, incapacitated or unable to participate for good reason. They shall hold the same level of authority as the main Independent Adjudicator and in this Operating Manual reference to the Independent Adjudicator may also be read as referring to the alternate Independent Adjudicator. Further details on the Independent Adjudicator can be found at **Part K.10 (Procurement Independent Complaints and Review Procedure) of the Instructions**.

B.2.3. Ministry of Finance

The Ministry of Finance ("MoF") has overall responsibility for the public sector procurement system, as well as direct responsibility for developing public sector procurement policy, procedures and documentation, informing legislation and monitoring the effectiveness of the implementation of the policy. As such, the Minister of Finance and CEO of MoF have specific obligations and responsibilities under the Act and Instructions.

B.2.3.1. **Procurement Monitoring Services Division**

The Procurement Monitoring Services Division ("Procurement Division") is part of the Operational Management Department of the MoF. Whilst under the overall direction of the CEO of MoF, the Procurement Division acts as the Tenders Board Secretariat. The Secretariat provides administrative and technical support and assists in implementing decisions, policies and directives issued by the Tenders Board.

The Secretariat may also provide administrative support to the Independent Adjudicator in accordance with Instruction K.10.6.

B.2.4. Attorney General’s Office

The Attorney General’s Office’s (“AGO”) primary responsibility in public procurement is in respect of providing legal advice, legal review, drafting and clearance of contracts and tender documents (In the case of significant amendments to the instruction to bidders).

B.2.5. Ministry of Works, Transport & Infrastructure

The role of the Ministry of Works, Transport and Infrastructure (“MWTI”) is to assist with technical and infrastructural issues in relevant procurement activities.

B.2.6. Cabinet Development Committee (CDC)

The MoF is the primary coordinating agency for the formulation, review and implementation of the Government’s Pathway for the Development of Samoa (“the National Plan”).

CDC is responsible for project planning and programming, particularly, reviewing broad macro-economic framework, assumptions and philosophy for the formulation of the National Plan, sector policies and priorities. CDC endorses projects valued above SAT$500,000 which are appraised by the MoF(through its Economic Planning and Policy Division, which also acts as Secretariat to CDC).

B.2.7. Procuring Entities

Procuring entities are responsible for the procurement of goods (or goods and related services), works, consultancy services and general services in accordance with the Act, its Instructions and the Operating Manual.

B.2.7.1. **Head of a procuring entity**

The head of a procuring entity is responsible for:

- overall management and performance of the procurement process within the procuring entity;
- providing the relevant approvals at key stages in the process;
- the development of an annual procurement plan and its submission to the Ministry of Finance (Procurement Monitoring Services Division);
- appointment of appropriate staff to manage and execute the procurement activities;
- establishment of Bid Evaluation Committees;
- compliance with the procuring entities internal procedures and regulations;
- inform the Responsible Minister of any development projects and related procurement activities conducted by the procuring entity.

B.2.7.2. **Procurement Unit**

Procurement will be undertaken by persons competent and adequately trained by MoF PMSD to manage and execute the procurement proceedings engaged in by the procuring entity. The head of the procuring entity shall be responsible for the recruitment, appointment and staffing level of the procurement unit relative to the scope of procurement being undertaken. Depending on the needs of the procuring entity the head may establish a Procurement Unit. It is recommended that each Procurement Unit shall have its own terms of reference ("TOR"). Each unit's TOR shall be finalized by the head of the procuring entity and approved by the PSC/Board/CEO as relevant. MoF must be consulted on the TOR, specifically regarding the purpose and functions of the unit's link to the objectives of Government's principal procurement division in MoF. The TOR would include the following terms as a minimum:

Draft TOR for a Procurement Unit

Purpose:

The staff of the specialist procurement unit shall be responsible for managing and effecting public procurement on behalf of their procuring entity.

Staffing:

The head of the procuring entity will determine the number and the technical expertise of the staff of the specialist procurement unit based on the size, location, organizational structure, financial resources and the procurement needs of the entity.

Responsibilities:

The specialist procurement unit will:

- be responsible and accountable to the head of the procuring entity
- receive instructions from the head of the procuring entity
- have received appropriate training in Government procurement procedures
- ensure compliance with the Act, its Instructions and the Operating Manual
- consult with relevant parties internally and externally
- oversee, execute and manage the procurement process in accordance with the approvals process, including:
    - planning
    - bid preparation and management
    - market engagement
    - evaluation
    - award of contract
    - contract management
- maintain proper records and provide ad-hoc reports related to public procurement

Figure 2: Procurement Unit Draft TOR

B.2.7.3. Bid Evaluation Committee

The head of the procuring entity shall arrange for the appropriate members (as specified in the box below) to form the Bid Evaluation Committee and this shall apply in respect of all procurements valued above **SAT$50,000**.

a). the officer responsible for preparing the bidding document;
- refers to the procurement officer or technical personnel within the procuring entity, responsible for preparing the bidding document (scope of services, works requirement, technical specifications & terms of reference),

b). a representative from the Ministry of Finance (MoF);
- **refers to MoF's** representative as the financial evaluator and as a mandated member of the Board,

c). a representative from the Attorney General's Office (AGO);
- refers to the AGO's representative as the legal evaluator and as a mandated member of the Board,

d). a representative from the Ministry of Works, Transport and Infrastructure (MWTI)
- refers to MWTI's representative as the technical evaluator and as a mandated member of the Board,

e). any other member to provide relevant expertise as required (from another Government ministry or public body).
- refers to a suitable representative of that ministry or public body with relevant expertise that could inform the Evaluation Committee on the evaluation.

Note: The Technical/Project Advisor engaged as a consultant should not be considered as an Evaluator, but rather an independent advisor to provide technical support to the Bid Evaluation Committee.

Despite the members of the Bid Evaluation Committee as specified in the preceding box, a representative from another Government Agency is required if the nature of the procurement concerned warrants their technical input.

For procurement valued at and below SAT$50,000, the Bid Evaluation Committee in the preceding box is not required to be formed, and the evaluation shall be carried out (internally) by the relevant personnel of the procuring entity. Despite that, while the usual Bid Evaluation Committee is not required to be convened, it is the responsibility of the procuring entity to ensure that the procurement process is conducted in accordance with the guiding principles in Instructions K.2.1 (see also Section A.1 of this Operating Manual).

All members of the Bid Evaluation Committee as well as observers and technical advisors must sign a Declaration of Impartiality and Confidentiality Form (see **Section D** of this Operating Manual). Everyone present at the evaluation must declare any potential conflict of interest including interest by way of affiliation (professional or personal) in any bidder or close family relationship to the principals of a bidder. A member undertaking the evaluation who has a conflict of interest will be excluded from the evaluation. A copy of the signed declarations must be appended to the Bid Evaluation Report.

Evaluation meetings will be convened upon the procuring entity's request. All members should be present but in the event this is not practicable, the procuring entity may propose a suitable date for the evaluation to proceed.

B.2.7.4. **Accountable Officers**

Any Accountable Officer, concerned with or responsible for the collection, receipt, custody, issuing or payment of 'public funds' or other public property, must ensure that appropriate safeguards are in place to guarantee that the requirements set out herein are adhered to at all times.

B.2.8. Public Procurement Suppliers

Public procurement suppliers play an important role in the Government's procurement policy. This role must be respected within the objects of the Act by all public officials, but equally any supplier wishing to participate must also respect the objects of the Act.

The Operating Manual therefore provides guidance on supplier's own behaviour, the process they must follow and should it be necessary, the system for review and reconsideration.

SECTION C: GOVERNMENT PROCUREMENT

C.1. Procurement Planning and Preparation

C.1.1. Public Procurement Cycle

Public procurement follows the same basic process. This process reflects the ten key stages for public procurement in Samoa. Effective management of the cycle will minimize risk and ensure the most efficient use of public funds.

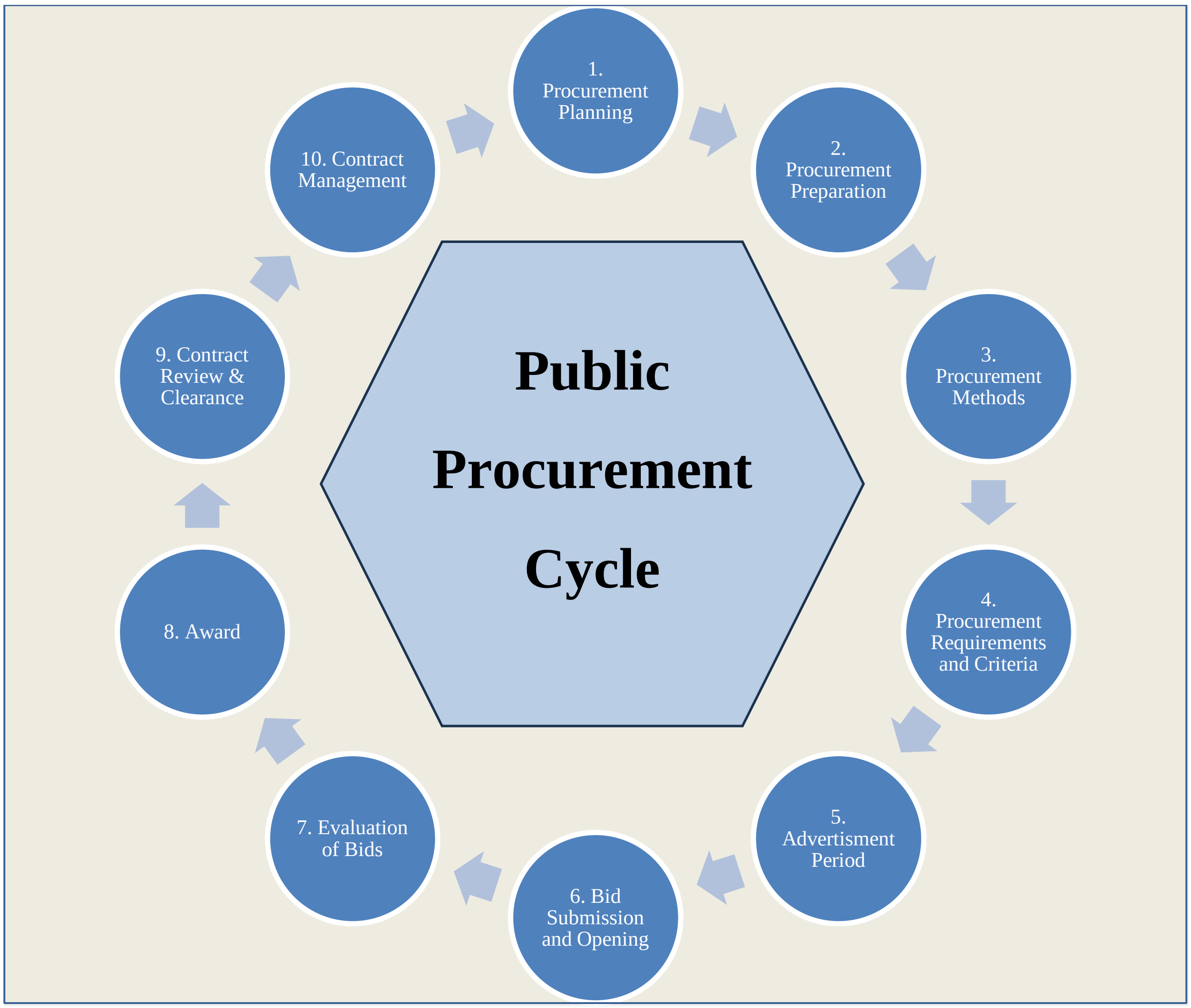


Figure 3: Government Procurement Cycle

This Section guides the user through the detailed process. Individual procurements will differ, but the Operating Manual seeks to ensure a consistent application of the Act and its Instructions.

It is important to note that each procurement/project is different. Whilst the Operating Manual provides a generic framework for users, the process must be adapted to fit the procurement or the project.

C.1.2. Procurement of Goods, Works, Consulting Services & General Services

This cycle will be applied to all four categories of procurement; that is, procurement of:

a). goods (or goods and related services);

b). works;

c). consultancy services; and

d). general services.

For clarification, general services commonly involve technical services using machinery or human labour; this may for example include building services management and maintenance, cleaning & sanitation.

Many of the techniques and procedures can be applied across all four categories. Therefore, each stage will discuss common approaches and where relevant, each stage will also include a specific section for each category. This section will also highlight differences in documentation or reporting which may be required.

C.1.3. Government Reporting

In addition to the standard reports produced during the procurement process, the following ad-hoc reports must also be produced.

Table 1: Government Reporting

Title	Outline of Contents	Author	Submitted To
Quarterly Procurement Reports	Progress on procurement	Procuring Entity	Ministry of Finance

C.1.4. Summary List of Documents and Records

A summary list of standard documents that are mandatory for use during the procurement process, in conjunction with the records which must be maintained, is provided at **Section D: Mandatory Documents and Records**.

C.1.5. Procurement Planning

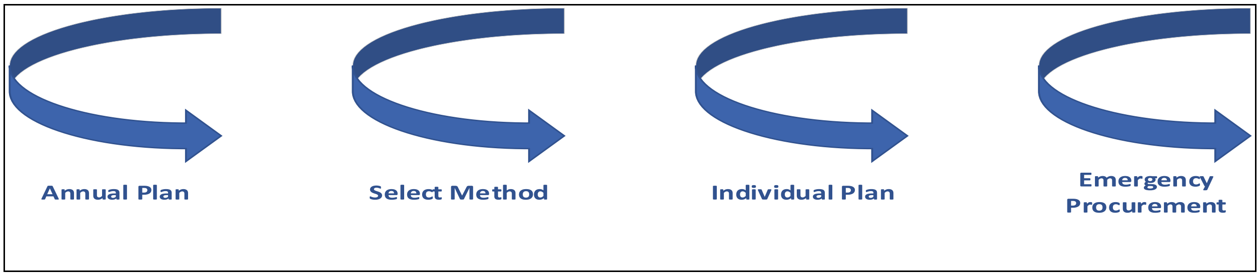


Figure 4: Procurement Planning

C.1.5.1. **Annual Planning**

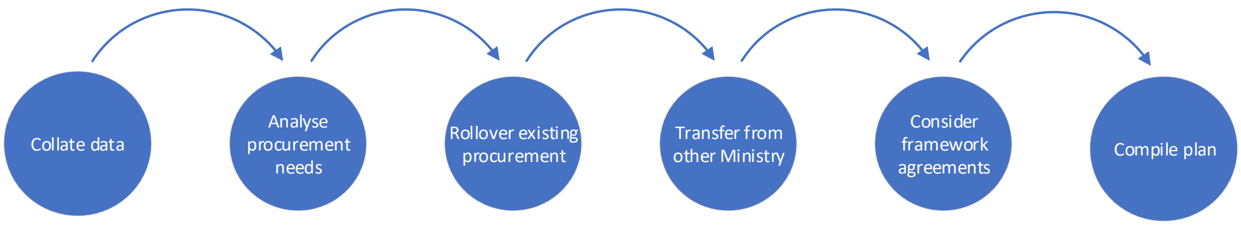


Figure 5: Annual Planning

Each financial year, as part of the applicable budget process, the procuring entity will prepare an annual procurement plan under the authority of the head of the procuring entity. As part of the planning preparation the procuring entity must:

- **collate data** on all forthcoming procurements which the procuring entity may require for the forthcoming financial year. Requirements should be aggregated where possible to achieve economies of scale;
- **analyze the procurement needs** in line with the procuring entity's budget, ensuring the estimate is accurate and includes any reasonable contingency;
- be mindful of any existing procurement which may **roll forward** from the existing financial year;
- enquire as to whether the requirement may be met by a **transfer** of goods from another Ministry;
- identify opportunities for establishing **framework agreements** as a key part of Government's procurement strategy. The Government is considering how best to facilitate these agreements so that framework procurement is included at this stage in the planning process; and
- specify the proposed application of any domestic margin of preference in the **plan** template.

The annual procurement plan must be prepared in accordance with the prevailing Government policies and using the template published by the Ministry of Finance. As a minimum it must include the following information:

a). a detailed breakdown of the goods (or goods and related services), works, consultancy services and general services required;

b). a schedule of the delivery, implementation or completion dates for all goods (or goods and related services), works, consultancy services and general services required;

c). an indication of which items can be aggregated for procurement as a single package or for procurement through any applicable arrangements for common-use items (which may include framework arrangements);

d). an estimate of the value of each package of goods (or goods and related services), works, consultancy services and general services required including provisional sums, contingencies and all applicable taxes, and details of the budget available and sources of funding;

e). an indication of the anticipated procurement method for each procurement requirement, including any need for pre-qualification, and the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements; and

f). other details as may be relevant to any item in the plan.

Following any internal approvals required within the procuring entity the following action must be taken prior to commencing procurement;

i. The estimate for each procurement must be committed in accordance with appropriation legislation.
ii. Prepare a General Procurement Notice and submit to the Procurement Division, Ministry of Finance.
iii. Submit a copy of the annual procurement plan to the Procurement Division, Ministry of Finance.

The Procurement Division will arrange for the General Procurement Notice (see Notice for further guidance) to be published on the Ministry of Finance's website to apprise local and international bidders of forthcoming procurements.

The procuring entity will provide a copy (and relevant updates) as part of the annual budget submission process.

Progress against the Annual Procurement Plan should be managed through Individual Procurement Plans (see **Individual Procurement Planning**). However, each procuring entity is also required to provide quarterly progress reports to the Procurement Division which must include the following as a minimum:

i.	a comparison of the annual procurement plan targets with progress;
ii.	a comparison of actual and planned days for procurement time, contract execution time, and post contract execution obligations (e.g. defect liability period and payment of the retention monies) and total time in calendar days.

C.1.5.2. **Individual Procurement Planning**

The Individual procurement plan should include as a minimum:
i. short title of procurement; ii. estimated budget; iii. method of procurement; iv. breakdown of activities in accordance with the selected procurement method; v. identification of responsible party for each activity; vi. timeline and milestones taking into consideration procurement method and required approvals (internal and external); and vii. plan dates, revised plan dates, actual dates.

The development of an individual procurement plan is encouraged for all procurements. The level of planning should be comparable to the complexity of procurement and must reflect the data provided in the annual procurement plan.

For example, a procurement plan for a single-source requirement would be expected to be simple. However, if the requirement is being procured through single-source method then the level of planning needs to be consistent with the budget threshold and type of bidding.

It is important to remember that individual procurement plans are a method of easily monitoring performance and capturing specific deadlines, for example bid closing dates, end of the standstill period, which are legally enforceable. They are not a substitute for planning as part of project management which may be required for more complex procurements.

It is recommended that each individual procurement plan has a designated procurement officer who is responsible for administering the plan. This should be in line with any designated levels of approval within the procuring entity.

The plan must be circulated to all parties supporting the process with clear instructions on their responsibilities and relevant plan dates. Individual procurement plans should be updated on a monthly basis as a minimum. This will help facilitate the quarterly reporting to the Ministry of Finance.

The duration of each milestone must be reasonable for the method, type of bidding and complexity of procurement. The final delivery must also be consistent with when the requirements are needed. Early or late delivery can attract a significant cost. Therefore, it is common practice to work backwards from the final delivery date when planning.

The Instructions specify timescales as follows. All periods are minimum periods unless stated otherwise. Some periods are not mandatory but recommended.

Table 2: Mandatory and Recommended Timescales for Publication of Tenders

Activity	Open Competitive or Selective/Restricted/Limited Bidding[1]	Request for Quotations
Pre-qualification (PQ)	N/A	N/A
Request for Expressions of Interest (REOI)	30 days	N/A
Bidding period for **Goods** (or goods and related services) and **General services**	60 days, if valued above 1 million 45 days, if valued above 500,000 up to 1 million 30 days, if valued above 100,000 up to 500,000	7 days, if valued below 50,000 14 days, if valued above 50,000 up to 100,000 (the Principal may decide to publicize up to 3 weeks depending on the value and complexity, local availability of stock and time to obtain prices from overseas)
Bidding period for **Works**	60 days, if valued above 3 million 45 days, if valued above 500,000 up to 3million 30 days, if valued above150,000 up to 500,000	7 days, if valued below 50,000 14 days, if valued above 50,000 up to 150,000 (the Principal may decide to publicize up to 3 weeks depending on the value and complexity)
Bidding period for **Consultancy Services**	60 days, if valued above 1 million 45 days, if valued above 500,000 up to 1 million 30 days, if valued above 100,000 up to 50000,000	14 days, if valued above 50,000 up to 100,000 (the Principal may decide to publicize up to 3 weeks depending on the value and complexity)
Bid meeting and/or site visit minutes	Within 5 days	N/A
Receipt of clarification on bids	10 days before bid deadline	3 days before bid deadline

[1] Includes Request for Proposals and Framework Arrangement Methods.

Activity	Open Competitive or Selective/Restricted/Limited Bidding[1]	Request for Quotations
Response from procuring entity	Within 5 days	Within 1 day
Bid opening	Same as bid closing	N/A
Bid validity	90 - 120 days or more depends on the complexity of the procurement activity	30 - 90 days

The following table provides guidance on the estimated duration purposes from initiation of the procurement contract award, allowing for a 90 - 120 days' validity period.

Table 3: Estimated Duration for Planning Purposes

Activity	Open Competitive[2]		Selective, Restricted or Limited[3]		Request for Quotations
Goods	150 days	141 days	118 days	111 days	104 days
Works with Pre-qualification	240 days	180 days	N/A	N/A	N/A
Works without Pre-qualification	210 days	150 days	125 days	118 days	104 days
Consultancy Services with REOI	186 days	155 days	N/A	N/A	N/A
Consultancy Services without REOI	165 days	141 days	118 days	111 days	104 days
General Services with Pre-Qualification	180 Days	171 days	N/A	N/A	N/A
General Services without Pre-Qualification	150 days	141 days	118 days	111 days	104 days

[2] Includes Request for Proposals and Framework Arrangement Methods.

[3] Includes Request for Proposals and Framework Arrangement Methods.

C.1.6. Procurement Preparation

Practitioners are encouraged to adopt a structured and strategic approach however simple the procurement may be. By developing this skilled approach at the lowest level, it will become second nature in more complex procurements. This approach is not prescriptive but areas that practitioners are encouraged to research and consider before beginning the procurement process include the following:

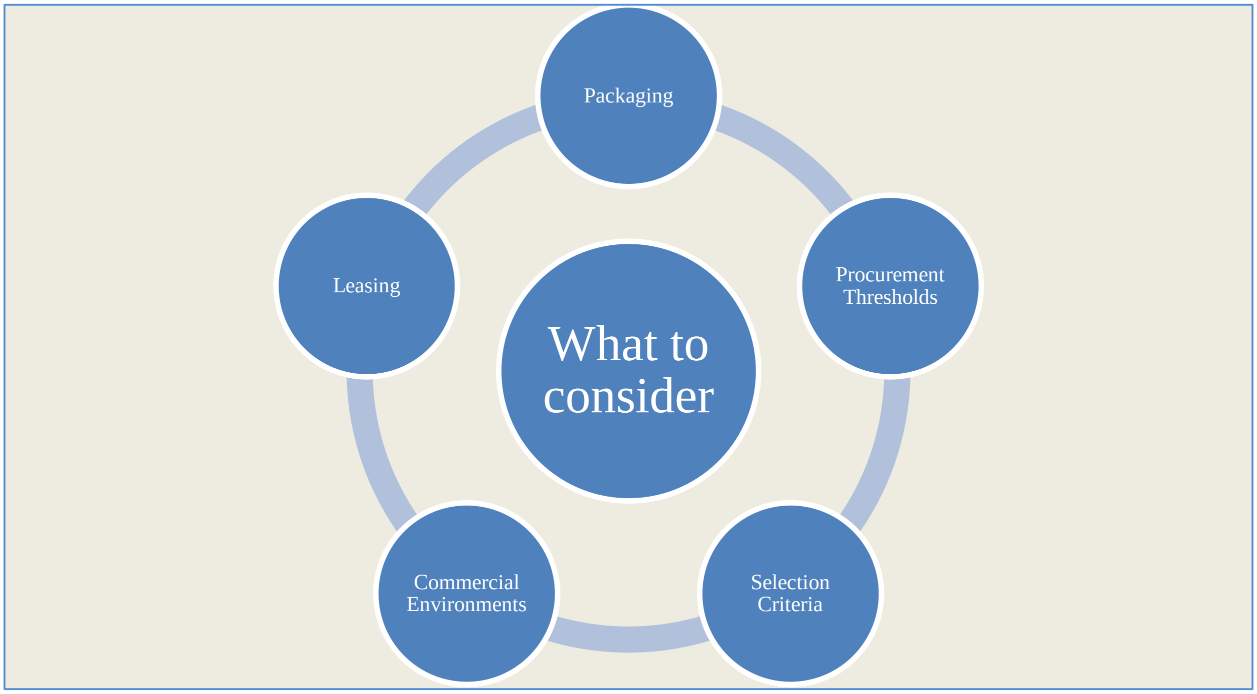


Figure 5: Procurement Preparation

In support of the guiding principles (Instructions K.2.1), the Government expects each procuring entity to comply with the following as a minimum level of preparation prior to commencing any procurement:

a). assemble final encompassing project design documents appropriate to the procurement including; scopes of service, terms of reference, technical specifications, supply schedules, detailed cost estimates, bills of quantity which are essential parts of the bidding documents;

b). compile bidding documents;

c). obtain AGO's clearance of bidding documents if standard bidding documents that have been issued by the MoF and pre-cleared by AGO are not used or substantial amendments are made to the same standard bidding documents or if there is anything controversial;

d). ensure sufficient funds are available and approved for expenditure prior to the publication of a procurement notice and issue of the bidding documents; and

e). secure the relevant approvals required under **C.2.1 Table 4** of the Operating Manual

Exceptionally the following approvals are required during the preparation stage:

- Tenders Board approval required for the use of a method other than competitive tender – this requires a report by the implementing agency to the Tenders Board requesting for example the use of limited bidding/selective/restricted/direct/single source/framework arrangement before they prepare their document.
- CDC's endorsement of future project – this requires a report which is submitted to the Ministry of Finance for their assessment before it is tabled before the CDC for their knowledge and endorsement. This must happen before the procuring entities prepare their bid documents for procurement activities relating to projects valued above SAT500,000 so that in the event the bid is later brought to Cabinet for approval of the actual cost, Cabinet has prior knowledge of this project.
- Cabinet approval is required for all procurement activities valued above SAT$500,000 and prior approval required for any procurement of any capital items that were not budgeted for in the relevant financial year or that the cost of the required procurement exceeds the budgeted amount – this requires also a treasury report prepared by the Ministry of Finance (Budget Division) to endorse the request and outlining any savings the Ministry can utilise for this item. Once the approval of a purchase of the capital item has been received by Cabinet, the procuring entity can then go about preparing their tender document and proceed with the required procurement procedures.

C.1.6.1. **Procurement Packaging**

There will be routine procurement activities and there will be project related procurement activities, which could be anything from the refurbishment of a hospital ward to the establishment of health specific clinics across Samoa. It is important that consideration is given to the whole portfolio and the range of procurement approaches. Are the requirements broken down so beds, redecoration etc. are procured separately or anything on the range through to a build, operate, transfer model.

A procuring entity shall not divide an object of procurement:

a). with the sole intention of avoiding the financial thresholds in **C.2.1 Table 4** of the Operating Manual.

b). where the award of several separate contracts would:

   i. create problems of compatibility or inter-changeability between items procured as separate lots; or

   ii. unduly strain contract administration resources;

c). where the award of several separate contracts would invalidate or otherwise restrict any provider's warranty or liability; or

d). where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements; or

e). where the award of several separate contracts would unduly delay the completion of the project and therefore, impact on the time and costs for that project.

However, a single bid may be issued with multiple lots where it is anticipated that the award of multiple contracts may be beneficial. For example, an office refurbishment may include furniture, IT equipment, furnishings, stationery etc. One bidder may be able to supply all items but sourcing from multiple bidders may provide financial savings. Where the procuring entity adopts this approach they shall:

a). Permit bidders to bid for a single lot, any combination of lots or all lots; and
b). Demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for money for the procuring entity.

C.1.6.2. **Selection Criteria**

Determining the Selection Criteria is an important element of Procurement Preparation and should be established prior to commencing the procurement process. The procuring entity has four stages at which they will consider the appropriateness of bidder's response. There may be an element of overlap for example to have prequalified may be an eligibility criterion:

Criteria	Definition
Eligibility	Where the bidder has satisfied certain conditions in order to participate in the process. This is a mandatory element
Pre-qualification or request for expressions of interest	Where the applicant (bidder) has to demonstrate a certain level of resources, expertise or experiences in order to participate in the bidding process
Evaluation criteria	The criteria used to assess a bidder's compliance with the technical and financial requirements of the bidding document
Post-qualification	This is conducted in certain cases where the procuring entity needs to verify specific aspects of a bid. This is conducted to the recommended bidder, if the bidding document allows for post-qualification.

These are useful tools in selecting the right bidder and are discussed in more detail later in the Operating Manual. However, it is important that the procuring entity applies them in appropriate manner, consistent with the requirements and budget.

C.1.6.3. **Procurement thresholds**

The thresholds are specified at **Procurement Thresholds**.

It is important that procurement activities are not broken down into smaller bundles just to avoid the use of higher level methods. Although it may be beneficial to specify lots, where it may be perceived that a market may not be able to supply as one bidder and there would be advantages in spreading the source of supply.

C.1.6.4. **Different commercial environments**

Consideration needs to be given to the markets that may respond to an invitation and the procuring entity's ability to fairly compare and evaluate the bids. For example, community led bids or non-governmental organizations (NGOs versus shareholding organizations or where universities or specialized agencies are required). This may be particularly relevant where the procurement involves local communities and (NGOs); use more local knowledge and materials; or use labour intensive and other technologies.

Whilst discrete contracts would invariably be low value, including mandatory national elements in the Invitation to Bid (ITB) would encourage participation of these types of organizations and national Small Medium Enterprises (SMEs). In this respect, the procuring entity has the option of applying the domestic margin of preference.

C.1.6.5. **Leasing**

In certain circumstances, it may be beneficial for the procuring entity to consider leasing the requirements as opposed to procurement. This may also include interim measures when the circumstances require immediate or long term use of the good or service to meet established objectives.

Therefore, the procuring entity must evaluate this option on a case-by-case basis. It is recommended that any practitioner preparing the evaluation has received training in life-cycle costing.

The evaluation must consider the comparative life-cycle costs, the nature of the procurement and as a minimum must include:

- **a).** the estimated time period for usage and the extent of use within that period;
- **b).** the financial and operational advantages of alternative types and makes of equipment;
- **c).** the cumulative rental or lease payments for the estimated period;
- **d).** the net purchase price;
- **e).** the opportunities for re-deployment of the equipment when no longer in use;
- **f).** the transportation and installation costs;
- **g).** maintenance and other service costs; and
- **h).** potential obsolescence due, for example, to imminent technological improvement(s).

In order to proceed, the evaluation must demonstrate that it is to Government's advantage under the circumstances of the particular procurement exercise i.e. as a general rule the cumulative leasing costs would be less than the purchase price. This evaluation requires approval of the head of the procuring entity before procuring the lease option may proceed. This procurement should still follow a competitive exercise in line with the Act and its Instructions.

C.1.7. Emergency Procurement

Emergency Procurement:
i. Limited Bidding Method; or ii. Framework Arrangement Method as part of the planning process; or iii. Single Source Selection for rapid selection of Individuals or small consultancy assignments; or iv. Direct Procurement Selection Method for situations that are urgent and in the public interest

Before any of the above methods are used, the procuring entity must obtain the approval of the Tenders Board with reasons justifying the use of such.

The final procedures for emergency procurement will be determined, to a certain extent, by the circumstances of the emergency and the time available to fulfill the requirement. It is important that the emergency is not just a failure in planning. Therefore, procurement staff will be required to use their professional judgment in determining how to proceed, but as a general rule should seek to follow the established procurement principles and rules. Specific consideration should be given to:

i. Identification of need - this should be limited to the scope in relation to the emergency.
ii. An individual procurement plan is still required demonstrating completion within the 30-day time period.
iii. The supplier selected must be able to complete the full scope within the priorities of the emergency.
iv. The financial evaluation needs to ensure that value for money is achieved.

When a **<u>Proclamation for a State of Emergency ('SOE') is declared</u>**, procurement may be conducted through direct invitation (for goods, works and general services) or single source selection (for consultancy services) so long as it is for the purpose of, or within the scope of the SOE, and approved by the Cabinet.

All critical procurement shall be initiated and completed within the SOE and a report on all critical procurement undertaken during the SOE must be submitted to the Tenders Board no later than three months after the emergency.

C.2. Procurement Methods

In order to afford procurement practitioners greater flexibility in procurement management Government has redesigned the structure and approach. In selecting the procurement approach practitioners will be guided by **Table 4** below.

The procurement approach should be dictated or qualified by the thresholds and then the procurement method. However, Government understands that the primary procurement methods applying to each threshold may not be relevant in the circumstances, and as such, there will be exceptions where it would be required to use alternative procurement methods (such as limited/selective/restrictive bidding/framework arrangement/direct procurement method) given the complex nature of the procurement or for any other valid reason. In these instances, a request (with justification) must be submitted to the Tenders Board for approval prior to commencement of any procurement activity using an alternative procurement method.

The use of the words 'bid' and 'proposal' are interchangeable and have the same definition throughout the Operating Manual and the Standard Bidding Documents (SBDs).

C.2.1. Procurement Thresholds

The procurement thresholds stipulate the financial limits for the mandatory application of the procurement methods. The primary procurement method must be applied at all times, however, where relevant circumstances warrant the use of an alternative method the prior written approval of the Tenders Board must be obtained before commencement of any procurement activity, regardless of the threshold. The Tenders Board's approval shall form part of the record of procurement proceedings.

The thresholds, the approving authorities and methods required for each type of procurement are set out in **Table 4** as follows:

Table 4: Financial Delegation Threshold (B4 Schedule)

Thresholds (SAT)	Methods of Procurement	Authorities to Approve
WORKS		
Above 500,000	▪ **Primary method:** open competitive tender	Cabinet
Above 200,000 – 500,000		Tenders Board
Above 150,000 – 200,000		

Thresholds (SAT)	Methods of Procurement	Authorities to Approve
	▪ **Alternative methods:** Limited/Selective/Restricted Bidding/Direct Procurement	▪ Tenders Board (in case of a department or government agency) or ▪ Board of Directors of a public body (in the case of a public body)
Above 50,000 – 150,000	▪ **Primary method:** Request for Quotation ▪ **Alternative methods:** Limited/Selective/Restricted Bidding/Direct Procurement	
Above 5,000 – 50,000	▪ **Primary method:** Request for Quotation (3 written) ▪ **Alternative methods:** subject to Tenders Board prior approval	Relevant Chief Executive Officer/General Manager/Managing Director
Up to including 5,000	▪ **Primary method:** Request for Quotation (3 oral) ▪ **Alternative methods:** subject to Tenders Board prior approval	
GOODS AND GENERAL SERVICES		
Above 500,000	▪ **Primary method:** open competitive tender ▪ **Alternative methods:** Limited/Selective/Restricted Bidding/Direct Procurement	Cabinet
Above 200,000 – 500,000		Tenders Board
Above 100,000 – 200,000		▪ Tenders Board (in case of a department or government agency) or ▪ Board of Directors of a public body (in the case of a public body)
Above 50,000 – 100,000	▪ **Primary method:** Request for Quotation ▪ **Alternative methods:** Limited/Selective/Restricted Bidding/Direct Procurement	
Above 5,000 – 50,000	▪ **Primary method:** Request for Quotation (3 written) ▪ **Alternative methods:** subject to Tenders Board prior approval	Relevant Chief Executive Officer/General Manager/Managing Director
Up to including 5,000	▪ **Primary method:** Request for Quotation (3 oral) ▪ **Alternative methods:** subject to Tenders Board prior approval	Relevant Chief Executive Officer/General Manager/Managing Director

Thresholds (SAT)	Methods of Procurement	Authorities to Approve
CONSULTING SERVICES		
Above 500,000	▪ **Primary method:** Request for Proposal ▪ **Alternative methods:** Limited/Selective/Restricted Bidding/Single Source Selection	Cabinet
Above 200,000 – 500,000		Tenders Board
Above 100,000 – 200,000		▪ Tenders Board (in case of a department or government agency) or ▪ Board of Directors of a public body (in the case of a public body)
Above 50,000 – 100,000	▪ **Primary method:** Request for Proposal (Low Value) ▪ **Alternative methods:** Limited/Selective/Restricted Bidding/Single Source Selection	▪ Tenders Board (in case of a department or government agency) or ▪ Board of Directors of a public body (in the case of a public body)
Up to including 50,000	▪ **Primary method:** Request for Proposal (Low Value) ▪ **Alternative methods:** subject to Tenders Board prior approval	Relevant Chief Executive Officer/General Manager/Managing Director

C.2.2. Procurement Methods

C.2.2.1. **Open Competitive (Public) Tender Method**

The Open Competitive Tender Method is the default method (or primary method) for;

a). any procurement of works valued **above SAT$150,000**; and

b). goods (or goods and related services), general services & consulting services valued **above SAT $100,000** and applies the following criteria:

- Single stage competitive bidding
- Publication of an advertisement
- Equal access to all bidders without discrimination

C.2.2.2. **Request for Proposals Method**

This method must be adopted for the procurement of consultancy services (intellectual and professional services). Within this method the procuring entity will adopt one of the following methods of selection:

a). **Quality and cost based selection (QCBS):** This method uses a competitive process among shortlisted consultants that takes into account the quality of the proposal and the cost of the services in the selection of the successful consultant; or

b). **Selection under fixed budget (SFB):** This method shall be used when the assignment is simple and can be precisely defined, and when the budget is fixed; or

c). **Quality Based Selection (QBS):** This method shall be used only to evaluate the quality of the technical proposals and negotiating the financial proposal and the contract with the consultant who submitted the highest ranking technical proposal and can only be used for:

- **i.** Complex and highly specialized assignment for which it is difficult to define precisely the terms of reference and the required input from the consultants, and for which innovation is to be demonstrated in the proposals;
- **ii.** Assignments that have a high downstream impact and in which high quality of the services is deemed essential to the outcome of the project; and
- **iii.** Assignments that can be carried out in substantially different ways, such that proposals be difficult to compare.

d). **Least costs election (LCS):** This method is appropriate for assignments of a standard or routine nature (financial audits, architectural and engineering design for non-complex works, etc.) where well established practices and standards exist, and in which the contract amount is small.

e). **Selection Based on Consultant's Qualification (CQS):** This method may be used for small scale assignment for which competitive proposals is not required. In such cases, the TOR shall be prepared and an EOI and information on the firm/consultants' experience and competence relevant to the assignment shall be requested, a short list (at least 3 firms/consultants) established and the firm with the most appropriate qualification and references be selected. The selected firm/consultant shall be asked to submit a combined technical-financial proposal and then be invited to negotiate the contract.

f). **Selection of individual consultants (SIC):** This method shall be used for procurements over SAT$50,000 for which:

- 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.
- iv. seeking expression of interest (EOI) is encouraged particularly when the procuring entity:
  - does not have knowledge of experienced and qualified individuals or of their availability;

- the services are complex; or
- there are potential benefits from wider advertising

v. submission of proposals is not required;

vi. selection shall be carried out through the comparison of the relevant overall capacity of at least three qualified candidates of those who have directly or through a firm expressed interest or have approached directly;

vii. the highest ranked candidate shall be invited for negotiation of contract;

viii. the selected individual shall be the most experienced, best qualified and fully capable of carrying out the assignment

The following methods **shall only be used with the prior written approval** of the Tenders Board irrespective of the threshold:

a). <u>Selection amongst community service organisations (CSO):</u> This method may be used for procurements over SAT $50,000 where involvement and knowledge of community needs, local issues and community participation are paramount in the preparation, implementation and operation of community development project;

b). <u>Single source selection (SSS):</u> This method does not provide the benefits of competition and shall be used only in exceptional cases, such as:

i. For tasks as continuation of previous completed assignment that was awarded following a competitive procurement process;

ii. where a rapid selection is essential (as in emergency);

iii. for very small assignments and are for emergency situations;

iv. when only one consultant is qualified or has experience of exceptional worth for the assignment; or

v. owing to a catastrophic event there is an emergent need of the services.

Note: There is no applicable threshold for SSS.

C.2.2.3. **Selective/Restricted Bidding Method**

This method also follows a competitive bidding process for procurements of a particularly high value or complexity. It seeks to establish that bidders are qualified before submission of the bid. The requirements for assessing the qualifications are noted in the Instructions to be defined in the bidding documents. The following criteria must be applied when selecting this method:

- Identification of the value or complexity
- Publication of a prequalification notice and documents
- Compliance with the prequalification process

- The goods (or goods and related services), works, consultancy services and general services are only available from a limited number of bidders and are high value or complex
- Bids must be invited from all prequalified bidders
- The record of procurement must record the circumstance

C.2.2.4. **Limited Bidding Method**

Limited Bidding Method may only be applied in the following specific circumstances and with the prior written approval of the Tenders Board as per the Instructions:

- When no suitable or responsive bids have been submitted in response to a competitive or selective bidding procedure, provided that the requirements of the initial bid are not substantially modified;
- when, for technical or artistic reasons, or for reasons connected with protection of exclusive rights, the contract may be performed only by a particular supplier and no reasonable alternative or substitute exists;
- for reasons of extreme urgency brought about by events not attributable to an unforeseen by the procuring entity, the products or services could not be obtained in time by means of competitive or selective bidding procedures;
- for additional deliveries of goods or services by the original supplier where a change of supplier would compel the procuring entity to procure equipment or services not meeting requirements of interchange ability with already existing equipment or services procured under the initial procurement and such separation would cause significant inconvenience or substantial duplication of costs to the procuring entity and provided that the total value of contracts awarded for the additional quantities shall not exceed 30% of the amount of the original contract and that such contract is entered into no later than eighteen months after the original contract;
- when a procuring entity procures prototypes or a first product or service which are developed at its request in the course of, and for, a particular contract for research, experiment, study or original development;
- for products purchased on a commodity market.

When undertaking procurement in accordance with this method the procuring entity must:

- Prepare a written description of requirements including quality, quantity, terms and time of delivery
- Invite bids from one or whenever possible more bidders
- Include a deadline for submission of bids
- The procuring entity must evaluate compliance with the technical specifications, terms and conditions
- Negotiation on the financial bid is permitted if considered excessive or substantially in excess of the prevailing market rates.

C.2.2.5 Direct Procurement

This method **shall only be used with the prior written approval** of the Tenders Board irrespective of the threshold:

Direct Procurement method involves dealing with the selected supplier or contractor and it does not provide the benefits of competition and shall be used only in exceptional cases, such as:

- Buying small or off-the shelf items generally valued at less than $10,000.00 or items valued above the said amount considering the circumstances;
- Standardization is important and equipment and spare parts required for expansion or repair of existing equipment must be procured from the original supplier or from a supplier of identical goods;
- Equipment is proprietary in character and is obtainable only from one supplier;
- Critical items are to be procured from specialized suppliers; or
- Works to be undertaken are a natural extension of an earlier or ongoing job and it can be shown that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality of work.

When undertaking procurement in accordance with this method the procuring entity must:

- Prepare a written description of requirements including quality, quantity, terms and time of delivery
- Issue the requirements to the identified supplier/contractor
- The procuring entity must evaluate compliance with the technical specifications, terms and conditions
- Negotiation on the financial bid is permitted if considered excessive or substantially in excess of the prevailing market rates.

C.2.2.6. Request for Quotation Method

The Request for Quotations (RfQ) Method may be used for the procurement of goods (or goods and related services), works or general services by submission through verbal or written quotes, or use of the applicable RfQ document, as set out in **Table 4** above.

When applying this method, the procuring entity must also follow the process as specified in the Operating Manual for Purchasing and Procurement by the Accounts Division of the Ministry of Finance. When undertaking procurement in accordance with this method the procuring entity must:

- Request for quotations from a minimum of three bidders
- Use the SBDs issued by the Ministry of Finance and pre-cleared by AGO
- Include a clear statement of the requirements
- Give the bidders adequate time to prepare and submit a quotation
- Only one quotation shall be submitted by a bidder

- No negotiation is permitted
- The procuring entity will issue a purchase order to the successful bidder

C.2.2.7. **Framework Arrangement Method**

The Framework Arrangement Method allows the procuring entity (or multiple procuring entities) to enter in to a specific contract as and when required (either as a call-off or by launching a mini competition) with pre-selected single or multiple suppliers with fixed terms (not to exceed three years' duration) and conditions for the supply of the goods (or goods and related services), works, consultancy services and general services at any stage during the term of the agreement. The prior approval of the Tenders Board must be obtained in a procuring entity wishes to enter into a framework agreement.

Procuring entities are encouraged to create frameworks. The aim is to consolidate requirements thereby avoiding multiple, low value contracts and achieving better value for money. Further guidance will be provided by the Government but procuring entities are encouraged to be pro-active in identifying requirements which may benefit from framework arrangements.

Framework agreements should be routinely used to supply off-the-shelf, readily available goods (or goods and related services), works, consultancy services and general services i.e. low risk items. They are most often used for high volume/low value orders but are also useful for other segments of spend such as consultancy arrangements. They are particularly useful in construction projects as they enable detailed specifications to be worked up at an appropriate time within the project. They are generally used when the overall requirements are known, but the specific quantity and delivery date of any particular good may not be known.

If framework agreements are to be for multiple procuring entities then a lead procuring entity must be nominated. They will be responsible for letting the agreement, managing the relationship with the supplier and keeping the other procuring entities updated.

The **benefits** of framework agreements include:

- a streamlined procurement process for the procuring entity and supplier;
- fixed prices and conditions based on consolidation of needs and volume, over a fixed term;
- flexibility to determine the specific requirement at the call-off or mini-competition stage;
- leverage/economies of scale through aggregation - framework agreements can often cover hundreds of items with the prices and terms and conditions agreed;
- avoids duplication - one procuring entity goes out to the marketplace on behalf of other procuring entities;
- ease of access to goods (or goods and related services), works, consultancy services and general services;
- lower transaction costs because of time and resources saved to receive and evaluate bids, and awarding a contract for each requirement (i.e. eliminates requirement for repeat bidding);
- can be used as a method of variety control/standardisation as appropriate by offering procuring entities a specific choice of products within a category of spend which are

provided for under the framework arrangement -alternatively the converse can be enabled through frameworks offering procuring entities a wider choice than they would have the time to arrange if sourcing independently;

- deliveries can be customised to fit in with the procuring entity's requirements and storage limitations.

There can be some drawbacks which procuring entities should consider before selecting a framework agreement technique:

- bids may include a premium to cover the fact that the framework agreement establishes fixed prices and are non-exclusive. This can be partly overcome by requesting a stepped pricing structure.
- risk that all parties may become less attentive to performance monitoring and quality inspection.

The Framework Arrangement method is appropriate where:

- there is a recurrent need for the same or similar requirements, or set of specifications butthe nature and timing of specific requirements are often not known until the time an order is placed;
- different procuring entities procure the same goods (or goods and related services), works, consultancy services or general services and aggregating the demand could lead to volume discounts; or
- as part of planning for emergency situations.

This method can be applied as two different types of framework agreement:

i. an agreement which is put in place with one or more suppliers, contractors or consultants for the supply of a range of goods (or goods and related services), works, consultancy services or general services in which the prices (or more accurately, a pricing formula) and terms and conditions are all agreed for the duration of the period of the arrangement; **or**

ii. where confirmed bid prices are determined by a 'mini-competition' between the suppliers, contractors or consultants that have been awarded the framework. They can also be used to refine other value for money criteria. However, the award criteria must remain consistent with those applied at the time the arrangements were put in place.

Both types of arrangement can be let with a single supplier. The 'mini-competition' arrangement involves firming up the indicative prices for the goods (or goods and related services), works, consultancy services or general services incorporated in the original ITB. There should be no potential for negotiation or varying the contract when calling off a requirement against a framework - finalizing the terms of any contract under a framework should be a 'mechanistic' procedure, not involving re-negotiation of the terms already established.

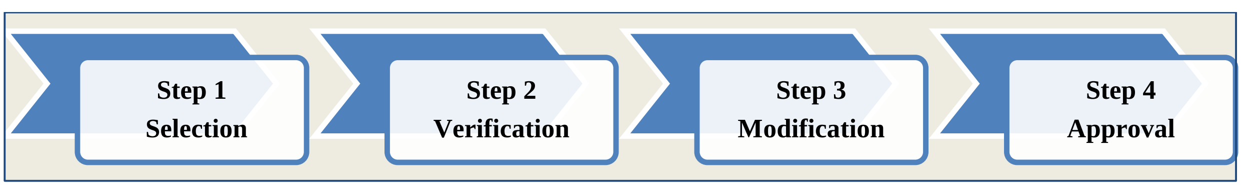
C.2.3. Selecting a Procurement Method

As explained in earlier parts of this Operating Manual, once the budget is determined the method of procurement must be selected.

The different procurement methods as set out in **Table 4** above are reiterated as follows:

- **Open Competitive ("Public") Tender Method** (primary procurement method for works valued above SAT$150,000 and goods (or goods and related services) and general services valued above SAT$100,000)))
- **Request for Proposals ("RFP") Method** (primary procurement method for high consultancy services valued above SAT $100,000 and low value consultancy services valued below SAT $100,000))
- **Request for Quotations ("RFQ") Method** (primary procurement method for works valued between SAT$0 – SAT$150,000 and goods (or goods and related services), and general services valued between SAT$0 – SAT$100,000)
- **Selective/Restricted Bidding Method** (an alternative procurement method for goods (or goods and related services), works, general services and consultancy services on a given circumstances)
- **Limited Bidding Method** (an alternative procurement method for goods (or goods and related services), works, general services and consultancy services on a given circumstances)
- **Direct Procurement Method** (an alternative procurement method for goods (or goods and related services), works, and general services on a given circumstances)
- **Framework Arrangement Method** (an alternative procurement method for goods, works, general services and consultancy services)

The default or primary procurement methods and alternative methods are clarified in the preceding box and **Table 4**. The process to ascertaining the correct method is as follows:



Step 1: Selection:

The method of procurement is selected according to the category of procurement, the budget and the application of the Thresholds.

Step 2: Verification:

If the procuring entity considers the method appropriate for the scope of requirements, then they may proceed with the procurement applying the mandatory Standard Bidding Document (SBD) for that threshold without any approval from the head of the procuring entity, unless applying the Limited Bidding Method, Selective Bidding Method, Restricted Bidding Method or Framework Arrangement Method.

Step 3: Modification:

There may be circumstances when the procuring entity may consider one of the other procurement methods would be beneficial. The research undertaken as part of the market engagement will be useful in determining a modified approach. A modification may propose a more open or a more limited method, for example:

> *"if a procurement is of a threshold value that dictates an open competitive approach but the supplier base is known to be very limited, then the procuring entity may wish to obtain approval to use Restricted Bidding,*
>
> *"Proposing a higher method - a 'restricted' procurement where there is a lack of suppliers a specific category may benefit from an 'open' approach to the market."*

Any modification as to the method of procurement (if it is not the primary procurement method) requires the prior written approval of the Tenders Board before any further action may be taken.

The written application must include:

- The scope of requirements
- Provisional budget
- Original method of procurement
- Modified method of procurement
- Justification for modification

The justification for modification should be easy to articulate and the grounds must be detailed. Statements such as *'We wish to procure the hospital beds by single-source procurement'*, with no further explanation will not be accepted. NB the grounds must be consistent with the Instructions and sections of this Manual relating procurement methods.

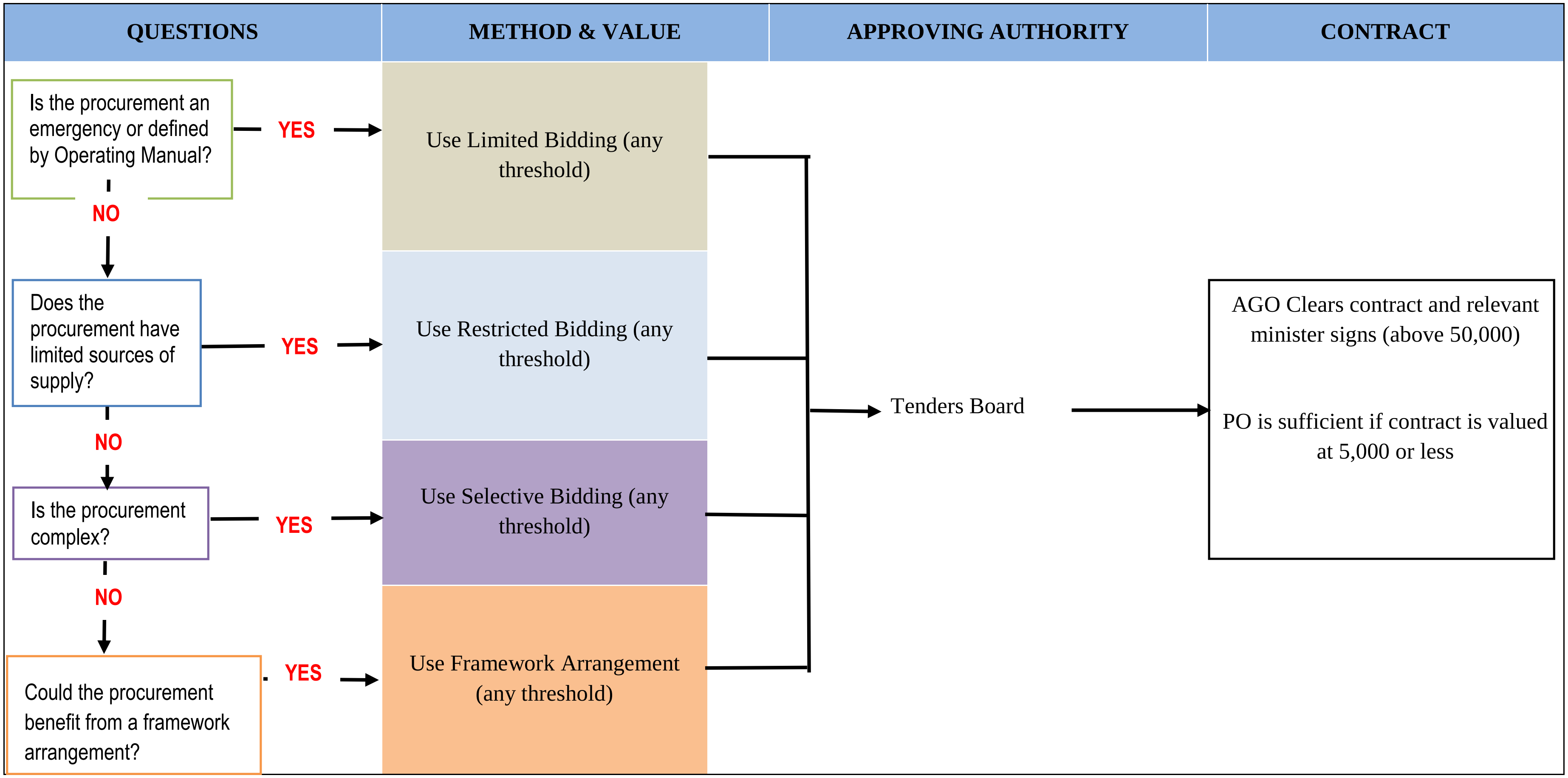
Step 4: Approval:

Once the procuring entity has the necessary approval then they may proceed with the procurement applying the mandatory SBD for that threshold without any approval from the head of the procuring entity.

The following flowchart may assist the procuring entity in their selection of the appropriate procurement method (including approving authority and contract clearance/signing) and must be considered together with Table 5:

Table 5: Procurement Methods, Approving Authority, Contract

QUESTIONS	METHOD & VALUE	APPROVING AUTHORITY	CONTRACT
Is it a procurement of goods (or goods and related services) or general services? YES	Open competitive Tender (above 100,000)	Cabinet/Tenders Board/ Board of Directors of a Public Body	AGO clears contract above $5,000& relevant Minister/Chair of the Board of Director signs
	RfQ (above 50,000 and up to 100,000)		
	3 Written Quotes (above 5,000 and up to 50,000)	Relevant CEO	AGO Clears Contract above 5,000 and relevant CEO Signs
	3 Verbal Quotes (up to ,000)		
NO			
Is it a procurement of works? YES	Open Competitive Tender (above 150,000)	Cabinet/Tenders Board/ Board of Directors of a Public Body	AGO clears contract above $5,000 & relevant Minister/Chair of the Board of Director signs
	RfQ (above 50,000 and up to 150,000)		
	3 Written Quotes (above 5,000 and up to 50,000)	Relevant CEO	AGO Clears Contracts above 5,000 and relevant CEO Signs
	3 Verbal Quotes (up to– 5,000)		For Contracts valued at 5,000 or less, no contract is required but PO is sufficient
NO			
Is it a procurement of consultancy services? YES	Request for Proposal High Value (above 50,000)	Cabinet/Tenders Board/ Board of Directors of a Public Body	AGO clears contract & relevant Minister signs
	Request for Proposal Low Value (up to 50,000)	Relevant CEO	AGO Clears contract above 5,000 and relevant CEO signs
NO			



<u>Note for Table 5</u>: *Procurement Contracts valued above 5,000 are cleared by AGO.*

C.3. Procurement Requirements and Selection Criteria

C.3.1. Procurement Requirements

The description of requirements is a key document which is used throughout the procurement process. In specifying the need the procuring entity will establish what is to be procured but also the key measurement of how a bidder has responded. It should reflect the precise requirements of the procuring entity, unless two stage bidding is required. It is used to:

- inform the procuring entity what needs to be procured providing the basis for the procurement planning and budgeting;
- inform bidders of the procuring entity's requirements through inclusion in the ITB;
- encourage competition;
- provide the technical standard against which bids are evaluated;
- form part of the contract, defining the goods (or goods and related services), works, consultancy services or general services to be supplied); and
- set the technical standard for inspection or measurement prior to acceptance and payment.

Across the four categories of procurement there are different titles given to the requirements:

Goods	Technical Specifications
Works	Work Requirements
Consultancy services	Term of Reference (TOR)
General services	Procuring Entity's Requirements

The following advice is generic advice across all four categories:

- must be as open as possible to encourage the best possible competition. However, they may not be so broad that performance of the goods (or goods and related services), works consultancy services or general services may be compromised.
- must consider the purpose or intended use as well as a list of all the required attributes, variables and parameters.
- must use language which is simple, clear and explicit.
- must use reference national, international and professional standards, as a minimum, wherever possible.
- reference to brand names, trademark, patent or unique characteristics should be avoided. However, this is not always possible, so 'or equivalent' should be added as appropriate.
- must consider performance and functional requirements and any post contract maintenance or support.
- must specify that all materials provided under the contract are the latest design and are new and unused.

- must include any environmental or safety features.
- must provide detail of any inspection or testing requirements.

It may be necessary to seek advice from other Government bodies or external specialists. However, in preparing requirements procuring entities must ensure there is no conflict of interest with the potential successful bidder.

The use of standardized specifications, especially in the use of commonly procured items should be encouraged.

If the procuring entity is applying the Framework Arrangement Method they must specify their technical requirements in accordance with this advice, however, the quantities provided must cover the maximum quantity anticipated over the duration of the framework arrangement, regardless of the number of procuring entities that may be participating. In the case of multiple procuring entities then all must approve the technical requirements to be included in the ITB.

C.3.1.1. **Developing the Technical Requirements through Staged Bidding**

Occasionally there may be circumstances where a procuring entity is unable to comprehensively articulate the technical requirements. This approach is predominantly applied in goods and works but can also be useful in developing more complex service delivery. This may be because;

- It may prevent bidders from preparing their best technical offer harnessing the bidder's expertise and technical know-how such as turnkey contracts for large complex facilities, plant or works of a special nature or complex information technology (IT) systems.
- It is a new requirement for the procuring entity.
- It is a sector with ongoing innovation.

The procuring entity should still adopt the advice outlined below, but with the understanding that it would be simplified or more driven by functional requirements, for example; *"the procuring entity requires a bottling plant to produce 1000 bottles of soda a day"*. The description should emphasize the objectives of the procurement and the performance required from the goods (or goods and related services), works, consultancy services or general services, to enable bidders to provide alternative solutions which meet the objectives and performance required.

Advantages of adopting this approach are:

- It is a more flexible approach to awarding contracts because it allows participation of prospective bidders in the definition of the technical specifications and scope of work.
- The selected bidder is more likely to have a good understanding of the requirement, which potentially reduces risks in the implementation of the contract.
- Prospective bidders are able to make suggestions for improvement of the technical specifications and scope of work of the assignment, through their technical proposal and clarification discussions.

- The second stage bidding period is reduced.
- The technical approach and methodology can be adjusted to suit the agreed technical specifications and scope of work.
- Risk is minimized given the early involvement of prospective bidders in the definition of the technical specifications and scope of work.
- A contract is negotiated on the basis of the agreed technical specifications and scope of work.
- More certainty regarding the qualifications of the preferred bidder.

Disadvantages of this approach are:

- Extended procurement lead-time due to two stage submission process.
- Second stage negotiations with the highest ranked bidder could prove difficult and protracted.
- There is risk of price escalation, and negotiations becoming adversarial in the second stage.
- Once a firm is selected for negotiations, competition is lost, and this may impact price.

C.3.1.2. **Goods Requirement**

Procuring entities should be mindful that goods procurement may include an element of small works or consultancy services procurement in which case reference should also be made to Works Requirements or TOR.

The procuring entity should commence with a general description with a summary list of items. Items should be numbered with associated products given a sub-number. For example;

OFFICE EQUIPMENT			
ITEM	**DESCRIPTION**	**QTY**	**UNIT OF MEASURE**
1	Desktop computer	4	Each
1a	Monitor	4	Each
1b	Hard drive	4	Each
1c	Keyboard	4	Each
2	Photocopier white 80gsm	10	reams

4WD VEHICLE			
ITEM	**DESCRIPTION**	**QTY**	**UNIT OF MEASURE**
1	4WD Vehicle	4	Each
2	Spares and Accessories		
2a	Wheels	4	Per vehicle
3	Service		
3a	After sales service	1	Per vehicle

The description should be a brief outline of what is required and include units of measure e.g. kilograms, litres, reams etc. Consideration should be given to including any spare parts or consumable items required, either by specifying the items required or requesting the spares or consumables normally required for a specified period of operation, such as one year. The list of goods should also describe any incidental works or consultancy services required, such as installation and commissioning, preparation of the site for installation or user training.

To accompany this, the procuring entity must prepare the detailed specification. This should be incorporated into a Statement of Compliance format.

ITEM NO.	TECHNICAL SPECIFICATION	STATEMENT OF COMPLIANCE

In adopting this format bidders must indicate whether their product complies with the procuring entities specification or not on a line by line basis. Any deviations or omissions have to be detailed by the bidder in the Statement of Compliance. This is an invaluable aid in evaluation. As part of the bid submission this document should be stamped and certified by the bidder.

It is important that the item numbers cross reference with the 'Summary List of Items'.

The technical specification should define the minimum technical characteristics. Bidders may exceed these requirements, but they will not benefit as part of the evaluation.

Technical specifications should be prepared for **each** item and contain a complete, precise and unambiguous description of the goods required, by specifying:

ITEM NO.	TECHNICAL SPECIFICATION	STATEMENT OF COMPLIANCE
1	**MANDATORY** **Functions or characteristics** e.g. dosage of a drug, air-conditioning in a vehicle to include any required manufacturing processes, workmanship or materials **Performance** e.g. the speed of a printer or the accuracy of laboratory equipment **Quality standards** ISO 9001 **Purpose** To include the intended use **Operating conditions** e.g. temperature or humidity ranges or, where no specific or unusual conditions apply, state "suitable for use in Samoa" **Drawings**	

	Of the goods, including site plans for installation. **Environmental or safety features** ISO/IEC 17025 **Packaging, marking and labeling** e.g. pills to be packaged in blister packs corresponding to weekly dosages, for HIV test kits to be individually packaged, along with the required protective gloves and instructions for use or for drugs to be marked with their expiry date **Documentation** E.g. manuals, user guides, licenses, test certificates etc. **OPTIONAL** **Inspection and testing** Including performance parameters, including outputs, timescales, and any indicators or criteria against which the satisfactory performance of the goods will be tested. **Maintenance and after-sales support** E.g. what post-contract support may be required including any requirements for in-country support and presence qualifications of in-country staff, national stock holdings etc. **Training** E.g. the number of people to be trained in use, maintenance or repair of equipment, the location for training, the standard to be attained etc. **Incidental works or services** e.g. preparing a site for installation, the current state of the site and the work required should be stated e.g. a thickness of concrete base for machinery	

The list of MANDATORY features should also be proposed by the procuring entity regardless of the complexity of the goods to be procured.

As an ancillary document to the Technical Specification the procuring entity should also prepare the proposed delivery schedule at this time.

The delivery schedule should specify the delivery period and place for each of the items listed. Where any related works or services are included, the delivery schedule should also state the completion period and the site.

In preparing the delivery schedule, the following guidance should be taken into account:

- The delivery and completion periods should be realistic. Unrealistically short delivery or completion expectations may result in restricted competition or may prompt complaints from prospective bidders and/or an increase in cost in order to accommodate the delivery requirement.

- The delivery and completion periods are best expressed as a number of days, weeks or months from the date of contract award, as precise dates cannot be determined until the contract has been placed.
- The delivery period should take into account whether the procurement is of standard, readily available goods or goods which are likely to be manufactured to order.
- Where appropriate, different delivery periods should be given for different items or the total requirement should be split into several batches, with phased deliveries.
- The delivery period should take into account whether the goods are likely to be available in Samoa or require importing. Where the goods are likely to be sourced internationally, the location of the goods and likely transport times should be considered.
- When the description of requirements is included in an ITB, the procuring entity should check that the delivery period specified takes into account the Incoterm specified for delivery. It must be remembered that under the Incoterms CIF, CIP, FOB, FCA or EXW, the delivery of goods takes place when they are delivered to the carrier, not when they are delivered to the final destination. Under other Incoterms, a realistic time should be allowed for delivery considering the mode of transport.

C.3.1.3. Works Requirements

C.3.1.3.1. General

Procuring entities should be mindful that works procurement may include an element of goods or services procurement in which case reference should also be made to Technical Specifications and TOR.

These requirements reflect the respective responsibilities of the contractor and the procuring entity and will form part of the contract that is awarded.

These schedules must be prepared by an engineer with appropriate technical qualifications and experience, for example requirements of the refurbishment of a substation should be prepared by an electrical engineer.

Works requirements should be structured as follows:

i. *Scope of works*
ii. *Specification*
iii. *Completion Schedule*
iv. *Drawings*
v. *Supplementary Information*
vi. *Bill of Quantities or Activity Schedule*

Where the contractor is responsible for the design of any part of permanent works, the extent of his obligations shall be stated.

It is recommended that essential technical and performance characteristics and requirements, including maximum or minimum acceptable values, as appropriate, be summarized in a specific section, to be completed by the Bidder, and submitted as an Attachment to the Bid Form.

C.3.1.3.2. Drafting the Works Requirements

i. Scope of works

The Scope of works should provide:
i. a description of the works; ii. approximate quantities of major items; iii. a background narrative to the work required, where appropriate; and iv. the objectives of the works required, where appropriate.

This section should include an outline of the works required and the objective to be achieved. This should be regarded as a design brief for the engineer.

The scope of works will normally form the first part of the description of requirements, but will need to be prepared last, once approximate quantities etc. are known. A description of approximately 1-2 pages is appropriate for most contracts.

ii. Specification

Most specifications are normally written specially to suit the specific works in hand. There is no standard set of specifications for universal application in all sectors, although there are established principles and practices.

There are considerable advantages in standardizing General Specifications for repetitive works in recognized public sectors, such as highways, ports, railways, urban housing, irrigation, and water supply, in the same region or where similar conditions prevail. The General Specifications should cover all classes of workmanship, materials, and equipment commonly involved in construction, although not necessarily to be used in a particular works contract. Deletions or addenda can then be used to adapt General Specifications to the particular works.

iii. Completion Schedule

The completion schedule should specify the completion period and site for each part of the works. In preparing the completion schedule, the following guidance should be taken into account:

- The completion periods should be realistic. Unrealistically short completion periods may result in restricted competition or may prompt complaints from prospective bidders.
- The completion periods are best expressed as a number of days, weeks or months from the date of contract award, as precise dates cannot be determined until the contract has been placed.

iv. Drawings

Technical drawings are required to define the works required by the procuring entity. The construction drawings, even if not fully developed, must show sufficient detail to enable bidders to understand the type and complexity of the work involved and to price their bids. In addition to the construction drawings, a simplified map showing the location of the Site in relation to the local geography, including major roads, ports, airports and railroads, is helpful.

When preparing the ITB, it is normal practice to insert a list of drawings, although the drawings themselves are often bound and issued in a separate volume, particularly where they are numerous or issued in large format, such as A1 or A2 paper. The list should detail:

- Type of Drawing
- Drawing Title
- Drawing No
- Sheet
- Revision

v. Supplementary Information

In the main all relevant requirements or information should form part of the scope of works. However, there may be ancillary reports, for example environmental studies which would need to be referenced discretely.

vi. Bill of Quantities or Activity Schedule

A bill of quantities should be prepared for inclusion in the ITB, where the requirement is to be contracted as an ad-measurement contract. Bidders are then required to price the bill of quantities in their bids and the priced bill of quantities becomes part of the contract. Payment is then made using the rates in the priced bill of quantities, but based on the quantity of work actually performed, which is measured on a regular basis.

Therefore, the objectives of the bill of quantities are:

- to provide sufficient information on the quantities of works to be performed to enable bids to be prepared efficiently and accurately; and
- to provide a priced bill of quantities for use in the periodic valuation of works executed, once a contract has been entered into.

In order to attain these objectives, works should be itemized in the bill of quantities in sufficient detail to distinguish between the different classes of works, or between works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. The layout and content of the bill of quantities should be as simple and brief as possible. The accuracy of the data in the bill of quantities is important as the rates and estimated quantities against which actual work is measured for payment purposes. Sample bill of quantities are provided in the Standard Bidding Documents (SBD).

For lump sum contracts an activity schedule should be prepared instead of a bill of quantities for inclusion in the ITB. Bidders are required to bid a lump sum price, based on the activity schedule and the successful bidder's bid price becomes the contract price. The actual work performed will not be re-measured for payment purposes, as under an ad-measurement contract, so the breakdown of price on the activity schedule is only used for contract variations.

Therefore, the objective of the activity schedule is to provide a breakdown of the activities and their associated cost that form the works to be paid on a lump sum basis. The breakdown is intended to be used:

- as the basis for certifying interim payment to the supplier; and
- to assist in valuing any ordered variations.

The works should be broken down by consideration of the nature of each activity and if applicable by the location. The procuring entity will have to determine the degree to which the works need to be broken down by consideration of the complexity of the works and the stated time for completion. Schedules can be provided for each different discrete element of the works. If the works require plant and equipment to be provided, separate schedules for the supply only of the plant and equipment may be provided. The activity schedule should be as simple and brief as possible. Sample activity schedules are provided in the SBD.

C.3.1.4. Consulting Services Requirements

Procuring entities should be mindful that consultancy services procurement may include an element of goods procurement in which case reference should also be made to Terms of Reference (TOR).

C.3.1.4.1. General Overview

The TOR need to communicate to the bidder the full scope of consultancy services required by the procuring entity without being too prescriptive. TOR need to allow consultants to match their skills, experience and the integration of latest best practice with the requirements of the procuring entity in order to optimize the technical solution. Each TOR will be unique, but by following the structure below procuring entities will ensure their requirements are suitably demonstrated and also allow for standardized text where appropriate.

The TOR reflects the respective responsibilities of the consultant and the procuring entity and will form part of the contract that is awarded.

The TOR should be titled to provide a brief description of the type of consultancy services required and where the consultancy services would be performed, for example curriculum and assessment adaptation for primary schools in Samoa; monitoring and evaluation of road safety across Samoa.

The Terms of Reference (TOR) should then be structured as follows:

i. *Background,*
ii. *Objectives,*
iii. *Scope of Services,*
iv. *Team Composition & Qualification Requirements for the Key Experts*
v. *Outputs and Time Schedule, and*
vi. *Data, Local Services, Personnel, and Facilities to be provided by the procuring entity*

C.3.1.4.2. Drafting the TOR

i. Background

The background should describe the circumstances and the environment in which the consultancy services are required and whether it forms part of a bigger project. For example, the TOR to undertake an M&E study of road safety will first outline the some of the challenges facing road safety in Samoa, the achievements made in improving road safety and then go on to describe the Government's current road safety policy.

It is assumed that only public funds are being used, but if there is any counterpart funding that should be mentioned.

The background should also cover if any other similar studies have been undertaken or if this set of TOR is as a result of another set of recommendations. A list of any relevant studies or data should be provided separately referenced via an internet link or attached to the TOR.

ii. Objectives

This is what the assignment is expected to achieve. For example, using M&E of road safety, the objectives would be to review improvements in data capture, management and reporting and to also recommend system improvements.

iii. Scope of the Consultancy Services

This section will describe the specific activities that the consultancy services will address, including any environmental or safety objectives. It should not discuss the approach or methodology by which the results may be achieved. It is important to be as precise as possible in this section as the information it contains will indicate to the consultants how much effort or person days the assignment is expected to take.

It may be necessary to break the scope into phases either because of limitations on funding; to facilitate management of the assignment or where the scope of work may be modified as a phase is completed. The procuring entity should indicate if there is likely to be any downstream assignments anticipated. This is important for potential conflict of interest at a later stage as a consultant may choose not to express interest if the assignment is the first stage in a project, i.e. a scoping opportunity and wait for the implementation assignment.

It is important that the scope considers national, social and cultural conditions, along with seasonal variations.

Capacity building or transfer of knowledge will often form an important aspect of the assignment. It's important to list and quantify what is expected to be delivered from the assignment. Some assignments will not include a capacity building element – for example an environmental impact assessment. Capacity building and transfer of knowledge components are encouraged, where the budget allows. It should not detract from an assignment's focus on its overall objectives, but it is an important opportunity in increasing the skills and knowledge within Samoa.

It should also cover the location(s) for the performance of the consultancy services, including if appropriate, the procuring entities premises.

If the scope is difficult to define then use an alternative approach, for example, to estimate the amount or value of the work.

iv. Team Composition & Qualification Requirements for the Key Experts

This section should identify the key roles, their qualifications and experience and potential levels of input. This is important for the eventual evaluation of the proposals received.

v. Output and Time Schedule

The outputs of an assignment are normally quantified by documents, often inception, monthly and final reports coupled with specific reports that contain recommendations. Ensure that the outputs are quantified as precisely as possible as it will make the resulting contract much easier to manage.

If additional reporting is required then the format, frequency and content should be specified. For all outputs the procuring entity should specify that all reports must be in English and the number of copies.

This section should also include the overall duration for the assignment and if there is any final completion date. The time schedule for relatively straight forward assignments such as the one used as an example are fairly easy to set down. More complex assignments that involve various stakeholders and procuring entity approvals beyond the direct control of the consultants have to allow more time. However, the mechanisms for managing these more complex timelines can be dealt with through contractual conditions

vi. Data, Local Services, Personnel, and Facilities to be provided by the procuring entity

It is important that the institutional arrangements for management of the assignment from within the procuring entity are clearly stated, as this will be a different party from the procurement process.

This section will deal with what; if anything will be provided by the procuring entity to the consultants to assist them in delivering the assignment. There is always a temptation to place the entire responsibility with the consultants. This should be avoided when possible as consultants, especially international ones will be unaware of the local conditions and are likely to estimate costs on the higher side to cover all eventualities therefore increasing the overall assignment's budget/cost.

Releasing counterpart or support staff from the procuring entity can be useful in developing capacity and reducing the potential budget. However, this is an important commitment that consultants will rely upon and the procuring entity must be comfortable that staff may be released as specified. These public officers will remain in the employment of Government and will not receive any remuneration from the consultant.

The more the project can support the consultants the better, however when specifying the consultancy services and facilities that the procuring entity will provide always make sure that they are actually available – if they are not, or are not available when required, there is a danger that consultants could sit around being unproductive at the procuring entities cost or at least not working as effectively as they could.

This section should also cover access to site and if any permits or visas might be required.

C.3.1.5. **General Services Procuring Entity's Requirements**

Procuring entities should be mindful that general services procurement may include an element of goods and works procurement in which case reference should also be made to the Procuring Entity's Requirements.

C.3.1.5.1. **General**

The Procuring Entity's Requirements should provide sufficient information to enable bidders to understand the general services required by the procuring entity and should be complete, precise and clear. Well-prepared requirements will facilitate the preparation of bids by bidders, evaluation of bids by the procuring entity and for any resultant contract a priced Activity Schedule for the monitoring and payment of the services performed.

The precise contents of the Procuring Entity's Requirements will be determined by the individual assignment, but should include the following details, where applicable:

- the purpose of the assignment and what it is expected to achieve;
- a description of the scope of the services required;
- the location or locations for performance of the services e.g. specify the address, where services are to be performed on the procuring entity's premises;
- the role, qualifications and experience of any key staff required, such as supervisors;
- the duration of the contract or expected completion date;
- the hours of work or hours when the supplier will have access to the site;

- an estimate of the amount or value of services or work involved, where the scope of the general services cannot be precisely defined e.g. vehicle repair services for 50 vehicles for a one-year period;
- any facilities, services or resources to be provided by the procuring entity;
- any particular equipment to be provided by the supplier e.g. security screening equipment for a building security contract;
- any required performance targets or response times e.g. routine repairs must be completed within 3 days;
- arrangements for reporting to the procuring entity, including lines of communication and the contact point for management and administration of the assignment;
- any other details or requirements relevant to the assignment.

In order to capture this level of detail the Procuring Entity's Requirements should be structured as follows:

i.	Objectives of assignment
ii.	Description of assignment
iii.	Activity Schedule
iv.	Performance Specification and Drawings
v.	Supplementary information
vi.	Facilities and Utilities to be provided by the procuring entity

C.3.1.5.2. **Drafting the Procuring Entity's Requirements**

i. Objectives of the Assignment

This is what the assignment is expected to achieve. For example, cleaning services in government offices, the objectives would be providing high quality and reliable cleaning services in government facilities.

ii. Description of the assignment

This will primarily follow the scope of services as in consultancy services i.e. this section will describe the specific activities that the general services will address, including any environmental or safety objectives. It should not discuss the approach or methodology by which the results may be achieved. It is important to be as precise as possible in this section as the information it contains will indicate to the consultants how much effort or person days the assignment is expected to take.

It may be necessary to break the scope into phases either because of limitations on funding; to facilitate management of the assignment or where the scope of work may be modified as a phase is completed. The procuring entity should indicate if there is likely to be any downstream assignments anticipated. This is important for potential conflict of interest at a later stage as a consultant may choose not to express interest if the assignment is the first stage in a project i.e. a scoping opportunity and wait for the implementation assignment.

It is important that the scope considers national, social and cultural conditions, along with seasonal variations. It should also cover the location(s) for the performance of the general services, including if appropriate, the procuring entities premises.

However, there may also be an element of goods and works procurement in which case the procuring entity must also follow the guidance at **Section C.3.1.2. Goods Requirements** and **Section C.3.1.3. Works Requirements** respectively.

iii. Activity Schedule

Dependent on the assignment the activity schedule may include the following:

a. Day-work Schedule

(a) A list of the various classes of services, labour, materials, and plant for which basic day-work rates or prices are to be inserted by the bidder, together with a statement of the conditions under which the service provider will be paid for services delivered on a day-work basis.

(b) Nominal quantities for each item of day-work, to be priced by each bidder at day-work rates as bid. The rate to be entered by the bidder against each basic day-work item should include the service provider's profit, overheads, supervision, and other charges.

b. Provisional Sums

The estimated cost of specialized services to be carried out, or of special goods to be supplied, by other service providers should be indicated in the relevant part of the Activity Schedule as a particular provisional sum with an appropriate brief description.

c. Bill of Quantity

Please see **Section C.3.1.3.2. Drafting the Works Requirements**.

d. Personnel Activity Schedule and Key Personnel

This may quantify a specific place, shift and frequency of utilization in the Activity Schedule. In case any key personnel are required (including any management); their qualification and experience required may also be mentioned.

e. Material Schedule

For any materials/consumables/tools of trade to be consumed or deployed, a separate materials schedule should be included, indicating the specification and quantity of such materials/consumables/tools to be consumed or deployed per unit activity/day/location/per manpower deployed.

Price of all these materials/tools etc. is to be shown as a separate Lump-sum cost in the financial bid by the bidder or the procuring entity may include a provisional sum.

f. Essential Equipment

Any essential equipment, machinery (trucks, cranes, washing machines, vessels/crafts, plant and machinery etc.) that the service provider must have and should deploy as a qualifying requirement must be mentioned along with specification, capacity, age of equipment etc. It should be ensured that operators for such equipment must be mentioned as key personnel.

iv. Performance Specification and Drawings

The performance specification or drawings if necessary should be specified for each activity, materials, tools and machines to be used in the activity. Any reporting requirement, periodic meetings or other submissions must be part of the Activity Schedule.

The performance specification must be precise and clear so that the bidder may respond realistically and competitively without qualifying or conditioning their bids. They must include a clear statement of the required standards of workmanship, materials, and performance of the goods, works and services to be procured, including any standards or professional codes which must be met.

In all other respects the procuring entity should follow the advice at **Section C.3.1.2. Goods Requirements** and **Section C.3.1.3. Works Requirements**.

v. Supplementary Information

In the main all relevant requirements or information should form part of the scope of works. However, there may be ancillary reports, for example environmental studies which would need to be referenced discretely.

vi. Facilities and utilities to be provided by the procuring entity

It is important that the institutional arrangements for management of the assignment from within the procuring entity are clearly stated, as this will be a different party from the procurement process.

This section will deal with what; if anything will be provided by the procuring entity to the service provider to assist them in delivering the assignment. There is always a temptation to place the entire responsibility with the service provider. This should be avoided when possible as the service provider, especially international ones will be unaware of the local conditions and are likely to estimate costs on the higher side to cover all eventualities therefore increasing the overall assignment’s budget/cost.

This section should also cover access to site and if any permits or visas might be required.

C.3.2. Preparing the Budget

In parallel to developing the technical requirements the procuring entity should build the budget. It may simply be the case that the budget is allocated by Government expenditure for the previous year, however, where this is not the case the procuring entity will need to propose a budget allocation.

The budget should be developed using a combination of historical contract data and current research. The most important aspect is that it is realistic.

Procuring entities shall not splinter or fragment procurement contracts in order to avoid the required method for competition or approval. Also when estimating for a framework agreement the procuring entity shall include the estimated maximum total value of the procurement contract envisaged under a framework agreement over its entire duration, taking into account all forms of remuneration.

C.3.3. Supplier Research and Market Analysis

As part of the early planning of a procurement activity the procuring entity must give consideration to the potential sources of supply. This analysis supports the planning process and may influence the final method selected and level of domestic margin of preference applied.

Robust supplier research and market analysis can assist on a number of levels:

- latest information on technological trends in the market
- current pricing structures
- how the market operates for example, commodities bought on spot markets versus long lead delivery products
- key players
- level of competition
- identify potential barriers to the market
- exploring latest trends in sustainable and ethical issues.

All of these impacts on the strategy that is to be adopted from the simplest procurements to the most complex.

The resources accessed would include previous procurements; market data accessed through the internet; supplier’s catalogues, brochures and annual reports; international and national legislation and policies; data maintained by the Procurement Division; data maintained by other Government procurement officers, Chambers of Commerce, trade or other industry linked organizations.

It is also important that procurement officers develop their knowledge and understanding of the market as part of defining appropriate levels of eligibility and evaluation criteria in the SBDs.

Procuring entities are encouraged to develop and maintain market knowledge in their own sectors as the strength of this work will be particularly beneficial to selective, restricted, limited bidding, direct and single source selection and preparing robust shortlists and budgets.

Restricted and limited bidding may be typically found in the procurement of:

- high tech or security sensitive items
- rare commodities

- innovative or bespoke items
- refurbishment of existing equipment
- maintenance and repair.

C.3.4. Discrimination in the market

It is essential at all times that procuring entities maintain an open and equal engagement of the market to ensure the best outcome for Government.

Any discrimination would leave individuals liable to further action and the procuring entity to a legal challenge from national and international suppliers/contractors and consultants.

C.3.5. Eligibility

C.3.5.1. **Eligibility criteria**

A bidder must be 'eligible' in order to participate in procurement proceedings. These criteria are a mandatory requirement in the procurement process and should form part of the procuring entity's market strategy. It is important to note these are different from the evaluation and qualification criteria which will be discrete for each procurement.

The eligibility criteria are predetermined in the SBD templates and incorporates the following;

a). the bidder is a private entity or a (JV);
b). the nationality of a bidder and any subcontractors or suppliers. The Government does not currently operate any restrictions on eligible countries of supply;
c). bidders may have prequalified in order to participate;
d). a bidder shall not have a conflict of interest;
e). a bidder (or any director, officer, manager or supervisor) has not been
- convicted of any criminal offence (within the previous 3 years) in Samoa or elsewhere; nor
- suspended or disbarred by the Government or elsewhere;

f). the bidder is legally qualified to perform the contract in Samoa or its country of registration;
g). the bidder is not insolvent, in bankruptcy, in receivership or under liquidation;
h). there are no legal proceedings which may affect the ability or legal capacity to perform the contract;
i). all taxes, statutory contributions, levies, license fees and other similar fees and charges will have been paid.

The procuring entity may edit the eligibility criteria for the following aspects:

i. Joint Ventures

The procuring entity may indicate the number of members in a joint venture (JV). For example, in works contracts it may be beneficial to open the number of members if the works including a variety of disciplines (construction, water, power) thereby enhancing the experience of the bidder. It may also be a positive action to encourage international bidders to include national bidders as part of the JV. Equally it may be beneficial to limit the number of members. This may be important where the procuring entity does not wish to dissipate the level of liability.

ii. Alternative bids

This must be an affirmative statement in the ITB and the scope clearly defined. This is discussed further in the SBDs. For the avoidance of doubt, alternative bids do not allow the bidder to offer terms or conditions that would compromise the procurement process and that the procuring entity reserves the right to reject any such offer (e.g. where a bidder offers to make payment or provide some form of consideration in the event that such bidder is awarded the tender/contract).

C.3.5.2. Conflict of interest

The same rules of conflict of interest set out in the Instructions K.10B apply similarly to this Manual.

- Bidders must declare any potential conflict of interest.
- Bidders shall not be contracted in instances where they would be in conflict with their prior or current obligations to Government or that may place them in a position of being unable to carry out the assignment in the best interest of the procuring entity.

To determine its materiality, a conflict of interest situation has to be reviewed - taking into consideration: the timing; the relatedness of the assignments; as well as the source; nature; potential impact of the conflict; and the circumstances under which it arises.

Common areas for conflict of interest include:

a). **Conflict between consultancy activities and procurement of goods (or goods and related services), works or general services**: Where a firm that has been engaged by the procuring entity to provide goods (or goods and related services), works, or services for a project, each of its affiliates shall be disqualified from providing consultancy services related to those goods, works or services. If a firm is contracted to provide consultancy services for the preparation or implementation of a project, each of its affiliates shall be disqualified from subsequently providing goods, works or services resulting from, or directly related to the firm's consultancy services for such preparation or implementation.

b). **Conflict among consultancy assignments**: Neither consultants (including their personnel and sub-consultants), nor any of their affiliates shall be contracted for any assignment which, by its nature, may be in conflict with another of their assignments. For example, consultants contracted to prepare an engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project. Similarly, consultants assisting a client in the privatization of public assets shall neither purchase, nor advise purchasers of such assets. In the same vein, consultants contracted to prepare TOR for an assignment, shall not be contracted for the assignment in question.

c). **Relationship with procuring entity's staff**: Consultants (including their personnel and sub-consultants) who have a business or family relationship with a member of the procuring entity's staff who are directly or indirectly involved in any part of: (i) the preparation of the TOR for the contract, (ii) the selection process for such a contract, or (iii) supervision of such a contract, may **not** be awarded a contract, unless the conflict stemming from this relationship has been resolved in the appropriate manner.

The consultant must be free from any relationship or affiliation that would compromise their ability to perform the assignment in an objective manner. The potential effects of conflicts of interest must be addressed early and re-examined at every stage of the consultant selection process. If the procuring entity is not in a position to make a fully informed evaluation of a conflict of interest situation, the head of the procuring entity must seek advice from the Procurement Division.

C.3.5.3. Unfair Competitive Advantage

Fairness and transparency in the selection process require that consultants or their affiliates competing for a specific assignment do not derive an unfair competitive advantage from having provided consulting services related to the assignment in question. Therefore, the Procuring Entity shall make available to all the short-listed consultants together with the request for proposals all information (except information developed by the consultant) that would in that respect give a consultant a competitive advantage.

C.3.6. Communication

All notices must be published as follows:
a). on the procuring entity's website and social media platform, **b).** on the Ministry of Finance website; and **c).** on the Government of Samoa e-Tendering Portal

It is essential that public officers ensure the highest standards in any form of procurement communication. For some, this will be the first engagement with Government and therefore respecting the guiding principles (Instructions K.2.1) is imperative. Public officers must also maintain rigorous records **Section C.7.2. Record of procurement proceedings** as all communication forms part of the audit trail and potentially evidence as part of the right to complain and right to review process.

Procurement notices (notice) provides an important step in engaging with the market and sourcing an appropriate supplier. Any notice must be written in simple clear English and should follow a similar structure regardless of the category. The location of the notice must be published in accordance with the method selected.

The procuring entity is responsible for all notices relating to the procurement process, however, they must ensure they follow the internal approval requirements of the procuring entity. They should also be mindful that there may be a cost for some publications which may need to follow a separate approval process.

This section focuses on notices in the public domain and not those that may be issued to specific bidders as part of the procurement process.

The procuring entity may also send the notice directly to potential suppliers and the notice has been published. A record must be maintained of the bidders to whom the notice is sent.

C.3.6.1. General

The contents of the notice must be accurate as this may impact the responses to the notice. The procuring entity must remember there can be a considerable cost to bidders in responding to some invitation notices and therefore the notice should encourage not dissuade their relevant participation. If as a result of a clarification it is established that the original notice was materially inaccurate, the amended notice must be republished in the same manner as the original notice.

We would not recommend the inclusion of a telephone number in any contact details, but a generic email address which is monitored daily would be beneficial to the procuring entity's management of the process.

If the procurement proceedings are cancelled at any stage (please see **Section C.5.14. Failure to contract** for further details on the grounds), then a cancellation notice must be published in the same manner as the invitation or contract award notices.

C.3.6.1.1. Guidance on pricing of documents

Procuring entities may charge a fee for the SBD in order to cover the cost of printing and distributing the document. The fee must not be set at a level which includes any element of profit for the procuring entity. In determining whether to charge a fee and the fee to charge, procuring entities should consider:

- the size of the document, which will affect printing and distribution costs. For example, an ITB for a large construction contract may include several separate volumes of drawings and bills of quantities, whereas a ITB for simple goods may be only 50-100 pages;
- the likely location of potential bidders. Distribution to international bidders will incur a greater cost than distribution to local bidders.
- the method of distribution. In some cases, distribution by courier, rather than normal postal services, may be required, which is likely to increase costs.

There should be no fee charged when:

- the Government Standard Bidding Document is adopted;
- the ITB is distributed in soft copy; or
- the procurement activity is a rebid exercise.

C.3.6.2. Public Notices

C.3.6.2.1. Agency General Procurement Notice

Once the annual budget has been approved by the Ministry of Finance the procuring entity will provide an Agency General Procurement Notice to the Ministry for publication on their website. The object of the notice is to apprise bidders of upcoming procurement opportunities.

C.3.6.2.2. Invitation to Bid Notice

The notice should include:
▪ Name of the procuring entity ▪ Applicable financial year ▪ Summary of procurements and quantities categorized by goods, works and services ▪ Contact details for further information

The ITB notice is for open bidding without pre-qualification. It is important because it ensures maximum completion which will drive value for money and fair opportunity for any party wishing to bid for Government contracts.

The notice must include the following information:

- the name of the project and/or title of procurement
- the reference of the procurement
- the name of the procuring entity managing the procurement, including contact details
- if the procuring entity is managing on behalf of another procuring entity
- if it is a notice for a framework, who would hold the framework and the other procuring entities that would be party to the final contract
- if it is a framework whether it is an open or closed framework
- if it is the subject of a framework agreement how the contracts will be awarded
- description of goods or works to be procured, delivery point or location and any specific timeframes for delivery or completion
- if applicable the place, date and time for any pre-bid conference and/or site visit
- details of any bid security that may be required
- any qualifications which may be required which must include description of similar work performed and those of the key staff who would undertake the work
- if a domestic margin of preference will be applied
- place, date and time for bid closing with any special packaging and labelling of the bid
- if applicable, place date and time for bid opening
- the outline evaluation criteria which will be applied
- the cost of the bidding documents and how payment can be made
- if applicable where a copy of the bidding document may be viewed
- where a copy of the bidding document may be obtained
- other matters as may be required by the Ministry of Finance

C.3.6.2.3. Invitation to Prequalify

This notice is for **selective bidding** for works contracts. The notice must include the following information:

- the name of the project and/or title of procurement
- the reference of the procurement

- the name of the procuring entity managing the procurement and contact details
- if the procuring entity is managing on behalf of another procuring entity
- if it is a notice for a framework, who would hold the framework and the other procuring entities that would be party to the final contract
- if it is a framework whether it is an open or closed framework
- brief description of the works subject to pre-qualification and whether the work will be contracted as one lot or a number of lots
- if applicable the place, date and time for any pre-bid conference and/or site visit
- if it is the subject of a framework agreement how the contracts will be awarded
- brief description of the works subject to pre-qualification and whether the work will be contracted as one lot or a number of lots
- if applicable the place, date and time for any pre-bid conference and/or site visit
- any qualification which may be required which must include description of similar work performed and those of the key staff who would undertake the work
- if domestic margin of preference will be applied
- place, date and time for pre-qualification closing with any special packaging and labelling of the pre-qualification
- the outline evaluation criteria which will be applied
- the cost of the pre-qualification documents and how payment can be made
- if applicable, where a copy of the pre-qualification document can be viewed
- where a copy of the pre-qualification document may be obtained
- other matters as may be required by the Ministry of Finance

C.3.6.2.4. **Request for Expression of Interest (REOI) Notice**

An EOI notice applies only in respect of procurement of consultancy services and a Request for Proposal (RFP) is to be used, and must be published for all procurements over SAT$50,000. EOIs are used to control or filter the number of potential bidders who may be interested. It differs from the previous two notices in that a scored shortlist is created and as such is called a request for expressions of interest. Therefore, the procuring entity must ensure it requests sufficient details in order for the consultant's potential qualification to perform the assignment.

It is good practice that the TOR will have been prepared (and approved) prior to approaching the market. We would recommend that this is shared as part of the request for expressions of interest as it encourages only suitably qualified consultants to express interest.

The notice must include the following information:

- the name of the project and/or title of procurement
- the reference of the procurement
- the name of the procuring entity managing the procurement and contact details
- if the procuring entity is managing on behalf of another procuring entity
- if it is a notice for a framework, who would hold the framework and the other procuring entities that would party to the final contract
- if it is a framework whether it is an open or close framework

- if it is the subject of a framework agreement how the contracts will be discharged
- description of the services to be procured and a specific timeframes for delivery or completion
- any qualification required to perform the assignment which must include description of similar services performed and those of the key staff who would undertake the assignment.
- Place, date and time for expression of interest closing with any special packaging and labelling
- If applicable, place, date and time for bid opening
- Criteria to be used in evaluating the expressions of interest
- If a copy of the TOR is available and how to obtain them

C.3.6.2.5. **Publication of Contract Award Notice**

The notice must be published on the Ministry of Finance website and within one month from the notice of award (under **Section C.6.1. Notice of award**), and include the following details:

a). Date and reference of the original notice if applicable.
b). Brief description of the goods, works or services.
c). The name of the successful supplier/contactor/consultant who has been awarded a procurement contract or framework agreement.
d). The names of all bidders who have submitted a bid.
e). The contract reference.
f). The awarded contract price of the procurement activity.

C.3.6.2.6. **Notice of cancellation**

If the decision is taken by the procuring entity to cancel proceedings **Section C.5.14. Failure to contract**, then a notice must be published promptly in the same manner and place as the original notice headed cancellation of procurement proceedings.

C.3.6.2.7. **Notice of Right to Review Decision**

The notice must include the following details:

a). the name of the project and/or title of procurement
b). the reference of the procurement
c). the name of the procuring entity managing the procurement
d). the basis of the application i.e. the alleged non-compliant decision or action taken by the procuring entity
e). The alleged circumstances which evidence the basis of the application
f). The finding of the Independent Adjudicator

C.3.6.2.8. Other Notices

The requirements for other notices may vary from time to time; therefore, the procuring entity must refer to any further guidance from the Procurement Division regarding the application of other notices.

C.4. Procurement Process

C.4.1. Overview

This section considers the procuring entity's approach to managing the bidding process from development of the ITB through to bid opening. It is important to monitor timescales in conjunction with the annual and individual procurement plans, as slippage can be commonplace.

This can be due to a number of factors but is normally due to an underestimation of the amount of work involved and the management of external stakeholders.

For external stakeholders, their priorities may not be the same as yours. For complex procurements, it is recommended that a working group (i.e. those with specific responsibilities in contributing to the bid process) convenes on a regular basis. This can assist in ensuring that progress remains on track. It is also good practice to set target dates for a response as part of any correspondence and to follow up promptly if the deadline is missed. Over time this will help reinforce the discipline of timely responses.

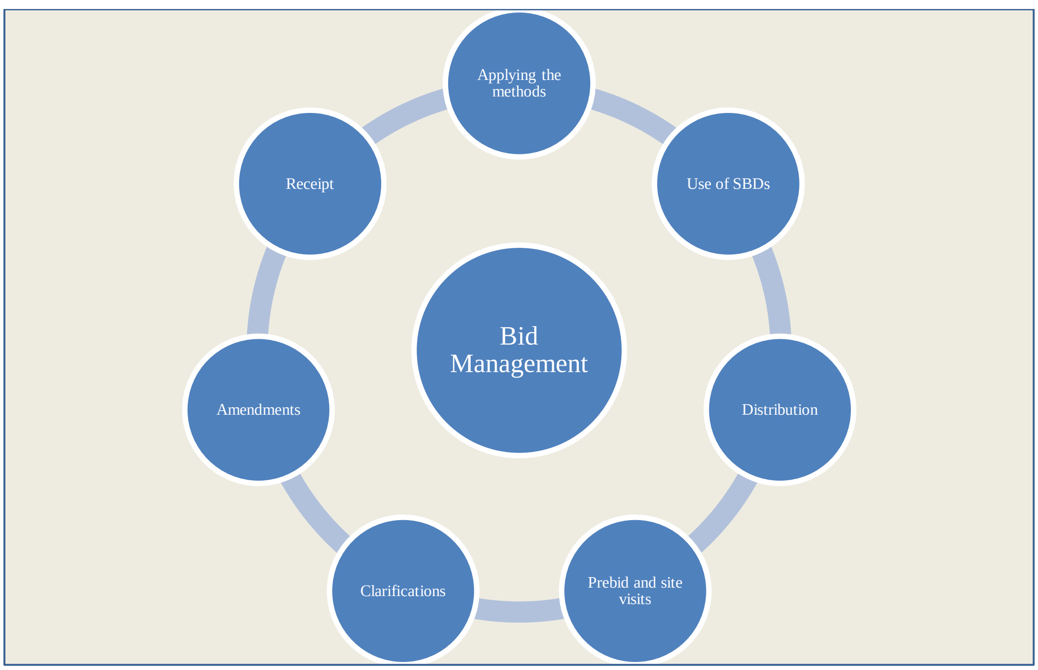


Figure 6: Bid Management

C.4.2. Applying the methods

The thresholds mandate the primary procurement method selected and the criteria surrounding the different methods as clearly defined at **Table 5**. However, there may be circumstances when a procuring entity considers an alternative procurement method may be more appropriate. In this instance a statement of reasons justifying the use of an alternative procurement method must be prepared and authorised by the head of the procuring entity before procurement proceedings commence.

It is mandatory that the procuring entity advertises all procurements under Open Competitive Tender Method (in the case of works, goods (or goods and related services) or general services) or a Request for Proposal (in the case of consultancy services). All notices must be published as detailed at **SectionC.3.6. Communication**.

The procuring entity may issue an open notice which allows any bidder to participate by requesting or purchasing the ITB.

Alternatively, the procuring entity may invite bidders through a two-stage process i.e. pre-qualification (PQ) (for goods, general services or works) or request for expressions of interest (REOI) (for consultancy services) before bidders receive the ITB. If the procuring entity adopts this approach the ITB is not sold.

It is not usual to have a public opening for PQ or REOI.

C.4.2.1. Pre-qualification (PQ)

PQ is not usually applied for goods procurement but may be appropriate for general services. Pre-qualification is common though for large works, civil works, turnkey plants and Build-Own-Transfer, where the supplier's capabilities, resources and experience are key to the successful performance of the contract and therefore bidding should be limited to qualified bidders.

It may be useful for the procuring entity to prequalify bidders for a number of similar procurements at the same time. However, it is important that this is made clear in the notice to prequalify.

Table 6: Advantages and Disadvantages of Prequalification

ADVANTAGES	DISADVANTAGES
▪ Prominent contractors, particularly those in the international market, are more likely to bid knowing that competition is confined only to those qualified. ▪ Time and cost savings for the procuring entity in evaluating the ITB responses. ▪ May stimulate JVs. ▪ May encourage international firms to associate with national firms.	▪ Procurement lead times may be increased. ▪ Medium sized enterprises may be discouraged by the additional cost of bidding.

These documents specify the terms and conditions in order to prequalify. PQ is a pass or fail criteria i.e. all bidders who pass receive the ITB, thereby limiting actual bidding to qualified bidders, but with no maximum number of bidders who may be invited to bid. It is important that the criteria set in the PQ are of a sufficient level so that a reasonable number of bidders pass, whilst not so demanding that too few bidders or even none pass.

If the number of prequalified bidders is considered too few for a competitive response, then the procuring entity should consider re-advertising and extending the deadline for pre-qualification applications after also reviewing the contractor’s risk with contract implementation.

Any bidder who prequalifies has to validate that the data provided in their PQ is still valid at the time of their bid. This can be particularly relevant to financial statements when there may be some delay between the PQ and the ITB.

PQ is treated in all respects as any bidding process i.e. with respect to clarifications, closing, late bids, amendments or withdrawals, evaluation, notification etc.

There must be no substantial change in the scope of requirements or terms and conditions between the PQ and ITB. If there is a change then the procuring entity must cancel the proceedings and recommence the procurement.

C.4.2.2. **Requests for Expressions of Interest (REOI)**

REOIs is a standard approach for the procurement of consultancy services under Request for Proposal Method and is applicable for all procurements over SAT$50,000. The approach is similar to prequalification in that bidding is limited to qualified bidders. However, the Expression of Interest (EOI) assessment is based purely on the technical capabilities, essential experience and personnel, of the consultant and the EOI are ranked to create a shortlist. Shortlists are usually limited to three to six potential consultants.

Consultancy assignments can vary considerably, therefore it is important that the procuring entity is quite explicit about the nature of the assignment, for example, training in financial services could cover a range of financial disciplines before even considering how the training may be delivered.

As consultants expect this approach there are no real disadvantages, however, the benefits include engagement from consultants with the true capabilities of performing the assignment and time and cost saving on the part of the procuring entity when evaluating.

A shortlist will either be developed as a result of an EOI for Request for Proposal Method for High Value (i.e. for procurements over SAT$50,000) or the same Request for Proposal method for Low Value from market knowledge or other sources of information (i.e. for procurements up to SAT$50,000). Whilst the primary market is Samoa a thorough approach to shortlisting will allow the procuring entity to be aware of relevant international markets in the case of non-standard procurements.

The procuring entity is responsible for developing shortlists, in consultation with technical advisers where appropriate.

The following guidance should assist the development of the shortlist:

a). Ensure that the basis for use of Request for proposals method are known i.e. minimum of 3 bidders on the shortlist.

b). Consideration must be given first to those bidders expressing interest that possess the relevant qualifications and experience.

c). Develop a long list of potential sources of the goods (or goods and related services), works, consultancy services or general services. Some work on the identification of potential sources may have been done at the procurement planning stage and reference should be made to this. Information on suppliers who may be included in a shortlist can be found from a number of sources. These might include:

- pre-qualification exercises conducted for this type of goods (or goods and related services), works, consultancy services or general services;
- previous bids received or contracts placed by the procuring entity, or another procuring entity;
- information available from trade or professional bodies;
- chambers of commerce in Samoa and abroad;
- trade representatives within embassies for foreign sources;
- existing knowledge of the market by either procurement or technical advisers;
- market research, using trade journals, the internet, trade directories etc.

d). Prepare a shortlist, based on the initial "long list". Where competition is restricted because the goods, work or consultancy services are only available from a limited number of suppliers, all potential sources must be included on the shortlist.

e). Where competition is restricted because of the relatively low value of the procurement, a minimum of three bidders must be included on the shortlist.

Where a shortlist of bidders is developed from a "long list" of potential sources, the following factors should be considered:

a). suppliers who are not expected to be able to submit responsive bids or meet qualification requirements should not be included;
b). a shortlist should not consist entirely of bidders with the same ownership;
c). for goods, a shortlist should not consist entirely of bidders offering the same brand of goods;
d). suppliers who may be suspended or debarred must not be included on a shortlist.

The expressions of interest received should be assessed for the key skills, experience or capabilities required for the assignment against the criteria specified in the notice. The evaluators should have developed an appropriate grading system (using the approach for consultancy services evaluation) before commencing the evaluation. Ultimately the evaluators(s) need to be able to rank the bidders in order to determine the recommended shortlist.

The evaluator(s) must prepare a BER with a recommended shortlist of minimum 3 bidders. The BER shall be approved by the Head of the Procuring Entity or a delegated personnel acting on behalf of the Head of the Procuring Entity or otherwise directly through the Tenders Board if appropriate.

C.4.2.3. **Framework Arrangements**

Use of a model framework agreement SBD is mandatory.

The SBD should be completed as thoroughly in respect of technical scope and the commercial terms as any other procurement. It is, however, essential that the procuring entity clearly identifies the following within the document;

- The number of procuring entities that will be party to and may use the framework. In multiple procuring entity frameworks, a 'lead' procuring entity must be nominated.
- The number of suppliers, contractors or consultants who may be awarded a framework.
- The unit pricing structure that will be required under the framework.
- Delivery timelines required from date of a call-off contract.
- Any financial limits on maximum expenditure.
- Any financial limits on individual call-off contracts.
- The term required for the framework agreement. The duration of the agreement will be the expiry date, or when the limit on total expenditure is reached, whichever comes first. For multi-year framework agreements there may be a clause allowing for a price increase due to inflation.
- The evaluation criteria applied should be consistent with the goods (or goods and related services), works, consultancy services or general services being procured, however, if multiple supplier frameworks are to be awarded then the ITB must clearly state how suppliers will be ranked, and any minimum or maximum number of suppliers that will be party to the framework agreement.
- How the contract will be awarded i.e. the ITB should clearly specify how call-off contracts or min-competitions would be managed.
- In the application of a mini-competition the ITB must detail what aspect of the terms and conditions would be established or refined and any additional evaluation criteria that may be applied. If known the procuring entity should also indicate the frequency of any mini-competition.
- NB: no changes are permitted during the duration of a framework arrangement.

Whilst the ITB shall state that the procuring entity may not necessarily intend to enter into a contract this should not be abused. The intention is to establish the best source of a future supply, based upon firm prices and pre-determined conditions over a specified validity period, and the

Government would expect procuring entities that proceed with frameworks agreements to maximize their benefits.

Care should be taken when providing suppliers with an estimated quantity of goods (or goods and related services), works, consultancy services and general services. In general, suppliers will quote lower prices if there is a reasonable possibility that a firm amount will be ordered. However, until an actual call-off contract document is awarded, no guarantee should be given that any amount will be ordered.

C.4.3. Use of the Standard Bidding Documents (SBDs)

C.4.3.1. **General**

The suite of SBDs issued and maintained by the Ministry of Finance (and pre-cleared by AGO) are mandatory for all public procurement in accordance with the Instructions and Section D of this Operating Manual.

Their application is important as it affords efficiency within Government as practitioners will be able to focus on the non-standard data to complete the SBD, whilst those reviewing or approving will also be assured of the standard elements.

Bidders will also be familiar with the structure and approach which will result in a reduction of minor questions and a focus on serious clarifications.

There is a variance in the structure of the SBDs (mainly different terminology) for the different categories, methods and bidding techniques, however, they follow a common overarching structure.

i. Instructions to Bidders – these cannot be modified by the procuring entity
ii. Bid Data Sheet – the procuring entity uses this document to clarify or refine the Instructions to Bidders
iii. Evaluation and Qualification Criteria – the procuring entity must formulate these terms based on the technical requirements
iv. Bidding Forms – these cannot be modified by the procuring entity
v. Technical Requirements – the procuring entity must articulate a clear requirement for the goods (or goods and related services), works, consultancy services or general services
vi. General Conditions of Contract – these cannot be modified by the procuring entity
vii. Special Conditions of Contract the procuring entity uses this document to clarify or refine the General Conditions of Contract
viii. Contract Forms – these cannot be modified by the procuring entity

The procuring entity will select the appropriate SBD in line with the guidance provided at:

Procurement of goods **Section C.4.3.2.1. Procurement of Goods**

Procurement of works **Section C.4.3.2.2. Procurement of Works**

Procurement of consultancy services **Section C.4.3.2.3. Procurement of Consultancy Services**

Procurement of general services **Section C.4.3.2.4. Procurement of General Services**

If after consideration the procuring entity considers that an alternative SBD model would be more appropriate for the particular procurement, the Procuring Entity must consult the Tenders Board Secretariat prior to the commencement of any procurement activities.

Any new SBD must be cleared by the AGO.

At each step in the process, the procuring entity should create a 'master' document which is used for subsequent copies. This is maintained as an original, whether it is in hard or electronic copy.

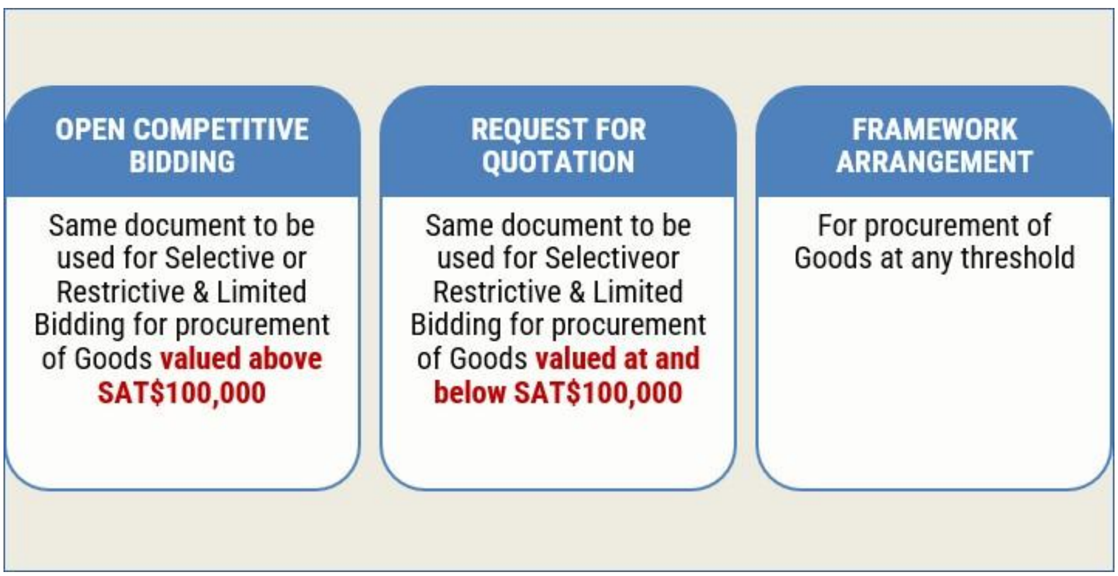
Once an ITB has been issued the only official changes to its content can be through Addenda which must be issued to all bidders.

C.4.3.2. **Selection of the Standard Bidding Document**

The SBD to be applied must be selected in line with the methods of procurement and the types of goods (or goods & related services), works, general services and consultancy services to be procured.

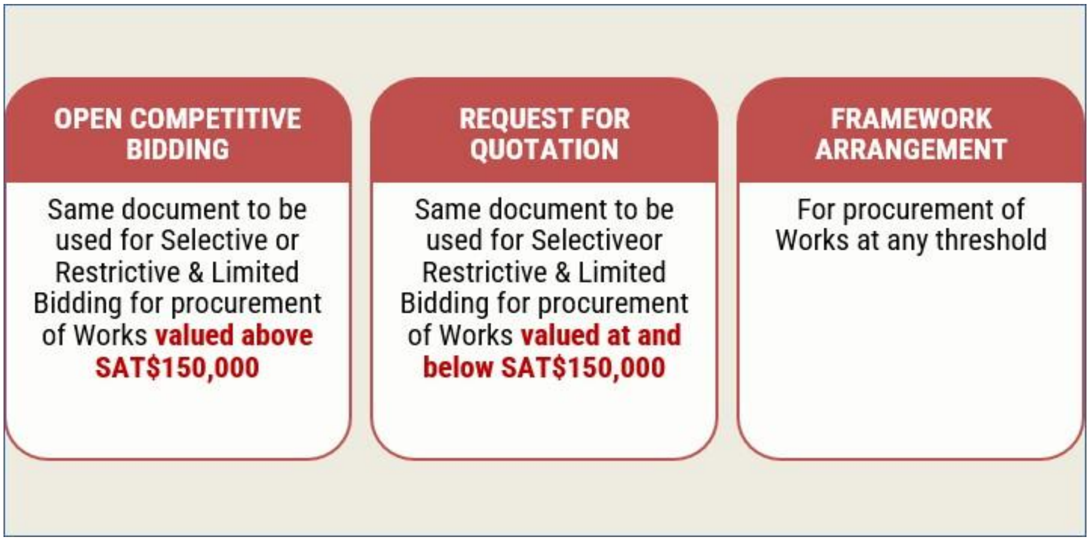
C.4.3.2.1. Procurement of Goods (or Goods and Related Services)

The following SBDs are available for the procurement of goods (or goods & related services):



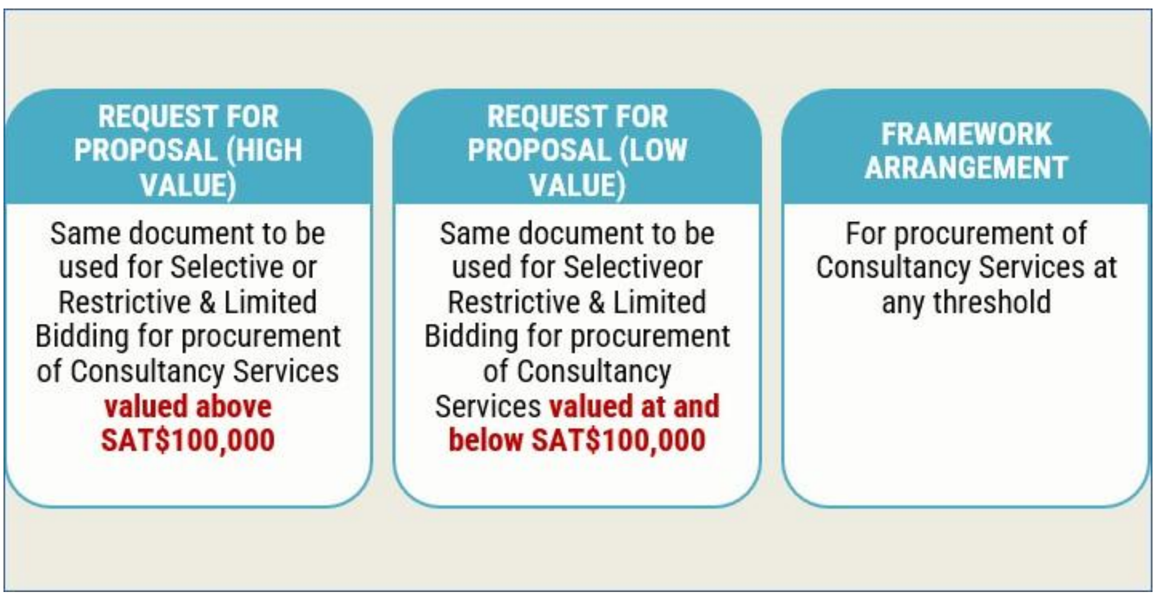
C.4.3.2.2. Procurement of Works

The following SBDs are available for the procurement of works:



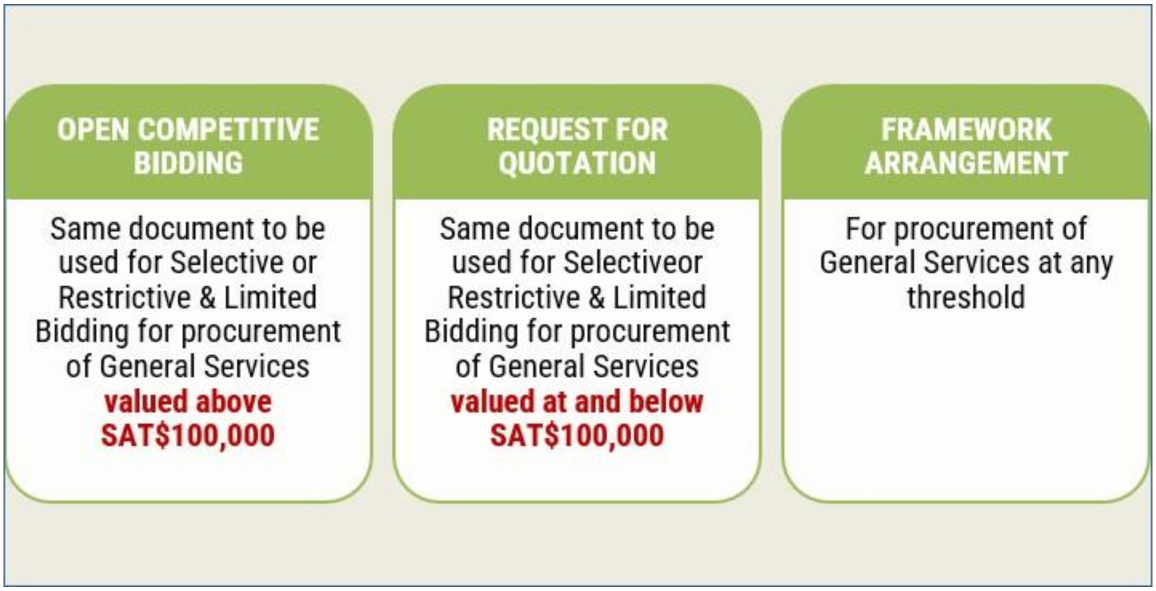
C.4.3.2.3. Procurement of Consultancy Services

The following SBDs are available for the procurement of consultancy services:



C.4.3.2.4. **Procurement of General Services**

The following SBDs are available for the procurement of general services:



C.4.3.3. Domestic preference

A procuring entity may apply a domestic margin of preference in accordance with any schemes or instructions published by the Ministry of Finance, and considering requirements set out under Instruction K.5.(8).

C.4.3.4. Editing the SBD

The ITB is critical to the success of the bidding process. It informs bidders of:

- the precise description of the goods (or goods and related services), works, consultancy services or general services required;
- the rules for the bidding process;
- the evaluation criteria and methodology which will be applied;
- any eligibility requirements;
- any qualification criteria which will be applied; and
- the type and conditions of the proposed contract.

A well drafted ITB should result in a successful procurement process. It is recommended that the procuring entity adopts an internal review process for ITBs.

The procuring entity is responsible for drafting the ITB, in consultation with the technical advisers. The recommended approach in editing the SBD:

1. Select the appropriate standard SBD for the requirement, threshold and method.

2. Consult with the technical adviser if required, regarding finalisation of the technical requirements plus advice on other relevant aspects such literature required, delivery etc.
3. Include the final description in the ITB.
4. Complete the Bid Data Sheet with details of the bidding process e.g. the bid closing date, the address for submission, the evaluation criteria to be applied, any qualification criteria to be applied etc. Note that the Bid Data Sheet modifies the Instructions to Bidders – the text of the Instructions to Bidders must NOT be modified.
5. Complete the Special Conditions of Contract with the conditions which will apply to the contract e.g. payment terms, delivery/completion period, warranty, liquidated damages. Note that the Special Conditions of Contract modify the General Conditions of Contract – the text of the General Conditions of Contract must NOT be modified.
6. The form of contract should be left blank for inclusion in the ITB, as these details can only be completed when the successful bidder has been decided.

Ensure that any related documents have been prepared e.g. the ITB notice or shortlist.

DEVELOPMENT OF THE INSTRUCTION TO BID

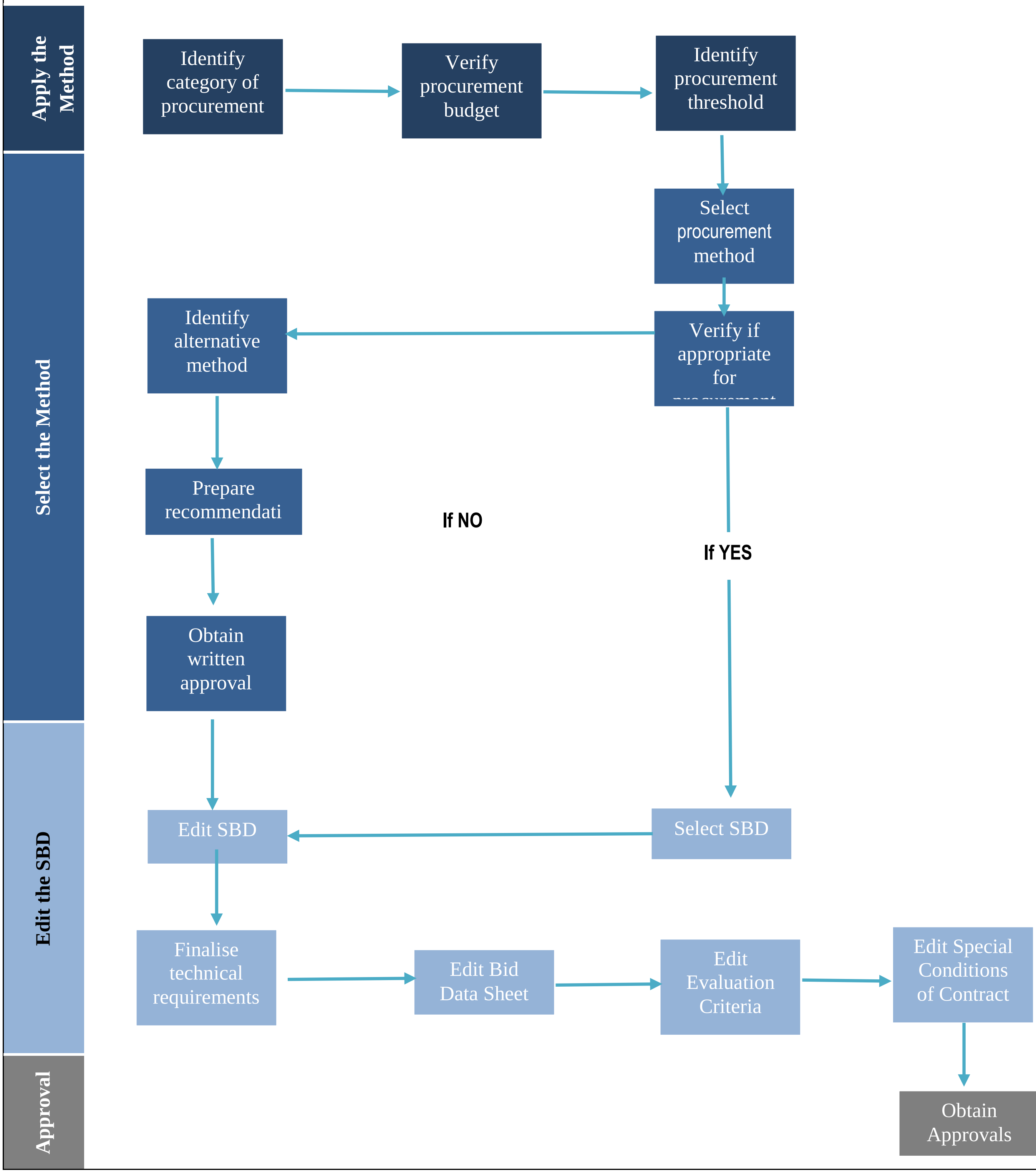


Figure 7: Development of the ITB

C.4.3.4.1. Bid Data Sheet

The format of the data in the Bid Data Sheet (BDS) will vary according to the particular SBD. The text in black should be maintained, whilst the text in blue provides guidance on the specific detail that must be completed for that procurement.

Key areas in the BDS which should form part of the procuring entity planning and approach to the particular procurement should include:

a). Maximum number of bidders in a JV (please see **Joint Ventures** for further guidance).

b). Site visit and pre-bid conference [please see **Section C.4.5. Management of pre-bid conferences and site visits**]

c). Deadline for clarifications.

d). The minimum documents which shall comprise the bid are specified in the Instruction to Bidders (these vary by ITB); however, the procuring entity has the option to specify additional documents which must be submitted as part of the bid.

e). Whether the procuring entity will accept alternative bids. Further instructions must be provided to the bidder in the '*Evaluation and Qualification Criteria'.*

f). How the requirements will be packaged i.e. as one single lot, multiple lots or single items. For example, if procuring drugs, it may be beneficial to award on an item by item basis but laboratory equipment may be packaged by general/ electrical/ scientific etc. The procuring entity may also allow for a quantity variance, but this must be limited to a maximum of 10%.

g). Whether any adjustment to the bid price would be permitted.

h). Any documentary evidence that the procuring entity requires, for example test certificates. The procuring entity must also decide if any Subcontractors experience will count towards the bidder's qualifications.

i). Whilst the ITB also allows for the option on a *'Manufacturers Authorization'* we would recommend this is always required.

j). The requirement and level of bid security required.

k). Bid validity period.

l). The format of the authorization required. The bidder must provide a Power of Attorney ("POA"). For the POA to be valid, it must satisfy the following requirements as per the *Companies Act 2001* and the *Property Law Act 1952*:

- an instrument or written document clearly defining the scope of authority granted to the attorney;
- signed by two (2) or more directors of the bidder (if it is a company);

- include a validity period and/or revocation conditions; and
- witnessed by a solicitor or notary public.

m). Whether the procuring entity will accept any variance on the quantities being procured

n). Whether a standstill period is required.

C.4.3.4.2. Evaluation and Qualification Criteria

i. Prequalification

In addition to editing the Qualification Data Sheet (which is similar to the Bid Data Sheet) the procuring entity must elaborate on the qualification criteria which cover:

- Eligibility
- Historical Contract Non-Performance
- Financial Situation and Performance
- Experience

The procuring entity must complete the criteria relative to the technical requirements and the guidance provided within the PQ SBD.

ii. ITB

This section of the ITB considers:

a). Alternative Bids

If a decision is taken to accept alternative bids, then the procuring entity has two options as to what will be accepted (sample text provided in the SBD) i.e.

i. only consider a bid from the lowest ranked bidder; or

ii. any alternative bids. An alternative bid may be accepted either only when the bidder has offered a compliant bid in accordance with the original technical requirements or regardless of their compliance with the original technical requirements.

The procuring entity must then use the Technical Requirements section to elaborate where an alternative requirement may be acceptable.

b). Domestic Margin of Preference

This section in the SBD explains which bids will be evaluated if a domestic margin is to be applied. Further guidance on whether a domestic margin should be applied can be found at **Section C.4.3.3. Domestic preference**.

Sample text on how the calculation should be applied is provided in the SBDs.

c). Multiple Contracts

This section clarifies to bidders how a procuring entity will evaluate bids if there is an option to award multiple contracts. This text is mandatory and may not be modified by the procuring entity.

d). Evaluation Criteria

The procuring entity will need to modify in line with the Technical Requirements being procured. Some suggested text is included in the SBDs. It is useful to consider how the bidder will respond and how the criteria will be evaluated to ensure only relevant criteria are applied.

For works contracts the criteria included in the prequalification SBD is repeated.

For consultancy services the technical and financial criteria shall be weighted in line with the methods of selection adopted by the procuring entity **Section C.2.2.2. Request for Proposals Method**.

The weighting (a split of 100% between the technical and financial bid) can be adjusted according to the relative importance of technical vs. financial. For example:

- **i.** Procurement A where the highest quality technical solution is paramount could have a 80/20 split. 80% for the technical bid and 20% for the financial bid.
- **ii.** Procurement B where the final cost paid has an enhanced merit could have a 70/30 split. 70% for the technical bid and 30% for the financial bid.

A perceived disadvantage of this approach is that a more expensive bid may win. Therefore, the procuring entity needs to be clear on the technical merits of adopting this technique.

The split of percentages is discretionary but arguable if the procuring entity is considering a split more equitable than the example of Procurement B then it could be argued that a standard evaluation on price, assuming compliance with the technical requirements would be more transparent.

The following weightings are recommended for the method selected:

Table 7: Procurement of Consultancy Services Technical and Financial Weightings

Method	Technical Weighting	Financial Weighting
QCBS	80%	20%
SFB	100%	Highest technical bid within budget is awarded the contract

Method	Technical Weighting	Financial Weighting
QBS	100%	Financial bid of the highest ranked technical bidder is opened and evaluated
LCS	100%	Any bidder who passed the technical threshold but is the lowest priced

e). Post-qualification Requirements

Once a lowest ranked bid has been selected the procuring entity may wish to verify the capability of that bidder to perform the contract. For example, the provision of a business registration may be a mandatory requirement and may impact the final recommendation. However, the procuring entity may include additional relevant requirements.

C.4.3.4.3. Technical Requirements

Further guidance is provided at **Section C.3. Procurement Requirements and Selection Criteria**.

C.4.3.4.4. Special Conditions of Contract

As these are very particular to the individual SBD further guidance is provided within the SBD.

C.4.4. Management of Distribution

A Record of documents issued must be maintained and must include:
i. the name and address of the bidder to whom the document was issued; ii. the date of receipt of the request for the documents, where applicable; iii. confirmation of the date of payment of any required fee; iv. the date of issue of the document; v. the signature of the official responsible for the issue of the documents.

The distribution of ITB needs rigorous management. This guidance applies to all SBDs.

The ITB notice will specify how documents may be viewed and/or bought. The option to allow bidders to view the bidding documents prior to issuing them would not be recommended in for example the purchase of 20 4WD vehicles, however, where the procurement is complex it would be good practice to allow the documents to be issued prior to being viewed.

It is important that this is managed daily and if emails are used the account has open access within the procuring entity. Delays in issuing ITBs can at worst leave the procuring entity open to a right to complain application and at best have a negative impact on the level of competition.

If the procurement is subject to open bidding, then there is likely to be a peak response shortly after the notice has been published. Therefore, the procuring entity must ensure there is a sufficient quantity of the ITB for immediate dispatch. This is an important consideration where it may take several days to collate, print and bind copies where drawings or annexes may be incorporated.

Following a shortlisting or pre-qualification exercise there will be no fee charged for the ITB and the documents must be dispatched at the same time to all bidders.

C.4.5. Management of Pre-Bid Conferences and Site Visits

In complex procurement and works procurement pre-bid conferences and site visits can be beneficial in the procuring entity further articulating their requirements and for the bidders to ask relevant questions. All of this would improve the quality of the bids received. However, there is a cost attached in organizing these meetings and it can also protract the bidding period. So, the procuring entity must weigh up the pros and cons carefully.

This needs to be discussed and agreed during the planning process as the details need to be provided in the notice and the ITB.

Pre-bid conferences and site visits are intended to provide a structured way of providing additional information for bidders, which cannot easily be included in an ITB. The application of emails has reduced the need for pre-bid conferences as the procuring entity will be able to respond swiftly in answering any questions raised. However, when the bidders would benefit from physically attending the site then arrangement should be put in place.

A pre-bid conference or site visit can offer the following benefits:

a). the procuring entity can provide additional information to bidders, ensuring that all bidders receive the same information;

b). bidders are assisted in preparing bids which should be based on more detailed and accurate information, responsive to the procuring entity's needs and less likely to include reservations, conditions or caveats;

c). the procuring entity can get early warning of any unforeseen queries or problems, while there is still time to modify the bidding document if necessary;

d). most likely requests for clarification can be addressed at the same time;

e). the possibility of contractual disputes, caused by a bidder's misunderstanding of the procuring entity's requirements, is reduced.

The pre-bid conference and/or site visit should be held early in the bidding period but it must also allow for any visa requirements which international bidders may need to attend. If a site visit is to be arranged, it should form part of the pre-bid conference. Whilst the ITB allows the option bidders should not be discriminated against by non-attendance. There may be a number of reasons why international bidders may be unable to attend.

All public officers involved must be briefed on their individual responsibilities and the arrangements and procedures for the meeting. All questions must be in an open forum and public officers must ensure they are not left in a one to one situation with any bidder.

It is recommended that in addition to the date, time and location the procuring entity includes a protocol for the site visit as part of the ITB.

This should cover matters such as:

a). Confirmation of attendance

b). Maximum number of bidder's representatives that may attend. Numbers need to be managed carefully in relation to the site and the ability to monitor bidder's actions and behaviour carefully.

c). Transport arrangements NB bidders are responsible for all the costs associated with attendance

d). Indemnity Form (a standard template) provided to the procuring entity and signed by the bidder's representative

e). Draft program
- Registration
- Welcome
- Brief presentation on the Technical Requirements
- Site Visit
- Q&A
- Wrap-up

Minutes of any meeting must be written up immediately and circulated to all bidders regardless of attendance. No questions or data should be attributed to any bidder. The minutes must include as a minimum:

- the date, time and location of the pre-bid conference and/or site visit;
- a list of all persons who attended, including both procuring entity staff, public officers and bidders;
- a list of all questions asked, and the responses given;
- any other information provided to bidders.

It may be that further research is required before a formal answer may be provided to a question. That should be documented, and the full response provided in a later clarification.

C.4.6. Clarifications of Bidding Document

This guidance applies to all methods of procurement. A clarification is a request from a bidder for more information on the procurement process or the contents of the ITB. Any requests for clarifications must be answered promptly to allow bidders sufficient time to make any adjustments/refinements to their bid and to avoid unnecessary requests to extend the bidding deadline. The information must be communicated simultaneously to all bidders. If the clarification results in the ITB becoming materially inaccurate then the procuring entity must withdraw and reissue the ITB. In this instance all bidders who had originally received the invitation must be permitted to participate without penalty.

The communication should be managed by the procuring entity, although the response may be drafted by technical, legal or financial public officers. A deadline will have been set in the ITB for receipt of clarifications. This must be adhered to, although the final clarification response issued by the procuring entity may be just after that deadline.

Any communication received after the deadline should be acknowledged but that the latest date has passed, and no response will be given.

Whilst it is advantageous to the procuring entity to consolidate requests for clarification there should not be a significant delay in responding.

Each clarification response should be numbered, commencing with no 1, even if that is the only response issued. The question received should be edited so that the bidder cannot be identified, whilst the written response by the procuring entity should provide the maximum amount of information available at that time.

The clarification may require an amendment to the ITB, see **C.4.7. Amendments to ITB** for further guidance.

The procuring entity must follow any internal approval levels in issuing the clarification.

A record should be made of all clarifications issued and the date of issuance.

C.4.7. Amendments to Invitation To Bid (ITB)

An ITB may need to be amended due to a clarification request from a bidder or when the procuring entity recognizes that it needs to modify the terms and conditions of the ITB.

In each case the procuring entity must follow the methodology in the specific ITB. They should also be mindful that this should be issued as an Addendum to the ITB as it will be legally binding on the bidder and any resultant contract.

It is important that the procuring entity obtains any internal approvals before issuing the Addenda which may include a legal review. Any Addenda must be issued in a reasonable time to allow bidders to take the changes in to account when submitting their bid.

C.5. Bid Submission and Bid Opening

C.5.1. Submission of Bid

The specific presentation and markings for each bid will be specified within the ITB. All bids shall be in written form, duly signed and submitted in accordance with the ITB. Any bid received after the deadline shall be considered late and must be returned unopened. The SBD may allow submission of bids by:

- hand;
- mail or courier;
- the Government of Samoa e-Tendering Portal (https://portal.tenderlink.com/mof_samoa/).

Submission and opening of bids are regulated by the level of threshold set out in **Table 4** as follows:

a). submission of bids in respect of the following procurement **shall be addressed to the Secretary of the Tenders Board, and opened in the presence of the Tenders Board Sub-committee**:

Category	Estimated Value (SAT) Above	Procuring Entity
Works	$ 150,000	Ministry Department Public Body
Goods & Related Services	$ 100,000	
General Services	$ 100,000	
Consultancy Service	$ 100,000	

b). submission of bids in respect of the following procurement **shall be addressed to the Head of the Procuring entity, and opened at the premises of the Procuring entity in the presence of representatives from MOF, AGO and MWTI**:

Category	Estimated Value (SAT)	
Works	Above	$ 50,000 - 150,000
Goods & Related Services		$ 50,000 - 100,000
General Services		$ 50,000 - 100,000
Consultancy Service		$ 50,000 - 100,000

c). submission of bids in respect of any procurement valued up to **SAT$50,000 shall be addressed to the Head of the procuring entity and opened at the premises of the Procuring entity without the need for representatives of MOF, AGO or MWTI to be present.**

Mailed or courier bids shall follow the directions contained in the ITB including, but not limited to, being sealed and marked as required. All bids shall be held unopened and safeguarded until the time specified for opening.

The Government shall not be responsible for delays in delivery by hand or mail. Misdirected bids or modifications of bids that are received at the specified place after the time stipulated for bid closing shall not be accepted and shall be returned unopened.

If there’s an inconsistency in relation to the place of submission stipulated in the SBD and the advertisement, the place of submission in the SBD prevails. In the absence of an Addenda the place of submission in the SBD prevails.

C.5.2. Electronic Procurements and Submissions:

Submission of electronic bids via Government of Samoa (GoS) e-Tendering Portal (https://portal.tenderlink.com/mof_samoa/) administered by the Ministry of Finance has been approved by Cabinet through its directive referencing F.K.(2017)17 dated 29th April 2020.

Procuring entities are encouraged to utilize the GoS e-Tendering Portal when procuring goods (or goods & related services), works, general services and consulting services. Bidders may submit bid electronically via the same portal if permitted in the Bid Data Sheet (BDS).

The procedures for submission of electronic bids will be specified within the ITB and BDS. Bids submitted via the e-Tendering Portal are to follow the portal's submission procedures. The standard procedures are provided as follows:

Procedures for Electronic Submission of Bids:
a). Bidders must register on the GoS e-Tendering Portal to gain access to tendered goods, works, general services or consulting services **b).** Bids shall be electronically submitted via the GoS e-Tendering Portal only. The bidder shall use this, and only this link to submit its electronic bid. **c).** The portal shall automatically expire on the submission deadline, specified in the relevant Invitation to Bid (ITB), Request for Proposal (RFP) or Request for Quotation (RFQ) &. No extension shall be provided after the expiry date of the tender. **d).** At the submission deadline, and not before, the TenderLink will forward to the Portal's Administrator access to the tender box electronic keys to open the bids. **e).** To ensure the integrity and compliance with the ITB, the Opening of the Tender Boxes can only be actioned by the Ministry of Finance's designated Administrator. For security purposes, all openings are dated and time stamped, ensuring compliance of their opening with relevant clauses of the ITB, RFQ & RFP.

C.5.3. Bid Security or Bid Securing Declaration

The bid security secures the obligations of the bidder relating to participating in procurement proceedings, and the obligation to sign a procurement contract if the contract is duly accepted. It assures compensation to the procuring entity for the time and money lost if the successful bidder fails to honour the bid and enter into the contract. Bid securities are only applied in goods or works procurement.

Where appropriate the procuring entity may request a bid securing declaration. It is important that this provides the Government adequate protection in the procurement process. The same grounds for invoking the bid securing declaration as a bid security will apply. However, the bidder will be disqualified for twelve (12) months from participating in any Government procurement regardless of the source of funds. With this in mind, it may only be appropriate to permit bid securing declarations where only national bidders are participating.

Bid Security in the form of an unconditional bank guarantee is required for all procurements valued above SAT$500,000. Where a procurement is valued at SAT$500,000 and below, a Bid Securing Declaration will suffice, at the procuring entity's discretion. It is recommended that the Bid Security in the form of an unconditional bank guarantee shall be fixed at an appropriate sum, set by the procuring entity.

The Bid Security or Bid Securing Declaration issued shall be consistent with the wording provided in the ITB. The Bid Security bank guarantee or Bid Securing Declaration shall accompany the bid and the validity shall correspond to the twenty-eight (28) days beyond the expiry of the bid validity period prescribed in the ITB. A bid security or securing declaration shall have a minimum validity period of thirty (30) or more days (depending on the complexity of the procurement). The security for a bid submitted by a JV shall be in the name of all the partners in the JV.

A **signed and original** Bid Security in the form of a Bank Guarantee or a signed Bid Securing Declaration as required in the SBD shall accompany the bid proposal. Any securities or securing declarations submitted or received after the deadline shall not be accepted and must be returned unopened to the bidder.

Once a contract is effective the procuring entity must return all original bid securities or bid securing declaration to the bidders.

C.5.4. Amendment or Withdrawal of Bid

The SBD will specify how a bidder may amend or withdraw its bid. However, any such notice from the bidder must be before the date and time for the close of submission of bids and in an envelope clearly marked amendment or withdrawal of bid.

Any amendments received after the deadline shall not be accepted and must be returned unopened to the bidder.

C.5.5. Receipt of bids

This guidance applies to all methods of procurement at any threshold. This is an important aspect in protecting the integrity of Government as:

- it ensures that submitted bids are kept unopened until the time for the public bid opening, to promote fair competition;
- it ensures that bidding is closed at the precise date and time of the deadline and that no late bids are accepted;
- it ensures that a record is kept of all bids submitted on time, to help avoid the opening of any late bids.

Any unsolicited bid must be returned unopened to the bidder. The procuring entity must enclose a covering letter advising submission of further unsolicited bids may require reference to the Tenders Board on the potential grounds of fraud or corruption.

C.5.5.1. **Tender box**

Each procuring entity must maintain a locked tender box (for all procurements at any threshold, except requests for verbal or written quotations valued below SAT$50,000) which must be accessible during any bid period. A public officer must also be available to provide a receipt for bid received using a standard template. Any bid which is too large must be placed in a safe or a locked room. A record should be kept of any other location. In all cases only the designated Tender Officer must have access.

The Tender Box should be emptied of the relevant bids at the time of the deadline and the bids moved to a secure supervised room in the case of a public opening.

C.5.6. Bid Opening

The bid opening must take place promptly after the bid closes and at the time specified in the ITB. All public officers who are managing the bid closing must be aware of their respective responsibilities. The room must be prepared in advance and the public officers must ensure they have the sufficient numbers to manage the opening efficiently, the record templates for completion, copy of the ITB and the tools to open the bid packaging easily. If bids are not opened immediately after the bid deadline the ITB must state the date, time and place of bid opening. In the interim the bids should remain in the Tender Box.

There should be a minimum of four public officers as per **Section C.5 Submission and Bid Opening**

On arrival all bidders and public officers must sign the "Record of Attendance".

It is recommended that the procuring entity maintains a short script for the Chair to follow and a checklist of tools required.

No comment regarding the disqualification or rejection of any bid should be made during the bid opening.

<table>
<tr><td>The Chair should:</td><td>i. Welcome bidders to the opening and verify that they have all signed the record of attendance.
▪ Emphasize the importance of the bid opening process.
▪ Briefly explain the procedure i.e. opening of bids, what information regarding the bids will be read out and recorded by the procuring entity.
▪ Advise that questions from bidders may be permitted and when they may be asked. They may only relate to the bid opening, their bid and a request to repeat information read out. Any questions must also be recorded.
▪ All mobile phones must be switched to silent mode.
▪ If there is a bid missing no bids shall be opened until that is resolved.
ii. Initial next to the date stamp on the front page/cover.
iii. Read out the specific data relative to that procurement. This is specified in the bidding document.</td></tr>
</table>

	iv. Not make any comment on the data contained or any errors or omissions. v. Briefly advise next steps in the procurement process. vi. Close the meeting.
The Opener will:	i. Organize the bids in to three separate piles according to the external markings on the bid packages 'Withdrawal', 'Amendment' and 'Originals'. The packages should then be opened in that order. ii. Show that each bid package received has not been opened or damaged. Any damage to the packaging should be recorded. iii. Open the packaging carefully iv. The original technical documentation should be identified and opened. If it is a two-stage process the financial documentation must not be opened. v. Mark each bid with a sequential number (i.e. 1, 2, and 3) in line with the Secretaries records. vi. The front page/cover should be date stamped. vii. Pass the documentation to the Assistant Chair.
The Assistant Chair will:	i. Check the record has been date stamped. ii. In the case of 'Withdrawal' or 'Amendment' bids, endeavour to identify the original bid documentation at that stage. iii. If the original documentation cannot be identified and once the Chair has read out the Withdrawal' or 'Amendment' information, retain the paper work to collate with the original bid. iv. Identify the pages which include the data the Chair must read out.
The Secretary will record in the Bid Opening Record:	i. The time proceedings commence. ii. Who is in attendance. iii. The details of any 'Withdrawal' should be recorded and if possible, the original bid identified (although this may not always be possible until the packaging is opened). This document is retained by the procuring entity. ▪ If the bidder is represented the original bid should be returned to the bidder who must annotate and countersign the bid opening record as proof of its return. iv. The details of any 'Amendment' should be recorded and if possible, the original bid identified (although this may not always be possible until the packaging is opened). v. The details of the original bids. vi. Any questions from bidders and the Chair's response. vii. The time proceedings close.

All bids will then be removed to a secure place. The Bid Opening Report (using the template provide) should include the original handwritten records i.e. Record of Attendance and Bid Opening Record should be scanned and circulated to all bidders who bought the ITB.

C.5.6.1. **Late Bids**

Any late bid must not be opened by the procuring entity. The procuring entity must notify the bidder, on the day of receipt, to collect its bid within seven days after the deadline for submission. Failure to collect within the time would result in the procuring entity destroying the late bid. The procuring entity must maintain a register of late bids and the date of collection or date the bid is destroyed. A bid that is submitted one (1) minute after the hour of the deadline is considered late and will be returned unopened to the bidder.

C.5.7. Confidentiality

The same rules of non-disclosure in procurement proceedings set out under the Instructions K.10C apply to this Manual.

C.5.8. Examination and evaluation of bids

The purpose of evaluation is to objectively assess and compare all bids received, using a pre-defined methodology and criteria, to determine which is the successful bidder and who should be awarded a contract. A well conducted evaluation should ensure that:

- competition is fair and that all bidders have an equal opportunity of winning Government funded contracts;
- the successful bidder is both eligible and qualified to undertake the contract;
- the goods (or goods and related services), works, consultancy services or general services purchased under the contract are of appropriate quality; and
- the procuring entity gets the best possible value for money

Evaluations will vary for goods (or goods and related services), works, consultancy services and general services, but the evaluation methodology will always consist of three stages:

i. a preliminary screening, to assess bids against the basic requirements of the ITB and mandatory eligibility and qualification requirements – in doing so, section 5.9.1.1 (Preliminary screening) must be followed;

ii. a detailed evaluation, to determine whether bids are responsive, substantially responsive or non-responsive to the technical and commercial requirements of the ITB – in doing so, section 5.9.1.2 (Detailed evaluation) must be followed; and

iii. a financial evaluation to compare the costs of responsive or substantially responsive bids and determine which is the successful bid and should be recommended for award of contract.

C.5.8.1. **Bid Evaluation Committee**

> **During the bid evaluation period the Bid Evaluation Committees must adhere strictly to the following principles:**
>
> **a).** ensure that the bid evaluation process is strictly confidential;
>
> **b).** reject any attempt or pressure to distort the outcome of the evaluation;
>
> **c).** reject any proposed action likely to lead to fraud and corruption; and
>
> **d).** ensure that only the evaluation and qualification criteria specified in the ITBs are applied.

The evaluation process and those responsible for undertaking the evaluation are as described in Section C.**5.9.** of this Operating Manual.

The head of the procuring entity must select the most appropriate member or members of staff to conduct each evaluation; particularly those with technical knowledge of the goods (or goods and related services), works, consultancy services or general services being procured. The appropriate number and type of staff will depend on the type, value and complexity of the procurement. For example:

- an evaluation of an RFQ for routine stationery items could be conducted entirely by one member of the procuring entity;
- an evaluation for a construction contract will require inputs from at least one civil works engineer.

The Bid Evaluation Committee will be responsible for the evaluation and comparison of the bids received and for the preparation of the Bid Evaluation Report (BER).

C.5.9. Evaluation and Post Qualification

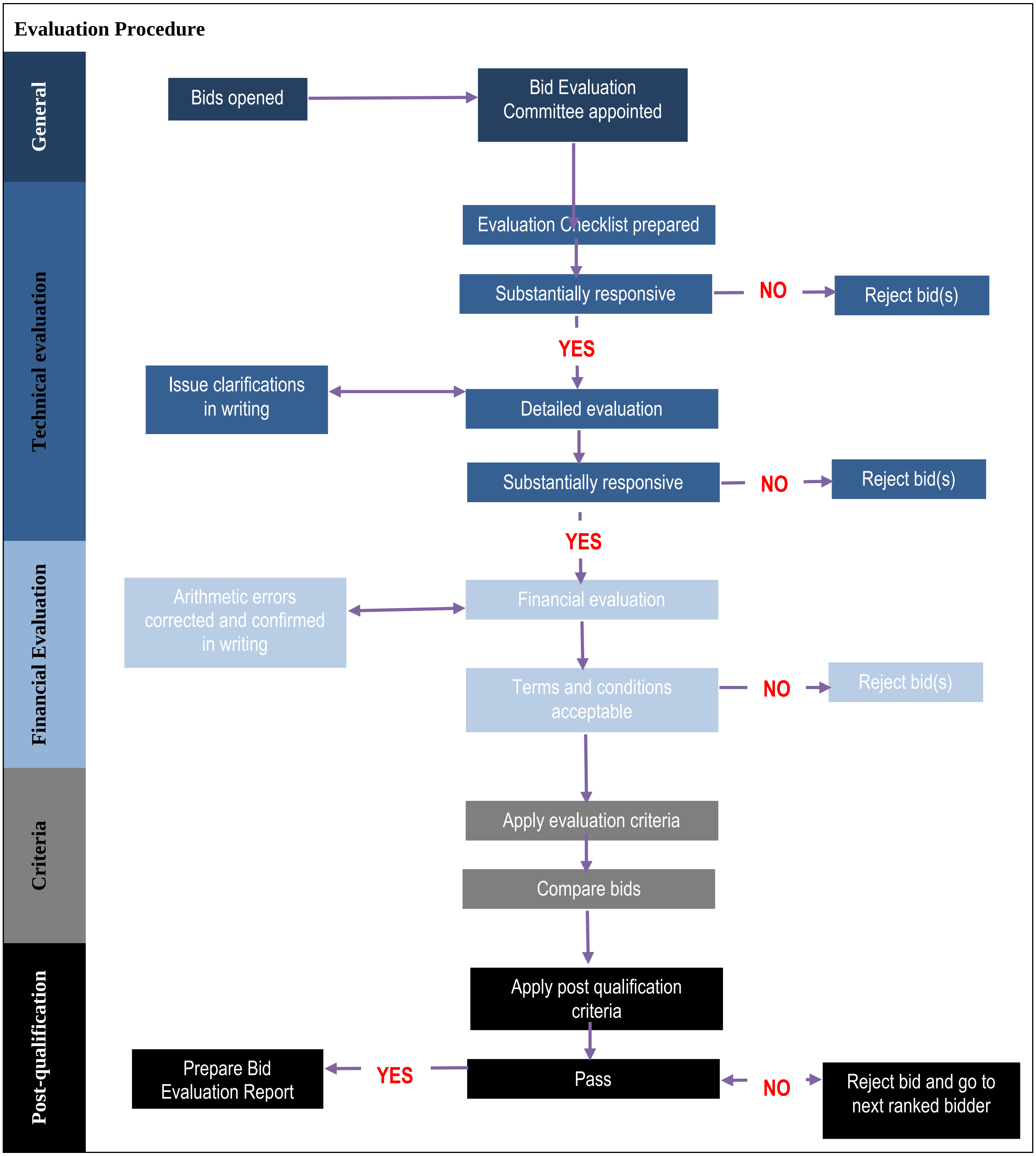


Figure 8: Evaluation Procedure

C.5.9.1. **Invitations to Bid**

The Bid Evaluation Committee will apply the following general steps:

a). Review and list the requirements, instructions and evaluation criteria specified in the ITB and ensure that these are clearly understood by all evaluators. The Bid Evaluation Committee must create an evaluation checklist and apply the criteria specified in the ITB, and not add any new or varied criteria.

b). Conduct a preliminary screening to assess bids against the basic requirements of the ITB and mandatory eligibility and qualification requirements – in doing so, section 5.9.1.1 (Preliminary screening) must be followed.

c). Conduct a detailed evaluation on the bids following the preliminary screening to determine whether bids are responsive or substantially responsive to the technical and commercial requirements of the ITB – in doing so, **Section C.5.9.1.2 Detailed evaluation** must be followed.

d). Correct bids or seek clarification from bidders as required, including quantifying any deviations or omissions.

e). Conduct a financial evaluation on the bids which passed the detailed evaluation to determine the lowest priced bid, correcting arithmetical errors and applying any discounts.

f). Where required, conduct a post-qualification on the successful bidder.

g). Applying the evaluation criteria.

h). Comparison of bids.

i). Prepare a Bid Evaluation Report for approval.

C.5.9.1.1. **Preliminary Screening (or Administrative Assessment)**

The preliminary screening should take place shortly after the bid opening and is conducted to determine whether bids comply with the basic instructions and eligibility requirements of the ITB.

Where no pre-qualification has been conducted, the preliminary screening can also be used to assess whether bidders meet the mandatory qualification requirements. If the procurement was subject to a prequalification exercise, then the bidder must reconfirm its original qualification criteria. This is particularly important in the case of a JV.

It is important that the evaluator(s) take into consideration any amendments or withdrawal by a bidder prior to the bid closing. The amendment may cover any aspect of the bid and therefore the evaluator(s) need to ensure it is applied at the correct stage in the evaluation process.

The criteria to be used for the preliminary screening depend on the requirements and instructions of the ITB, so the preliminary screening must always start with a review of the ITB to list the requirements to be met.

If any deletions, interlineations, additions, or other changes have been made, they should be initialled by the bidder. These changes may be accepted if they are amendments, editorial, or explanatory. If not, they should be treated as deviations. Missing pages in the original copy of the bid may be cause for its rejection, as it may result in contradictions in model numbers or other designations of critical supply items.

As guidance only, the administrative assessment might typically include the following checks:

a). submission of a bid security, if one was required, in the correct form and amount and from an acceptable financial institution i.e. commercial bank;
b). submission of an original and the correct number of copies of the bid;
c). submission of all forms and documents required including, in particular the bid submission form and any required price schedules;
d). submission of any essential supporting documents such as business registration certificates and business licences;
e). signature and authorization of the bid in accordance with the instructions in the ITB, including any required power of attorney;
f). correct bid validity;
g). the bid is for all items included in the ITB, or in a particular lot, if so required by the ITB;
h). any changes are initialled;
i). submission of any additional documentation or samples required; and
j). whether the bidder meets the administrative requirements.

If **discrepancies are identified**, **these may be rectified through clarification** without giving any benefit to the bidder, and without prejudice to the interests of other bidders. Such discrepancies shall be noted and decisions regarding their acceptance or rejection shall be recorded in the BER. The request for clarification shall be documented and shall form part of the record of procurement proceedings.

The results of the preliminary examination shall be presented in the BER and may be useful to include additional tables to check responsiveness/compliance to the basic requirements of the ITB and mandatory eligibility and qualification requirements.

C.5.9.1.2. Detailed evaluation

The detailed evaluation must only be conducted on bids which passed the administrative evaluation. The detailed evaluation is conducted to determine whether bids are substantially responsive to the technical and financial requirements of the ITB. The technical evaluation for goods (or goods or related services), works and general services is conducted on a pass or fail basis; only bids which are responsive, or substantially responsive, to the requirements of the ITB are included in the subsequent financial evaluation whereas, the evaluation for consultancy services is conducted on a weighting basis with a minimum technical score to proceed.

If there are any bids which were non-compliant at the technical evaluation, the Bid Evaluation Committee shall, as per **Section C.5.9.1.3. Bid Clarifications from Bidders and Corrections**,

seek clarification from the relevant bidders on any minimum technical requirements of the ITB and mandatory qualifications requirements that were not complied with or omitted at the time of the technical evaluation. If, after the specified period any such bidder still fails to comply or satisfy those requirements, the Committee shall then proceed to undertake the financial evaluation of the bids that remain responsive or substantially responsive. Bids that are non-responsive or not substantially responsive at this stage are eliminated from the evaluation.

In evaluating bids, the evaluator(s) is required to decide whether a bid is “responsive” (i.e. meets the procuring entity’s requirements) or “substantially responsive” (i.e. meets the procuring entity’s essential requirements or which conforms to all the instructions, requirements, terms and conditions of the ITB without material deviation, reservation, or omission) or “non-responsive” (i.e. does not meet the procuring entity’s requirements). In practice, few bids are perfect and therefore the key test is whether a bid is “substantially responsive”. In other words, minor (or “non-material”) errors or problems can be accepted by the evaluator(s) or corrected by the bidder, while bids with major (or “material”) errors or problems must be rejected.

As a general rule, a **material deviation, reservation, or omission** is one that;

- affects the scope, quality or performance of the goods, works or services in a substantial way; or
- would limit the procuring entity’s rights or the bidder’s obligations under the contract in a substantial way.

Determining whether a deviation is material or non-material is a decision for the evaluator(s). The decision must be based on the contents of the bid only. Additional information or previous knowledge of a product or bidder must not be taken into account.

What is a material or non-material deviation will vary between different bidding procedures, depending on the particular requirements of each; However, decisions on what constitute material and non-material deviations must be applied consistently to all bids which are part of the same evaluation process.

In deciding whether deviations are material or non-material, the evaluator(s) should consider the impact on key factors, such as cost, risk, time and quality of the procurement. The below examples are for guidance only:

Material Deviations, reservations or Omissions are likely to include:	**Non-material Deviations, reservations or Omissions are likely to include:**
▪ unacceptable schedules for delivery or completion; ▪ unacceptable technical details, such as design, materials, workmanship, specifications, standards or	▪ minor differences in delivery or completion schedules, where time is not critical; ▪ the omission of minor items; ▪ a fixed price bid in response to an ITB with

methodologies; ▪ sub-contracting in a substantially different amount or manner than permitted; ▪ refusing to bear important responsibilities and liabilities stipulated in the ITB, such as performance guarantees and insurance coverage; ▪ taking exception to critical provisions such as applicable law, taxes, duties, and dispute resolution procedures; and ▪ unacceptable counter-proposals on key contract terms and conditions, such as payment terms, price adjustment, liquidated damages or warranty.	price adjustment (the reverse i.e. an adjustable price when a fixed price was specified would be considered to be material); ▪ a bid requesting changes in the coefficient of the price adjustment formula specified in the ITB, or seeking a ceiling for the price adjustment; ▪ arithmetic errors; ▪ alternative technical details, such as design, materials, workmanship, specifications, standards or methodologies, which are substantially responsive and acceptable to the procuring entity; ▪ bid which offers minor deviations from the technical requirements, which do not affect the suitability or performance for the intended use (deviations which affect the efficiency or performance should be evaluated for purposes of comparison); ▪ a bid which offers the equipment specified but has omitted minor attachments and components, e.g. a tool kit; and ▪ minor amendments to contract terms and conditions, which are acceptable to the procuring entity.

Where a bid is determined to be substantially responsive, the evaluator(s) may waive, clarify or correct the non-conformity, error or omission in the bid.

C.5.9.1.3. Bid Clarifications from Bidders and Corrections

The scope of bid clarifications must be made clear in the tender document before advertisement so that all bidders know that there will be a chance to provide clarification or missing documents (if not a substantial issue). Where information contained in a bid is unclear, the evaluator(s) may seek clarification of the information from the bidder. Clarifications cannot be used to amend the price of the bid (with the exception of the correction of arithmetic errors), to correct material deviations or to make other significant changes to any aspect of the bid.

Requests for clarification must be addressed to the bidder in writing and must state that a written response is required by a specified date as determined by the Bid Evaluation Committee. The request must also state that failure by the bidder to respond to the request may result in the rejection of his/her/its bid at the detailed evaluation stage.

If the bidder attempts to amend its bid in any manner, then the bid will be rejected and any bid security forfeit.

Where a bid includes non-material deviations, errors or omissions, the evaluator(s) may choose to accept or to correct them. In order to make the evaluation fair to all bidders, the nonconformity should be quantified and expressed in monetary terms, wherever possible. This amount should then be added to the bid price, for purposes of the financial evaluation only, to reflect the price or cost of the missing or non-conforming item.

> **For example**, where a bid for goods does not include the price of a spare part or consumable item, the price of the missing item should be added to the bid price, using the highest price for the same item from the other bids.
>
> **As a further example,** where a bid includes a slightly later delivery date than required by the ITB and this delay is acceptable to the procuring entity, the late delivery could be quantified and expressed in monetary terms, using the monetary penalties for liquidated damages contained in the draft contract.

The communication should be managed by the Bid Evaluation Committee, although the response may be drafted by technical, legal or financial public officers.

C.5.9.1.4. Financial Evaluation

The financial evaluation must only be conducted on bids which were determined to be responsive or substantially responsive during the detailed evaluation. The financial evaluation is conducted to determine the evaluated price of bids, rank the bids according to their evaluated price and either identify the lowest priced bid or apply any financial weighting. The successful bid will be determined in accordance with the evaluation criteria in the ITB and should be recommended for award of contract.

Unless otherwise required by the instructions in the ITB, the procedure for determining the evaluated price of each bid is as follows:

- **a).** be clear on the basis of the item evaluation i.e. complete bid covering all technical requirements, by lot or by item.
- **b).** determine the total bid price, including or excluding particular costs, as indicated in the ITB e.g. the ITB may give particular instructions on the inclusion of all taxes and duties in the bid price or the exclusion of provisional sums and contingencies, but the inclusion of competitively priced day-works, in bids for works;
- **c).** correct any arithmetic errors i.e. the quantities should be the same as stated in the Bidding Documents. The total bid price for each item should be the product of the quantity and the quoted unit price;
- **d).** prices written in words shall take precedence over numeric quotations where there are differences;
- **e).** apply any non-conditional discounts offered by bidders;
- **f).** convert all bids to a single evaluation currency for purposes of comparison, using

the currency and the date and source of the exchange rate specified in the ITB;

g). make adjustments for any non-material nonconformities, errors or omissions;

h). apply any non-price criteria specified in the ITB;

i). apply any domestic margin of preference; and

j). determine the total evaluated price of each bid.

Where the evaluation is for a procurement requirement consisting of more than one lot and bidders are permitted to offer discounts which are conditional on the award of contracts for more than one lot, these must be taken into account in a further financial evaluation at this stage.

In the procurement of durable goods such as engines, vehicles, equipment, etc., the cost of initial and subsequent spare parts is very important as it constitutes a substantial part of the maintenance costs. Bidders should, therefore, be required to include in the bid, the price of spare parts over a specified period of time. These prices shall be added to the bid price when evaluating the bids. Bidders should also be asked to include the costs of maintenance and the supply of spare parts.

The procuring entity may reject a bid if the Bid Evaluation Committee has concerns about the bidder's ability to perform the contract successfully and clarifications have not brought the necessary explanations. This may include:

a). the technical solutions chosen; or

b). any exceptionally favourable conditions available to the bidder for the supply of the products or services or for the execution of the work; or

c). the originality of the work, supplies or services proposed. It considers that the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

After the recommended bidder is determined, the procuring entity and that bidder could enter into an appropriate arrangement for both the supply of spare parts and maintenance, as may be required in the specific circumstances.

Following completion of the financial evaluation and determination of the successful bid(s), a further financial comparison should be conducted to take any conditional discounts into account. This comparison must identify the best overall value for money for the procuring entity i.e. the combination of contract awards which offers the lowest total price.

A. Arithmetic Errors

In conducting a financial evaluation, arithmetic errors may be corrected by the evaluator(s). The procedure for correcting arithmetic errors is normally stated in ITBs and the procedure stated must be used. This is normally the procedure stated below.

Where no specific procedure is stated in the ITB, the following procedure should be applied:

- if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the evaluator(s) there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

- if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to the notes above.

Bidders should be notified in writing of any arithmetic corrections made and requested to agree to the corrections in writing.

B. Omissions

Where items missing in some bids are present in others, an average of quoted prices could be used to compare the competitors' bids.

Adjustments: The ITB specify which, if any, performance or service factors will be taken into account in the evaluation process. The method used in the evaluation of these factors should be clearly outlined in the BER and should be consistent with the provisions in the ITB. Bonuses or additional credits, which reduce the evaluated bid price will not be given in the evaluation for features that exceed the stated requirements in the ITB, unless otherwise indicated.

The value of the adjustments shall be expressed in terms of cost (for all works and most goods contracts) and should be expressed in the currency being used for the evaluation.

C. Discounts

Bidders are permitted to offer discounts to their bid prices, provided that any discounts are included in their bid. Discounts, or any other change in price, are not permitted after the bid closing date. Non-conditional discounts should be taken into account in the evaluated price of the bids.

Prompt payment discounts, which are conditional on prompt payment by the procuring entity, must not be taken into account in the financial evaluation, but should be included as a contract term, if the bid is accepted.

If so stated in the ITB, bidders may be permitted to offer conditional (or cross) discounts i.e. discounts which are conditional on the simultaneous award of contracts for more than one lot. Conditional discounts should be excluded from the main financial evaluation.

D. Deviations

Requests for deviations that are expressed by the bidder in vague terms, such as: "We would like an increase in the amount of the mobilization advance" or "We wish to discuss changes in the completion schedule", should ordinarily be ignored in the evaluation. However, a categorical statement by the bidder highlighting disagreement with a requirement in the ITB should be treated as a deviation.

If a bidder requires a faster payment stream than specified in the ITB, the penalty shall be based on the prospective benefit to the bidder. This situation assumes use of a discounted cash flow, using the prevailing commercial interest rates for the currencies of the bid, unless the eventuality is anticipated and a rate is specified in the ITB.

If a bid provides for a delivery or completion date that is later than the one specified in the ITB but is technically responsive or compliant - the time advantage given should be assessed as a penalty, as specified in the ITB. Whenever possible, the procuring entity should initiate the procurement process sufficiently early, so that delivery schedules normally available in the market are acceptable, and no premium has to be paid for urgent deliveries. The ITB should indicate the latest delivery schedule acceptable; and a bid offering delivery beyond this time would be deemed non-responsive. No advantage should be given for early delivery, unless this will result in tangible benefits for the procuring entity.

C.5.9.1.5. Applying the evaluation criteria

A. Lowest evaluated bid price

The standard methodology is lowest evaluated bid price i.e. where the bid matches the technical requirements and the recommended bidder is the one with the lowest evaluated bid price. However, more than the simplest services will include some form of weighting and even for goods and works the procuring entity may have included additional evaluation methodologies which need to be considered next in order to establish the bid which is 'most advantageous'.

B. Alternative bids

If the ITB allows for alternative bids, then the evaluator(s) must apply the option as selected in the ITB. Either only the alternative bid from the lowest priced bid is evaluated or all qualifying alternative bids are evaluated.

C. Domestic Margin of Preference

Domestic margin of preference is only permissible in goods procurement. If the ITB allows for its application, then the evaluators must follow the methodology specified in the ITB.

D. Multiple Contracts

The ITB will specify the basis on which a contract will be awarded i.e. for the full list of technical requirements, by lot or by item. It is important that the financial evaluation is conducted on this basis.

C.5.9.1.6. Comparison of bids

Following the application of the evaluation criteria the evaluator(s) will either select the lowest evaluated bid price or most advantageous bid for goods (or goods and related services), works and general services or for consulting services the bidder with the highest technical and financial percentage (combined) score.

C.5.9.1.7. **Post-qualification**

Post-qualification is conducted to check whether a successful bidder has the resources, experience and qualifications required to satisfactorily perform a contract. As post-qualification is conducted before a contract is awarded, and the contract denied if the bidder is not qualified, it should reduce the likelihood of defaults or poor performance under a contract.

It is not usually applied under Request for Proposal or Request for Quotations Methods.

The evaluator(s) should adopt the following steps:

1. Review the ITB for details of the post-qualification criteria set and the evidence of post-qualification requested from bidders.
2. If the bidder is pre-qualified under selective bidding, then the bid should be verified against the pre-qualification criteria
3. Examine the evidence submitted by the successful bidder and assess whether it meets the criteria. Seek clarifications or updated information from the bidder if required. Where post-qualification requires a visit to the successful bidder, or any other checks which are likely to incur significant costs, obtain approval of the evaluation report before incurring expenditure.
4. Where the successful bidder is qualified, include this information in the BER and proceed to submit the completed report, with the recommendation for award of contract, for approval.
5. Where the successful bidder is not qualified, conduct a post-qualification check on the bidder with the next lowest evaluated price/ranking and repeat this process as required until a qualified bidder is identified. Include the results of all post-qualification checks in the BER, which should be submitted for approval, with reasons why any bidder was determined not to be qualified and a clear recommendation for contract award.

A similar check must be done for procurements which included a prequalification or request for expressions of interest stage.

C.5.9.2. **Additional Considerations when evaluating Goods**

The purpose of the evaluation methodology for goods is to determine the lowest evaluated bid price or most advantageous bid, which is responsive to the requirements of the ITB.

It is important that the technical evaluation for goods is conducted by a thorough comparison with the technical requirements in the ITB. The technical requirement will specify a minimum standard which bids must reach.

For example, if the specification in the ITB for a photocopier specified a copy speed of **25 pages per minute**:

- a bid offering a copy speed of **15 pages per minute** would be **non-responsive**;
- a bid offering a copy speed of **24 pages per minute may be substantially responsive**, if the evaluator(s) so decide;

- a bid offering a copy speed of **25 pages per minute** would **be responsive**;
- a bid offering a copy speed of 33 pages per minute would be responsive but would receive no additional preference in the evaluation compared to the bid offering 25 pages per minute.

In conducting the technical evaluation, all aspects of the technical requirements must be considered.

For example:

- failure to offer the specified engine size would almost certainly be a material deviation in an evaluation for a vehicle;
- failure to offer the specified colour of vehicle may be a non-material deviation if the vehicle is for general use but may be a material deviation if the vehicle is for police or military use and requires a colour or markings for identification or camouflage purposes.

The commercial evaluation criteria will depend on the ITB, which might include:

- delivery schedule for goods within the time period specified;
- completion schedule for incidental services within the time period specified, where installation and commissioning or user training is required;
- availability of spare parts and consumable items;
- service arrangements, such as a requirement for a local agent.

The successful bid is ordinarily the lowest evaluated bid price, which has met the procuring entity's technical and commercial requirements, the procuring entities are permitted to apply non-price criteria, as long as they are specified in the ITB.

Non-price criteria must be given a relative weight or expressed in monetary terms wherever possible. Examples of non-price criteria might include:

- a penalty for late delivery and/or a bonus for early delivery, based on the delivery schedule stated in the ITB. Penalties and bonuses could be expressed in monetary terms, by increasing or reducing the evaluated price by a specified amount for each day or week that delivery will be late or early. The amount could be calculated using the rates normally applied to liquidated damages for late deliveries.
- a penalty for payment terms, which require payment earlier than specified in the ITB. The penalty could be expressed in monetary terms, by calculating the interest which would be earned on the money, using a defined interest rate.
- inclusion of the estimated cost of spare parts and/or consumable items for a specified period of operation. This could be expressed in monetary terms, by requiring bidders to provide prices for a specified list of items, which would be added to the evaluated price.
- inclusion of the costs of operating and maintaining equipment during its projected lifetime;

- a penalty or bonus for productivity or performance of equipment below or above a specified level.

C.5.9.3. Additional Considerations when evaluating Works

Like goods, the purpose of the evaluation methodology for works is to determine the lowest evaluated bid price , which is responsive to the requirements of the ITB. However, the evaluation of bids for works contracts is more complex than the evaluation of bids for goods.

To make the evaluation process easier and more transparent, it is essential that the procuring entity establishes well defined evaluation criteria in the ITB and executes the evaluation process in a transparent manner. The evaluation of works contracts involves consideration of both price and non-price factors, following the administrative examination to determine the responsiveness of the bids.

It is important that an officer qualified in the relevant field participates in the technical evaluation. The detailed evaluation will depend on the criteria in the ITB, but might include:

- completion schedule for the works within the time period specified and/or meeting key milestones of the construction program; equipment, material, workmanship and design of the standards or codes specified in the ITB or equivalent;
- use of construction methods specified in the ITB or acceptable alternatives;
- suitability of the bidder's key staff, taking into account their qualifications and experience;
- bid based on the design specified in the ITB or an acceptable alternative design, where alternatives are permitted by the ITB;
- compliance with applicable Instructions, such as those concerning labour; and/or
- sub-contracting within the amounts and in the manner permitted by the ITB and sub-contractors meeting requirements specified in the ITB.

It is expected that the ITB would call for bids on the minimum of a lot basis. However, in the case of works contracts, missing prices for occasional items are considered to be included in the prices for closely related items elsewhere.

Bids may contain provisional sums set by the procuring entity for contingencies. As these sums are the same for all bids, it is important that the evaluator(s) verify that the bidder has applied the same values as the ITB.

No extra benefit should be given to bids which exceed the standard required, except where this is done through the application of non-price criteria. Procuring entities are permitted to apply non-price criteria, as long as they are specified in the ITB.

Non-price criteria must be given a relative weight or expressed in monetary terms wherever possible. Examples of non-price criteria might include:

- a penalty for late completion and/or a bonus for early completion, based on the completion schedule stated in the ITB. Penalties and bonuses could be expressed in monetary terms, by increasing or reducing the evaluated price by a specified amount for each day or week that completion will be late or early. The amount could be calculated using the rates normally applied to liquidated damages for late completion.

- a penalty for payment terms, which require payment of any sums earlier than specified in the ITB. The penalty could be expressed in monetary terms, by calculating the interest which would be earned on the money, using a defined interest rate.

Some of the non-price factors may have formed part of the prequalification. Therefore, the evaluator(s) need to ensure that the qualifications are still valid. For example, previous contract experience may have lapsed or the financial statements may cover a new financial year.

If the evaluator(s) consider that a bid may be defined as **"abnormally low"** or **"front loaded"** it must be given further scrutiny. Ordinarily only the recommended bidder would be subject to this level of scrutiny. The analysis must consider a line by line analysis of the Bill of Quantities (BOQ) and a comparison with the engineer's estimates and other bids received. Are all items low priced or just specific sections, is the early stages of construction priced higher, are lower stages priced considerably lower. The focus should usually be on the major items. Once the evaluator(s) have completed the analysis and still remain concerned they must prepare a clarification questioning how the bidder will deliver the contract in those areas of concern.

If an evaluator(s) concludes that the bid was **abnormally low it shall be rejected**. If the bid was **front loaded** the evaluator(s) must recommend whether the bid is accepted, the performance security adjusted or the bid rejected.

C.5.9.4. Additional Considerations when evaluating Consultancy Services

Evaluation Procedure – Request for Proposals Method

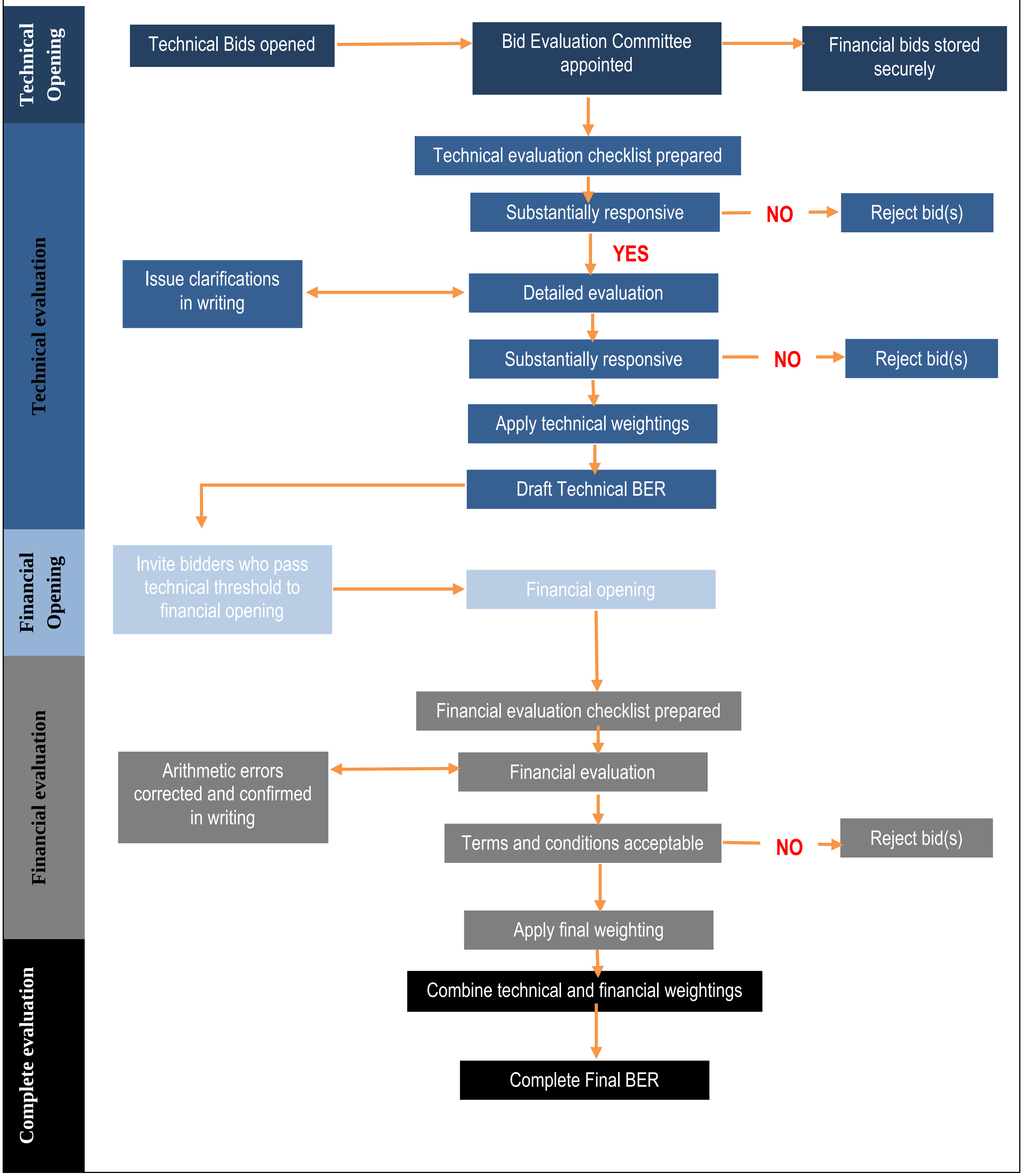


Figure 9: Evaluation Procedure – Request for Proposals Method

The purpose of evaluating consultancy services is to assess and compare all proposals received objectively, using a pre-defined methodology and criteria, in order to determine which is the successful bidder and who should be awarded a contract. A well conducted evaluation for consultancy services should ensure that:

- competition is fair and that all bidders have an equal opportunity of winning Government funded contracts;
- the bidder selected has appropriate staff and experience to successfully perform the consultancy services; and
- the consultancy services purchased under the contract offer the procuring entity an appropriate balance of quality and cost, depending on the objectives and circumstances of the procurement requirement.

The detailed evaluation must be conducted on proposals after the preliminary screening. The merit point scoring system is used to assess the relative quality of proposals. A variable number of points are awarded to each proposal for pre-determined criteria out of a maximum number of points stated in the request for proposals document.

This gives a score indicating the relative quality of each proposal. The scores of several evaluators are used to calculate an average score for each proposal, which becomes the total technical score for that proposal.

All bids are evaluated technically applying the following steps regardless of the method of selection i.e. QCBS, SFB, QBS or LCS.

C.5.9.4.1. Aspects to be considered in the Evaluation

Evaluator(s) must evaluate the quality and the adequacy of the proposed methodology and work plan by considering such aspects as:

a). Understanding of the Objectives of the Assignment – The extent to which the consultants' technical approach and work plan respond to the objectives indicated in the TOR;

b). Completeness and Responsiveness– Does the proposal respond exhaustively to all the requirements of the TOR?

c). Creativity and Innovation– Does the proposal suggest any new approaches to the assignment or new methodologies that may help to achieve better outcomes?

d). Clarity– Are the various elements coherent and the decision points well defined?

e). Efficiency and Resource Utilization– Is the staffing schedule appropriate? Are there too many short-term experts, or too many generalists? Is the proposed staff permanent or engaged by the external consultants? In the latter case, determine whether the consultants have worked on previous assignments with the permanent staff. This aspect must always be considered.

f). Flexibility and Adaptability– Is the methodology and work plan flexible, and easily adaptable to changes that might occur during implementation of the assignment? This aspect is especially relevant when the assignment takes place in potentially changing environments.

g). Technology– Does the methodology propose the use of appropriate technologies and the adoption of innovative solutions?

h). Timeliness of Outputs – Does the proposed activity schedule provide the requested outputs in a timely manner?

i). Logistics– If the consultants will be required to work at remote sites, their approach to logistics must also be assessed.

j). Quality Management– In large and complex assignments, the TOR may include a requirement to provide a Quality Plan or a detailed list of contents for the Quality Plan.

C.5.9.4.2. **Evaluation when Sub-Criteria are provided**

The quality and adequacy of the proposed methodology and work plan are evaluated by means of the following **three sub-criteria**; technical approach and methodology, work plan and organization and staffing. Additional sub-criteria may be specified in the RFP when there is a need to focus on particularly important aspects of the assignment.

The evaluator(s) shall develop a definition for each of the three sub-criteria. An example of the definition of the four grades, poor, satisfactory, good and very good, may include the following:

Technical Approach and Methodology	i. **Poor -** The technical approach and or the methodology to carry out important activities indicated in the TOR are inappropriate or very poorly presented, suggesting that the consultant has misunderstood important aspects of the scope of work. The list of contents of the Quality Plan (required in the TOR) is missing. ii. **Satisfactory -** The way to carry out the different activities of the TOR is discussed generically. The approach is standard and not specifically tailored to the assignment. Although the approach and methodology are suitable, they do not include a discussion on how the consultant proposes to deal with critical aspects of the assignment. The list of contents of the Quality Plan (if required in the TOR) is provided, but it is generic and does not reflect the specific features of the assignment. iii. **Good -** The proposed approach is discussed in detail. The methodology is specifically tailored to the characteristics of the assignment and is flexible enough to allow for adaptation to changes that may occur during execution of the services. The list of contents of the Quality Plan (if required in the TOR) is tailored to the specific characteristics of the assignment. iv. **Very Good -** In addition to the defined grading for "good", important issues are approached in an innovative and efficient way, indicating that the consultants have understood the main issues of the project and have outstanding knowledge of new solutions. The proposal discusses in detail ways to improve the results and the quality of the assignment by using state-

	of-the-art approaches, methodologies, and knowledge. A detailed description of the Quality Plan is provided in addition to its list of contents (if required).
Work Plan	i. **Poor -** The activity schedule omits important tasks. The timing of activities and correlation among them is inconsistent with the approach and/or methodology proposed. There is a lack of clarity and logic in the sequencing. ii. **Satisfactory -** All key activities are included in the activity schedule, but they are not detailed. There are minor inconsistencies between timing, assignment outputs, and proposed approach. iii. **Good -** The work plan fits the TOR well. All the important activities are indicated in the activity schedule: their timing is appropriate; consistent with the assignment outputs; and the interrelation between the various activities is realistic and consistent with the proposed approach. There is a fair degree of detail which facilitates understanding of the proposed work plan. iv. **Very Good -** It surpasses the grading defined for "good". In addition, the decision points are well-defined, as are the sequence and timing of activities, indicating that the consultants have optimized the use of resources. A specific chapter of the proposal explains the work plan in relation to the proposed approach, and the work plan permits flexibility to accommodate contingencies.
Organisation and Staffing	i. **Poor -** The organizational chart is sketchy; the staffing plan is weak in important areas; and the staffing schedule is inconsistent with the timing of the most important outputs of the assignment. There is no clarity in the allocation of tasks and responsibilities. The proposed specialists have never worked together as a team. ii. **Satisfactory -** The organizational chart is complete and detailed; the technical level and composition of the staffing arrangements are adequate; and staffing is consistent with both timing and assignment outputs. iii. **Good -** In addition to meeting the requirements of the guidelines defining "satisfactory", the staff is well balanced - showing good coordination. There is clear and detailed definition of duties and responsibilities: not too many short term experts; not too many generalists; precise blending of staff skills and needs; and efficient logistical support. Some members of the project team have worked together before to some extent. iv. **Very Good -** Besides meeting all the features for a "good" rating, the proposed team is integrated and several members have worked together extensively in the past. A detailed explanation of the procuring entity's role and integration in the assignment is provided. The proposal contains a detailed discussion demonstrating that the consultants have optimized the use and deployment of staff from the point of view of efficiency and economy, based on the proposed logistics.

Key staff is evaluated in terms of their skill and suitability for the job. The qualifications of the team leader must be carefully evaluated because that position plays a crucial role in the success of the assignment. If the team leader is acting as both project manager and expert, evaluate his or her qualifications for each function and assign the scores to each function proportional to the time effort dedicated to each of them if the two functions overlap. Full marks to each function are assigned only if the functions can be clearly separated without affecting the quality of the consultancy services.

a). Local participation as reflected by Samoan nationals among key staff (international consultants)

For assignments involving international consultants, a maximum of 10 points must be allocated to this criterion. In the evaluation these points will be allocated to each proposal in a proportion equal to the percentage share of national key staff in the total key staff time effort proposed. If, for example, eight (8) points are attributed to the criterion, and 50 percent of total man months or staff-hours of key staff is allocated by the consultants to national experts, the proposal will receive four (4) points. This criterion covers only the quantitative aspect of participation by nationals; qualitative aspects such as experience of national key staff are captured by the criterion "Qualification and competence of the key staff proposed". The participation of national consultants as domestic consultants, or as local branches of foreign consultants, or as individual experts equally satisfies this criterion.

b). Rating Scale

A range of 30 to 60 points must be allocated to "Qualifications and Competence of Key Staff". The grades indicated below are recommended for percentage ratings related to the evaluation of the proposed Key Staff. Only Key Staff should be graded and only one CV per position.

Table 8: Rating scale

RATING	GRADE
Poor	40%
Satisfactory	70%
Good	90%
Very Good	100%

The lowest grade is 40 % instead of zero for the following reasons:

i. A zero rating is not realistic, as it would imply that the consultant has not responded at all to the proposal under this criterion.
ii. A zero rating given here may hardly be compensated for; even by high scores for the remaining criteria. This could lead to the rejection of a proposal that is attractive in all its other aspects.

If the key staff contingent proposed by the consultants does not fully satisfy all the conditions set out in one of the grade definitions, but that particular grade appears to reflect the overall adequacy of the key staff better than the lower grade, the upper grade may be assigned.

An example of the definition of the four grades may include the following:

A. General Qualification	i. **Poor**: The proposed expert has less experience than that specified in the RFP or less than 10 years of relevant experience. ii. **Satisfactory**: The proposed expert has 10 years or more of experience relevant to the assignment, with relevant academic education and training. iii. **Good**: The proposed expert has more than 15 years of overall working experience - a substantial part of that experience relates to consultancy assignments similar to the one in question. The expert's professional achievements, e.g., position within the firm and level of responsibility, have steadily increased over time. iv. **Very Good**: The proposed specialist has more than 20 years of specialized experience in the field of the assignment and is recognized as a top expert and is fully up to date in state-of-the-art methodologies relevant to the discipline.
B. Adequacy for the Assignment	i. **Poor**: The proposed expert has never, or only occasionally worked in a position similar to the one required under the assignment. Qualifications do not 'match', e.g. the position requires an experienced project manager, whereas a relatively junior professional with limited experience is proposed. ii. **Satisfactory**: The experience of the proposed expert fits the assigned position. In the past 10 years or more has successfully held positions similar to the one proposed for the assignment in at least one project of a similar nature. Skills (either professional or managerial as the proposed position may require) are adequate for the job. iii. **Good**: The qualifications of the expert are suitable for the proposed position. Over the past 10 years has held several similar positions in similar assignments. Skills (either professional or managerial) are fully consistent with the position and requirements of the assignment. **iv.** **Very Good**: In addition to meeting the criteria defined under "good," the expert has qualifications and experience substantially exceed the requirements for positions similar to the one being considered.
C. Experience in the Region (For International Consultants)	i. **Poor**: The proposed expert has never or only occasionally worked in countries similar to the one of the assignment. ii. **Satisfactory**: The expert has worked in countries with cultural, administrative, and government organizations similar to Samoa. iii. **Good**: In recent years the expert has worked in the region of the assignment for at least one year. iv. **Very Good**: In addition to meeting the criteria defined under "good," the expert has gained detailed first-hand knowledge of Samoa through years of professional work.

C.5.9.4.4. Transfer of Knowledge (Training)

a). Rating Scale

A maximum of 10 points must be allocated to "Transfer of Knowledge", except when training is an important component of the assignment. The same grades and ratings as indicated at **Table 8: Rating scale** would apply.

b). Aspects to Consider for the Evaluation

The evaluator(s) must evaluate the proposed transfer of knowledge program by considering the following:

i. Methodology and Expected Outcome of the Program:
Definition of outcome and results in keeping with the requirements of the TOR; type and approach to the transfer of knowledge (e.g., program based on on-the-job training, or stand-alone training, or a combination) and methodology proposed to attain the objectives, are clearly explained and appropriate for the target audience; quality of learning materials proposed

ii. Organisation of the Program:
Degree of definition of the program, that is, the activities that will be carried out under the assignment; definition of roles, duties, output, and organizational arrangements of the procuring entity's personnel; level of skill and effort required of such personnel; consultant's personnel involved and the expected level of effort; and allocation of responsibilities between the consultants and the procuring entity

iii. Experience in Transfer of Knowledge and Training:
The level of previous training experience of the consultant's experts involved

iv. Supervision and Evaluation:
Arrangements for supervision and implementation of the assignment, and the impact of transfer of knowledge program, e.g., progress reports, progress evaluation, and evaluation of knowledge gained by the trainees.

c). Evaluation when no sub-criteria are provided

When no sub-criteria are provided for transfer of knowledge, the program for transfer of knowledge proposed by the consultants must be evaluated as a whole. An example is given below (definitions may differ from case to case, depending on the characteristics of the program).

i. **Poor**: Approach and methodology of the training program respond only partially to the objectives indicated in the TOR, and resources allocated are insufficient.

ii. **Satisfactory**: Program objectives and approach are generally consistent with the requirements of the TOR; proposed methodology seems suitable, but there is no discussion of its important aspects; training program is complete and well defined; allocated resources are commensurate with the objectives; functions and responsibilities are only broadly defined; and measures to supervise the program are only generally indicated.

iii. **Good**: The methodology is specifically tailored to the objectives of the program and is discussed exhaustively. Timing of training activities is well defined and fully consistent with the time schedule of the activities on which the training is based.

Quality and composition of consultant personnel involvement are very well thought out and balanced. Duties and responsibilities of consultant and the procuring entity personnel involved are clear and defined in detail. Measures to supervise the program and minimize risks of abuses are clearly indicated.

iv. **Very Good**: In addition to the meeting of the criteria defined under "good," approaches and methods proposed represent new best practices.

In the event that the training program does not fully satisfy all the conditions set out in one of the grade definitions, but that particular grade appears to reflect the overall adequacy of the training program better than the lower grade, the upper grade may be assigned.

d). Evaluation when sub-criteria are provided

There may be cases where training is an important component of the assignment, and the RFP has allocated to "Transfer of Knowledge" more than 10 points. In these cases, sub-criteria may be established and points allocated in the RFP to each of them.

C.5.9.4.5. Conducting the evaluation

The general procedure for merit point scoring systems is as follows:

1. All evaluators should jointly discuss the criteria and any sub-criteria, to ensure that all evaluators have a common understanding of the criteria and their relative importance.
2. Each evaluator should conduct an evaluation of each proposal, independently from all other evaluators. Consider each proposal and award scores out of the maximum number of points against each criterion. Record all scores and sign the score sheet.
3. The evaluator(s) will collect scores, compile them on a single score sheet and calculate average scores for each proposal. To calculate the average, add the scores of all evaluators together and divide by the number of evaluators.
4. The Bid Evaluation Committee will compare the scores of each evaluator for each proposal, in order to check that there has been a consistency of approach and a common understanding of the criteria and each proposal. Any significant deviations from the average score or inconsistencies in scoring should be identified and evaluators may be called upon to explain their scores, at a meeting of all evaluators.
5. In exceptional cases, where the evaluators agree that there has not been a consistency of approach or where discussions reveal a misunderstanding of a criterion, the scoring method or a proposal, one or more evaluator may be permitted to adjust his individual scores. No evaluator shall be obliged to make adjustments to his scores. The original score sheets must

be retained and revised scores recorded on a new score sheet. Where any scores are revised, the Bid Evaluation Committee will collect and compile scores again and recalculate the average score for each proposal.

6. Compare the technical score of each proposal against the minimum technical threshold specified in the RFP document. Eliminate any proposals which do not reach this threshold or which the evaluators agree are not responsive to important aspects of the TOR.
7. Prepare a technical BER.

The procuring entity will then:

- Notify bidders, whose proposals are being rejected, stating that their financial proposals will be returned unopened after completion of the evaluation process.
- Notify bidders whose proposals reached the threshold, and if there is a public opening, of the date, time and location for the financial proposal opening and conduct the proposal opening.

The proposals which pass the detailed evaluation and proceed to the financial evaluation are determined by the individual evaluation methodology.

The proposal or proposals proceeding to the financial evaluation will be determined by the relevant methodology for the technical evaluation.

The financial evaluation is conducted to determine the evaluated price of proposals, compare the proposals and determine the successful proposal i.e. the proposal which should be recommended for award of contract. The financial evaluation and the determination of the successful proposal differ between different evaluation methodologies.

Unless otherwise required by the evaluation methodology or the instructions in the request for proposals document, the procedure for determining the evaluated price of each proposal is as follows:

- determine the total proposal price, including or excluding particular costs, as indicated in the request for proposals document e.g. the request for proposals document may state that all taxes and duties are to be included in the evaluation;
- correct any arithmetic errors;
- assess whether all items are included in the proposal price and add the cost of any missing items;
- convert all proposals to a single evaluation currency for purposes of comparison, using the currency and the date and source of the exchange rate specified in the request for proposals document or the SBD;
- determine the total evaluated price of each proposal.

The evaluator(s) will award financial scores to each proposal, based on their evaluated price. Financial scores must be awarded using the method specified in the RFP document.

i. QCBS

All bidders who pass the technical pass mark will have their financial bids opened.

Points are awarded for financial bid as follows:

1. the lowest priced proposal is given a financial score of 100
2. all other proposals are given a financial score proportionate to this, using the formula Sf = 100 x Fm/F, in which

Sf denotes the financial score of the proposal under consideration;

Fm is the price of the lowest price proposal;

F denotes the price of the proposal under consideration.

For example, if prices were as follows:

Proposal A SAT$ 500,000

Proposal B SAT$ 450,000

Proposal C SAT$ 600,000

a. Proposal B has the lowest price and would be awarded 100 points.
b. The formula would be applied to Proposal A as follows:

100 x 450,000/500,000 = 90 points.

c. The formula would be applied to Proposal C as follows:

100 x 450,000/600,000 = 75 points.

ii. SFB

All bidders who pass the technical pass mark will have their financial bids opened.

The bidder who has the highest technical score and whose financial bid is within the fixed budget will be recommended for award.

iii. QBS

Only the financial bid of the highest technically ranked bidder is opened and evaluated.

iv. LCS

All bidders who pass the technical pass mark will have their financial bids opened.

The bidder who has the lowest priced bid, regardless of their technical bid should be recommended for award.

The evaluator(s) will then prepare a financial BER.

Weight the technical and financial scores, using the weights stated in the RFP document and add the weighted scores together to obtain the total score for each proposal.

The technical and financial scores must be weighted using the weights stated in the RFP document. This is normally in the range of 70-80% for the technical score and in the range of 10-20% for the financial score. The combined weights must always total 100%.

To determine the weighted scores, multiply the actual technical and financial scores by the percentage weights stated in the RFP document.

To determine the total score, simply add the weighted technical and financial scores together.

The example in the table below shows the technical and financial scores received by a proposal, the weights stated in the RFP document, the calculation required, the weighted scores and the total score:

Table 9: Evaluation Weighting Example

	ORIGINAL SCORES	WEIGHT IN RFP	CALCULATION	WEIGHTED SCORE
Technical	75	80%	75 x 80/100	60
Financial	85	20%	85 x 20/100	17
Total		100%		77

Rank the proposals according to their total scores. Identify the proposal with the highest total score, which will be the successful proposal.

Prepare a combined technical and financial BER.

C.5.9.5. Additional Considerations when evaluating General Services

The evaluation of general services' bids will follow the methodology for the evaluation of goods and works i.e. the bid which is lowest priced or most advantageous.

As such the evaluation will follow the same three stages:

- an administrative evaluation, to assess bids against the basic requirements of the ITB and mandatory eligibility and qualification requirements – in doing so, section 5.9.1.1 (Preliminary screening) must be followed;
- a detailed evaluation, to determine whether bids are responsive or substantially responsive to the commercial and technical requirements stated in the bidding document – in doing so, **Section C.5.9.1.2 Detailed evaluation** must be followed;
- a financial evaluation to compare the costs of responsive bids and determine which is the lowest evaluated bid price .

In all other aspects the procuring entity should follow the advice for goods (or goods and related services), works, general services or consulting services as applicable and relevant to the general services being procured.

C.5.9.6. Additional consideration when applying the bidding techniques

a) Prequalification

Evaluation of a prequalification exercise should allow for the different criteria in the PQ ITB.

Evaluators must prepare a BER documenting all bidders' responses against the prequalification criteria. The BER must record those bidders who passed and therefore will receive the ITB. The BER must also document those bidders who failed.

b) Request for Proposals Method

The evaluation is based on the best technical solution within the budget prescribed by the procuring entity. The evaluation will follow the guidance above, however, once the evaluator(s) have ranked the bidders they will complete a technical BER for submission to the Bid Evaluation Committee. This must show the full ranking of all proposals which passed the technical score which will also represent the recommendation ranking to proceed to negotiations. Once the procuring entity has the recommendation of the Bid Evaluation Committee they may then invite the first ranked bidder to negotiate.

c) Request for Proposals Method (Low Value)

For small and simple assignments, the procuring entity may choose not to identify sub-criteria under the methodology and work plan. Instead, the proposed methodology and work plan are evaluated as a whole, using the four grades. An example of how these grades could be defined is given below. Definitions may differ from case to case, depending on the characteristics of the assignment.

i. **Poor**: The methodology for important activities in the TOR is inadequate, indicating that the consultants may have misunderstood relevant aspects of the scope of work. The schedule of activities is incomplete; staffing is inadequate; and the staffing schedule is not fully consistent with the timing of the outputs. The proposed specialists have never worked together as a team.

ii. **Satisfactory**: Proposed methodologies are standard and generally suitable for the assignment, but no detailed discussion of the specific aspects of the assignment is provided. The activity schedule is complete and clear; the staff composition is adequate; and staff levels are consistent with established timing and outputs.

iii. **Good**: Approach and methodology are well defined and respond to the assignment. The work plan is detailed and adequately addresses the TOR. All the important activities are indicated in the activity schedule and their timing is correct and consistent with the assignment outputs. Staffing is well-balanced with good coordination, and clear and detailed definition of duties and responsibilities. Some members of the proposed team have worked together on limited occasions.

iv. **Very Good**: Besides meeting the criteria under "good," the proposal includes important innovations in approach; relevant to the procuring entity; and makes practical suggestions on how to improve the overall quality and efficiency of the assignment clearly indicating how they would be implemented. The implementation of key activities is explained in detail. The proposed team is well integrated and several of its members have previously worked together.

In the event that the consultants' approach and methodology do not fully satisfy all the conditions outlined in one of the grade definitions, but that particular grade appears to reflect the overall adequacy of approach and methodology better than the lower grade - the upper grade may be assigned.

d) Framework Arrangement Method

Frameworks agreements should follow the standard advice provided for goods (or goods and related services), works, consultancy services and general services.

C.5.10. Requesting Extensions to Bid Validity

The bid validity period requested in the ITB should normally be sufficient to enable the procuring entity to undertake and complete the evaluation, obtain approval and award the contract. Therefore, extensions to the validity of bids should not normally be required.

If an extension is required all bidders should be requested in writing, to extend the validity of their bids for an additional specified period of time. This request should be issued a reasonable period *before* the expiry of the validity of bids, to give sufficient time for responses to be received.

Bidders must not be permitted to change the price, or any other details, of their bid, when extending the validity. Where a bid security is required, bidders extending the validity of their bids must also extend the validity of their bid securities by the same period of time. Any bidder is free to refuse to extend the validity of his/her bid, without forfeiting any bid security submitted.

The purported extension of the bid validity after the validity period has lapsed is unlawful. As soon as the bid validity period is expired without an award, the tender process is deemed complete, albeit unsuccessfully. Any negotiations to extend the bid validity period *after* its expiration date, lacks transparency and are neither equitable nor competitive.

Once the tender validity period has expired, there is nothing left to extend because the tendering process is considered complete. Therefore, neither the Tenders Board nor the procuring entity has the prerogative to award the tender after the bid validity period had lapsed, consequently they also do not have the authority to extend the period should they attempt to do so.

C.5.11. Bid Evaluation Report (BER)

The BER must summarize the actions taken by evaluator(s) at each step in the process. Particular consideration/evidence must be given for bids that may be rejected through the process. The BER should recommend whether the bid should be considered for contract award, whether negotiations are required, whether an alternative supplier should be used or whether the procurement requirement should be cancelled or redefined. All evaluator(s) must countersign the minutes of the evaluation and the final BER. In the case of **works, goods (or goods & related services) and general services** the report should include the following information:

- **a).** the executive summary;
- **b).** background and objective of the procurement;
- **c).** bid evaluation committee;
- **d).** list of bids received;
- **e).** detailed assessment of bids against qualifying evaluation criteria:
  - **i.** results of the administrative assessment;
  - **ii.** results of the technical assessment
  - **iii.** results of the financial assessment (any arithmetic errors);
- **f).** the reasons for bids which were rejected for being non responsive to important aspects of the tender requirements;
- **g).** a recommendation to award or reject a tender;
- **h).** supporting documentations:
  - **i.** signed minutes of the bid evaluation;
  - **ii.** any clarifications sought from or provided to, bidders (including responses);
  - **iii.** approvals from development partners and financiers (including relevant no-objections)
  - **iv.** signed Declaration of Impartiality and Confidentiality form by all members of the bid evaluation committee, observers or the like.

In the case of **consultancy services** two reports are required for the record. The **technical BER** should include the following information:

- **a).** the executive summary;
- **b).** background and objective of the procurement;
- **c).** bid evaluation committee;
- **d).** list of proposals received:
- **e).** detailed assessment of technical proposals against the qualifying evaluation criteria:
  - **i.** the results of the administrative assessment;
  - **ii.** the technical scores of each evaluator for each proposal;
  - **iii.** a summary of the relative strengths and weaknesses of each proposal;
  - **iv.** reasons for proposals which were rejected for being non responsive to important aspects of the TOR and the reasons;
  - **v.** an analysis of any discrepancies in scores between evaluators and a summary of any discussions held and adjustments made;
  - **vi.** the total technical score for each proposal;
  - **vii.** which proposals reached the minimum technical threshold and a recommendation to open the financial proposals of these bidders;
- **f).** a recommendation to approve or reject all other proposals;
- **g).** supporting documentations:
  - **i.** signed minutes of the bid evaluation;

ii. any clarifications sought from or provided to, bidders (including responses);
iii. approvals from development partners or financier (including relevant no-objections);
iv. signed Declaration of Impartiality and Confidentiality form by all members of the bid evaluation committee, observers or the like.

The final BER (combined Technical and Financial) should include the following information:

a). the total proposal prices and technical scores read out at the financial proposal opening;
b). the evaluated price of each proposal, following any corrections or adjustments to the price and the conversion to a single currency;
c). the financial scores of each proposal and the methodology for allocating financial scores;
d). the weighting of technical and financial scores;
e). the total combined score for each proposal;
f). a statement of which proposal had the highest total combined score and is therefore the successful proposal;
g). the successful proposal and the price of the proposed contract; and
h). whether any negotiations should be held with the successful bidder.

C.5.12. Tenders Board

The Tenders Board will receive the final BER and:

- review evaluation reports in line with internal approval levels of the procuring entity (to be defined in the final specifications, works requirement, procuring entity's requirement and terms of reference);
- review recommendations to award or reject contracts;
- maintain proper records of the reviews undertaken;
- provide their approval of the BER; and
- make any recommendation to the Cabinet and obtain their approval.

The procuring entity must ensure the BER is submitted to the Tenders Board no later than 12:00 noon on the Tuesday of the week prior to a scheduled meeting day of the Tenders Board.

The procuring entity may not proceed with notification of award until they have the decision of the Tenders Board or Cabinet as the case may be.

C.5.13. Negotiation

C.5.13.1. General

A procuring entity may only enter into negotiations with bidders in the following three specific circumstances:

1. Request for Proposals Method;
2. Limited Bidding Method; or
3. recommendation by the Bid Evaluation Committee.

   1. **Request for Proposals Method**
   2. The procuring entity may invite the recommended bidder to a meeting which is commonly referred to as a negotiation meeting. In these procurements the 'negotiation' meeting is to verify the availability of staff, start dates etc. There should be no negotiation on the TOR, price or any other contractual matter. **Limited Bidding Method**

      Under this technique negotiations are permitted to bring down the prices may be carried out if the prices offered are deemed to be excessive or substantially in excess of the prevailing market prices. The procuring entity may negotiate on the financial terms of their bid; however, there should be no negotiation on the technical requirements or commercial terms.

   3. **Recommendation by the Bid Evaluation Committee**

      If the potentially successful bid exceeds the budget for the contract by a substantial margin, the Bid Evaluation Committee shall investigate the causes for the excessive cost. The Bid Evaluation Committee may recommend that new bids be invited (through re-tender) or, subject to the relevant approval(s), recommend the negotiation of a contract (where the bid price exceeds the engineer's estimate or the allocated budget) with the recommended bidder through a reduction in the technical requirements. Other areas that may be negotiated are as specified in **SectionC.5.13.2 The Negotiation Process** of this Manual.

C.5.13.2. The Negotiation Process

The procuring entity has the overall responsibility for any negotiations, but will require technical input from the end user, or other technical specialists where a reduction in the technical requirements is required. The procuring entity may make use of staff who were involved in the evaluation, as they will be familiar with the ITB and the successful bid. Negotiations must always be conducted by a minimum of three staff, selected by the head of the procuring entity.

The following steps should be adopted in the negotiations:

1. The evaluator(s) will have made recommendations in the BER, as to whether negotiations are required and the issues to be negotiated.
2. The head of the procuring entity should identify appropriate member(s) of staff to manage the negotiations. Negotiations should normally be managed by the member of the procuring entity who managed the evaluation, although additional procurement staff with greater experience or particular skills may also be involved. It is recommended that a minimum of three member(s) of staff should be appointed to manage the negotiations. That member of staff will then be responsible for coordinating inputs from other staff, ensuring that the negotiations are conducted in accordance with all applicable rules and procedures and

preparing minutes of the negotiations. The appropriate number and type of staff will depend on the type, value and complexity of the procurement, the areas which require negotiations and the extent of the negotiations. The type of skills, knowledge or experience needed, when considering the best team, might include:

- procurement and contracting skills, including experience of negotiations;
- technical knowledge;
- legal expertise;
- representation by the end user.

3. The procuring entity unit shall invite the successful bidder for negotiations, proposing the time, date and location for negotiations. The invitation letter may state that the bidder's bid has been evaluated as the successful bid, but it is important that no contractual commitment is made to the bidder i.e. the letter must not make any reference to the bid being accepted or a contract being awarded.
4. If the negotiations are simple it may be possible to conduct them through email exchange. Also to save on the carbon footprint it may be acceptable to conduct the negotiations via video conferencing if the time difference permits.
5. The negotiators should begin by reviewing the ITB, the bid from the successful bidder and the BER. They must identify the areas where negotiations are required.
6. They need to be clear on the areas where negotiations are permitted.
7. For each area, they must identify the objectives which the procuring entity wishes to achieve. Where possible, quantify these objectives and set maximum and minimum negotiating parameters.
8. At the negotiation meeting the procuring entity should present an agenda. It is important that the negotiators do not commit the procuring entity to any arrangements or agreements during the negotiations. The bidder's representative must provide a power of attorney to show they are authorized to negotiate on behalf of the bidder.
9. The procuring entity must prepare a record of the negotiations and make recommendations on how to proceed. The minutes must be signed and agreed by all representatives in attendance at the negotiations and shall form part of the record of procurement proceedings.
10. Where the recommendation is for negotiations with the next bidder, repeat this process from step 2 onwards.
11. The record of negotiation should form part of the BER and be sent to the Tenders Board for approval.

Areas which may be subject to negotiation dependent on the circumstances may relate to the following areas:

- minor amendments to the Special Conditions of Contract;

- finalising the payment arrangements;
- mobilisation arrangements;
- agreeing final delivery or completion schedules to accommodate any changes required by the procuring entity;
- the proposed methodology or staffing;
- inputs required from the procuring entity;
- clarifying details that were not apparent or could not be finalized at the time of bidding;

Negotiations must **not** be used to:

- substantially change the technical quality or details of the requirement, including the tasks or responsibilities of the bidder or the performance of the technical requirements unless negotiating a reduction following a recommendation by the Bid Evaluation Committee;
- substantially alter the terms and conditions of contract stated in the ITB;
- reduce unit rates or reimbursable costs;
- reduce work inputs solely to meet the budget; or
- substantially alter anything which formed a crucial or deciding factor in the evaluation of the bids.

In the case of consultancy services, the bidder should not be allowed to substitute key staff, unless the procuring entity and the bidder agree that delays in the procurement process, changes in the TOR or other unavoidable circumstances make it necessary. The substitution shall have qualification equal to or better than the key staff initially proposed.

Following negotiations, the recommendations may include:

- proceed with contract award to the successful bidder, incorporating the revisions agreed during negotiations;
- terminate the negotiations, where they have failed to result in an acceptable contract, reject the bidder and award the contract or hold negotiations with the next best ranked bidder;
- cancel the procurement proceedings, where it is believed that the original ITB was flawed, the need has changed or the budget is insufficient for the requirement.

A record of any negotiations must be completed and kept on the procurement file. As a minimum, this record must include:

- the name of the bidder with whom negotiations were held and the names of the bidder's representatives;
- the names of all staff involved in the negotiations;
- the time, date and location of the negotiations (this may cover several days);

- the areas subject to negotiation and the main points or requests made on each side;
- the final agreement reached on each area of negotiation;
- any points where agreement was not reached or further discussion is required.

The record of the negotiations must be signed by all staff of the procuring entity and the bidder's representatives involved in the negotiations.

Any other correspondence or information relating to the negotiations must also be kept on the procurement file, including letters inviting the bidder to negotiate and the procuring entity's preparation of its negotiating position.

C.5.13.3. Additional Advice for financial negotiations

The following guidance is provided for consideration as part of the financial negotiation preparation:

Time-Based Contracts

Under a time-based contract, the assignment must be completed within the time and the budget ceiling specified in the contract. These amounts are based on schedules that form part of the contract and give details on the inputs (staff, vehicles, etc.), as well as the cost of these inputs. A list of such schedules is given in the Appendices to the Contract Form attached to the ITB. With some limited flexibility, the contract requires consultants to adhere to these schedules. Fieldwork is billed at monthly, daily, or hourly staff rates. These rates shall be clearly stipulated in the contract to avoid any misunderstanding during implementation. Home office work is billed at staff hour or staff daily rates calculated on the basis of hours worked. If the selection method did not include price as a factor of selection, financial negotiations must include unit rates, and reimbursable expenses, and begin with a discussion on the billing rates in foreign currency for expatriate staff and in national currency for local staff.

Lump-Sum Contracts

Under a lump-sum contract, the consultant is paid an agreed amount based on scheduled payments linked to the delivery of outputs. The unit rates for personnel and reimbursable expenses used by the consultant to arrive at the lump-sum are included at Appendices of the contract. These rates shall be included in order to determine the remuneration due for any additional consultancy services beyond the agreed scope of work, for example, an extension. Consultants are paid according to the schedule specified in their contracts, which shows the assignment's specific outputs.

The procuring entity can negotiate only the unit rates for personnel and reimbursable for additional consultancy services.

Staff Billing Rates

Billing rates offered by consultants typically depend on three factors: the internal structure of the rates, the ongoing market rates in the consultants' country and the level of the technical and institutional experience.

A breakdown of staff rates includes the following elements:

Basic Salary	Basic salary is the gross monthly salary paid to staff. Any overseas allowances must be identified separately, and not included in the basic salary. The basic salary shall not include any premium or bonus, except where required by law, or where it can be demonstrated that the bonus is part of the regular salary. The salaries of permanent staff are usually non-negotiable.
Social Charges	Social charges are the costs to the firm of nonmonetary benefits paid to staff under legislation in the consultant's home country, or based on the consultant's own rates. Social charges include: vacation; official holidays; sick leave; pension; social security; medical and life insurance. These costs vary from country to country and to a lesser extent, from consultant to consultant within the same country. Because most of the payments are required by law or by the consultants' own policies, they are not negotiable.
Overheads	Overhead costs are the firm's costs due to general expenses that are not directly related to the execution of the assignment and cannot be reimbursed as separate items under the contract. Overheads include such items as: home office costs; the cost of staff not currently employed on revenue-earning projects; rent; support staff; marketing; and business development costs; as well as the preparation of proposals. Overheads vary from firm to firm and depend on the size and type of organization, and the firm's is core business. Some consultants charge different overheads for home office and for fieldwork and distinguish between short or long term assignments.
Profit	This is the consultant's fee expressed as a percentage of the sum of his/her salary, social costs, and overheads.
Away from Headquarters and Overseas Allowance	This amount is added to the salary paid to staff on overseas assignments or assigned to projects away from their home office. The allowance is normally calculated as a percentage of the basic salary and depends on the location of the assignment.

Billing Time

Time spent in the country of the assignment is generally billed monthly or as fraction of a month, while home office time is generally measured and billed in working days or hours. For billing purposes, a day worked is usually equal to 1/22nd of a month and an hour is equal to 1/176th of a month, but it can vary between countries depending on labour Instructions. The "unit" of account" (month, day, or hour) used for payment purposes must be clearly stipulated for each key staff member contracted. Overtime for professional staff is not billed, whereas overtime for support staff at the home office and in the field is generally billable.

Reimbursable Expenses

A list of reimbursable expenses payable in foreign and local currencies is provided in the Special Conditions of Contract. The procuring entity must reimburse expenses at cost on presentation of receipts, invoices, etc. In certain cases, for example, in the acquisition and importation of equipment needed for the execution of consultancy services, and where the consultants incur additional administrative costs, they may be paid a fee or "handling charge" of five (5) to ten (10) percent of the invoice.

For short term assignments (usually less than six months,) the daily allowance for board and lodging may be based on the UNDP Daily Subsistence Allowances or estimated on the basis of reasonable costs for hotels, meals, and local transportation.

Payment Provisions

The procuring entity must avoid delaying payments without due cause, to ensure that the consultants do not fall behind in their assignment for lack of funds.

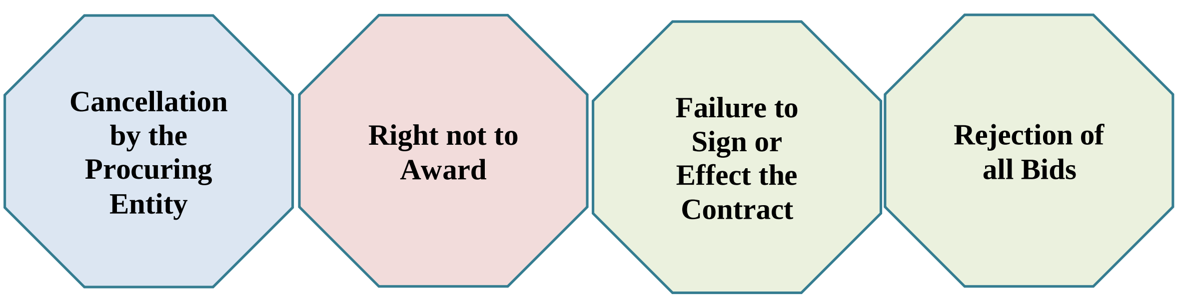
In general terms, advance payments i.e. for mobilization costs normally do not exceed 20 percent of the contract value. If the advance exceeds ten (10) percent of the contract sum, it must normally be backed by an advanced payment security – as per the template in the ITB. When remuneration is on a lump-sum basis, payment against progress targets can be made when the consultants' deliverables are produced at reasonable intervals and are easy to identify.

The bank guarantee shall be released when total payments reach 50% of the lump-sum amount. For smaller projects, the last payment may take place upon the delivery of final documents.

Retention:

C.5.14. Failure to contract

There are several grounds on which a procuring entity may not complete the procurement or contract with the successful bidder. These include:



C.5.14.1. Cancellation of procurement proceedings by the Procuring entity

The procurement proceedings may be cancelled on the following grounds:
(a) **The procurement need has ceased to exist or changed significantly;** (b) **Insufficient funding is available for the procurement;** (c) **There is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the re-commencement of procurement proceedings is necessary;** (d) **insufficient, or no responsive bids are received;** (e) **there is evidence of collusion among bidders; or** (f) **it is otherwise in the public interest. .**

The procuring entity may cancel the procurement proceedings at any stage up to the notice of award of contract. They may do so without incurring any liability, unless the cancellation of the procurement is a consequence of irresponsible or dilatory conduct on the part of the procuring entity. The SBDs are explicit on this point.

The procuring entity may also cancel procurement proceedings after the notice if the successful bidder is disqualified or suspended from procurement proceedings.

Before doing so the procuring entity should consider the grounds for cancellation. Cancellation should be avoided wherever possible, but occasionally it is the only option. A formal record of the grounds must be prepared by the procuring entity and subsequent submission of recommendation for a final decision by Tenders Board.

The procuring entity must notify all relevant parties as a priority to avoid bidders incurring unnecessary costs. If no ITB has been issued then no further action is required.

The procuring entity should check the tender box for receipt of any bids. These should be recorded but must remain unopened once the decision to cancel the proceedings has been taken. Then the procuring entity must arrange for all bids, including any securities (opened and unopened), to be returned to the bidders.

The procuring entity must issue a cancellation notice in the same manner as the ITB notice or award of contract notice. The notice should include the grounds for cancellation but does not need to justify the grounds.

Should the procuring entity reissue the ITB on the same basis at a later stage then there should be no charge for those who originally bought the ITBs.

C.5.14.2. Invoking the right not to award

The procuring entity may not award the contract to the successful bidder if:

i). the bidder presenting the successful bid is disqualified;

ii). the procurement is cancelled;

iii). the bidder is excluded on the grounds of an unfair competitive advantage or a conflict of interest that is likely to impair the integrity of those procurement proceedings;

iv). the procurement, the bid or the bidder contravenes or is otherwise not compliant with the provisions of the Instructions.

In this instance, the procuring entity must inform the successful bidder of the grounds of the contract not being awarded.

The procuring entity should then move to seek to award to the second ranked bidder. The procuring entity must check against the levels of approval in case the threshold has been exceeded. Also, some post-qualification criteria may need to be verified before proceeding. In this case the procuring entity will need to issue a new notice of award and initiate a new standstill period.

C.5.14.3. The successful bidder fails to sign or effect the contract

If the successful bidder fails to return the signed contract or to provide the required performance security, the procuring entity may:

(a) annul the contract and the bidder would forfeit their bid security; and
(b) proceed to award the contract to the second ranked bidder.

The procuring entity must check against the levels of approval in case the threshold has been exceeded. Also, some post-qualification criteria may need to be verified before proceeding. In this case the procuring entity will need to issue a new notice of award and initiate a new standstill period.

C.5.14.4. Rejection of all bids

In addition to rejecting the successful bid, the procuring entity may reject all bids. Grounds for rejecting all bids could include:

(a) No bid received is responsive to the technical or commercial terms in the ITB.
(b) There is evidence of collusion.

In this case substantial revisions would be required to the SBD and a new tender process would need to commence.

C.5.14.5. Unsuccessful procurement

If the procurement proceedings do not result in the award of a contract then the procuring entity may undertake an investigation. The investigation must record the reasons for the failure and the course of action taken to remedy the situation. This investigation and its outcomes must form part of the record of proceedings.

The investigation should consider all relevant issues, including whether:

a). the bidding period was sufficient, considering the factors listed in Instruction K.5
b). the requirements of the bidding documents and the terms and conditions of the proposed contract were clear, non-discriminatory, proportionate, reasonable and not so excessive as to deter competition;

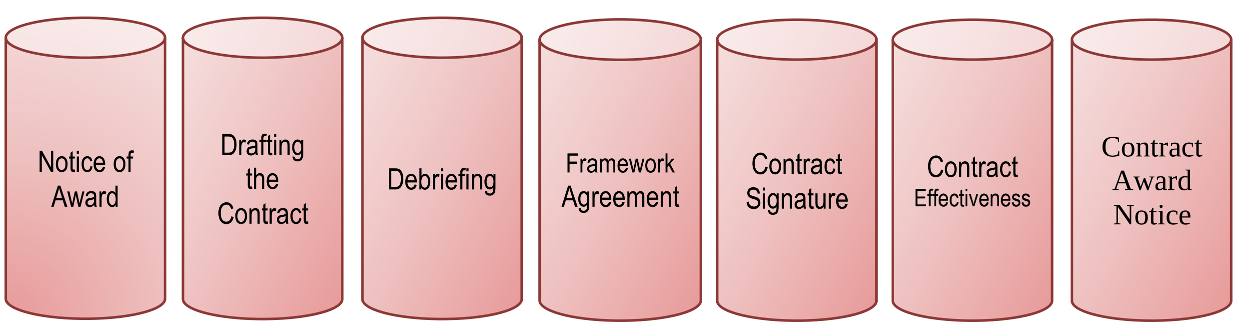
c). any invitation notice was published in an appropriate publication and on the required date;
d). there was any delay in issuing the bidding documents;
e). any amendments or clarifications to the bidding documents allowed sufficient time for bidders to take them into account in preparing their bids;
f). there were other extraneous events or circumstances, which may have affected the ability of bidders to respond;
g). the evaluation process was conducted in accordance with these Instructions and the bidding documents and whether officers responsible for the evaluation had adequate skills and resources;
h). there is any suspicion of collusion between potential bidders; and
i). the original choice of procurement method was appropriate.

The procuring entity shall take any appropriate action suggested by the cause or causes of failure. The outcome may include:

a). the use of an alternative method of procurement;
b). amendments to the bidding documents, including bidding requirements, the type of contract or the terms and conditions of the proposed contract;
c). alternative publication of any invitations to bid, similar notices or bidding documents; and
d). the introduction of international competition.

As the outcome may involve a modification in the application of the Instructions the approval of the Head of the procuring entity must be obtained before proceeding further with the particular procurement.

C.6. Award



C.6.1. Notice of award

This notice shall contain:

a). the name and address of the bidder who presented the successful bid;
b). the contract price;
c). the duration of the standstill
d). period as determined in accordance with the bidding documents;

e). a statement that any right to complain the Procurement Complaints Review must be submitted within 10 days of the notice of award of contract and where to access information on how to make an application;

f). a short debrief on their bid (please see C 6.3 Debriefing for further advice on this aspect); and

g). any other matters as may be prescribed by the Procurement Division or Tenders Board.

Once the evaluation and negotiations, if applicable, have been satisfactorily completed and the necessary approvals received, the process will have produced a successful bid. It is the responsibility of the procuring entity to ensure all approvals have been obtained, especially where the final contract value exceeds the original procurement budget.

Prior to the expiry of the bid validity period the procuring entity shall notify the successful bidder of the proposed award. This notification does not bind the Government until/unless a formal contract has been signed. In the case of competitive bidding and for all procurements over SAT$50,000, the procuring entity shall issue a notice of award to all bidders. There shall also be a 'standstill period' of at least 15 days between the notice of award and contract signature. The notice must be sent by recorded means.

Where there is no standstill period, the prior written approval of the Tenders Board must be obtained before any procurement commences, and all the necessary approvals will have been obtained, and this shall be the award of contract and shall be binding on both parties.

Once the procuring entity has an effective contract it must publish the contract award notice in accordance with **Publication of Contract Award Notice**.

C.6.2. Drafting the Contract

The contract document formalizes the agreement between the procuring entity and the successful bidder. It defines the goods (or goods and related services), works, consultancy services or general services to be provided, the price to be paid for the goods (or goods and related services), works, consultancy services or general services and establishes the rights and obligations of each party. The contract is the governing document for administration of the contract.

The procuring entity is responsible for the preparation of contract documents, obtaining all necessary approvals, clearance from the AGO, and getting the approved contract signed.

It is recommended the following steps are followed:

1. Edit the final form of contract taken from the SBD to reflect any accepted terms or conditions from the successful bidor any negotiations.
2. Collate copies of all documents which will form part of the contract document
3. Assemble the complete contract document, by including all necessary documents in the correct order.

4. Make the required number of copies of the approved contract and bind or secure the pages in such a way that pages cannot be replaced or lost. The number of copies required must be at least two – one for the successful bidder and one for the procuring entity.
5. The authorised signatory in accordance with the thresholds specified in Instructions K1.3 should sign all copies of the contract.
6. Send all copies of the contract to the successful bidder, with a cover letter instructing the successful bidder to counter-sign all copies, retain one for his records and return all other signed copies to the procuring entity.

The contents of the contract document will depend on the model contract included in the ITB. The contents of a contract and the order of precedence are normally listed in the contract form or special conditions of contract. As guidance only, contract documents normally consist of the following:

- the contract form or agreement;
- the contract award notice;
- the bid and any amendments to that bid;
- the special conditions of contract;
- the general conditions of contract;
- the description of the goods (or goods and related services), works, consultancy services or general services, comprising specifications, TOR, drawings, bill of quantities, activity schedule and/or any other similar document.

A copy of the approved contract document sent to the successful bidder must be kept on the procurement file.

The original signed contract document returned by the successful bidder must be kept in a secure location, with a copy kept on the procurement file for reference.

C.6.3. Debriefing

If a request for debriefing is made by unsuccessful bidders within the 15 days period between notification of award and contract award then the date of contract award shall be suspended until the debrief has been completed.

More detailed advice is provided at **Bidder debriefing** as part of the section on Transparency and Integrity.

C.6.4. Framework Agreements

The procuring entity must follow the guidance on notice of award as provided at **Section C.6.1. Notice of award**.

The framework agreement with multiple parties shall be let as one agreement between all parties. The procuring entity may determine that it is in a party's interest to form a separate agreement. However, any amendments to the terms and conditions must be minor and justify the conclusion of a separate agreement. The procuring entity must include in the record of procurement proceedings its justification for concluding a separate agreement which it may need to rely on at a later stage.

Only parties to the framework agreement may be awarded a call-off contract.

The award of the framework agreement and call-off contracts will follow the same guidance for award of contract**.**

The framework agreement represents acceptance, between the procuring entity and the supplier, contractor or consultant, of the terms and conditions. As such, it is the "call-off" which forms the contract that would be submitted for Government approval in line with the thresholds**.**

The procuring entity shall publish a notice on signature of the framework agreement in the prescribed manner **Publication of Contract Award Notice****.**

As long as the procuring entity awards within the terms of the framework agreement then there is no requirement to rebid the opportunity. However, if the procuring entity had a modified requirement, for example a framework agreement to supply children's chairs and tables to a school could not be used to supply chairs and tables to an office, and then a new procurement exercise must be initiated.

The supplier may withdraw from the framework agreement under pre-determined conditions and would then have no further obligation to perform any call-off contract which are issued after the agreed withdrawal date.

C.6.5. Contract Signature

Immediately at the end of the 'standstill period', or on receipt of the necessary approvals, the procuring entity must send a letter of acceptance to the successful bidder. This letter must be sent by recorded means. The letter should include the following details:

- the name and address of the procuring entity, which is party to the contract;
- the name and address of the supplier/contractor/consultant;
- the date of the notice;
- the reference number of the procurement transaction;
- a brief description of the goods (or goods and related services), works, consultancy services or general services procured;
- the date and any reference number of the bidder's bid;
- reference to any clarifications or other correspondence which modifies the bidder's bid;
- the currency and amount of the contract award;
- details any items which are specifically excluded from the contract for example if the award is by lot;

- details of any variance in quantities if allowed for in the ITB;
- a statement that the supplier/contractor/consultant should begin performance of the contract;
- a statement that a full contract is being prepared and will be sent to the supplier/contractor/consultant for signature shortly;
- instructions on any immediate actions required from the supplier/contractor/consultant e.g. provision of a performance security, advance payment security, mobilization security;
- a request that the supplier/contractor/consultant confirms receipt of the notice of acceptance and confirms that they are proceeding with contract performance;
- the signature of the authorized signatory of the procuring entity.

The contract should then be issued promptly. The procuring entity will sign the contract in accordance with the B4 Schedule. They then issue three original copies of the contract for signature by supplier/contractor.

In the case of framework agreements with multiple procuring entities, the lead procuring entity will hold the original contract and provide copies to the other procuring entities.

C.6.6. Contract Effectiveness

Once the contract is effective the procuring entity must ensure that all original bid securities or bid securing declaration are returned in accordance with C.5.2.

C.6.6.1. Advance payments

The procuring entity may offer the option of an advance payment as part of the ITB. It is at the option of the bidder as to whether they choose to accept the option.

Advance payments should not exceed 50% of the total contract award and should be commensurate with an accurate estimate of the supplier or contractors' or consultants' mobilization and start-up expenses.

Any advance payment must be secured by an advance payment security, to the same value, which can be in the form of a bank guarantee or an irrevocable letter of credit, before any payment is made to the supplier or consultant. A format for the bank guarantee is provided in the SBDs.

The procuring entity must review and approve the advance payment security. It must be issued by a financial institution acceptable to the procuring entity. It may be appropriate to take legal/financial advice on the wording if it differs from the template provided. This advice is also particularly important in respect of irrevocable letters of credit.

The security must be redeemable on demand and will only be released in accordance with the conditions in the contract. It is essential that it is not to be released until a minimum equivalent value of goods or consultancy services have been delivered or performed. Advance payments are normally amortized, i.e. set off in equal amounts, against following payments until fully off-set with the respective security reducing according.

Advance payment securities are financial instruments and therefore must be stored in a secure and fireproof environment.

C.6.6.2. Mobilisation Security

In the case of works contracts the procuring entity may offer the option of a mobilization security as part of the ITB. It is at the option of the bidder as to whether they choose to accept the option.

Mobilization payments should not exceed 10% of the total contract award. If the contractor includes sub-contractors as part of their bid then a mobilization payment not exceeding 15% of the total contract award may be made. The payment should be commensurate with an accurate estimate of the contractor's mobilization and start up expenses.

Any mobilization payment must be secured by a mobilization payment security, which can be in the form of a bank guarantee or an irrevocable letter of credit, before any payment is made to the contractor. A format for the bank guarantee is provided in the SBDs.

The procuring entity must review and approve the mobilization payment security. It must be issued by a financial institution acceptable to the procuring entity. It may be appropriate to take legal/financial advice on the wording if it differs from the template provided. This advice is also particularly important in respect of irrevocable letters of credit.

The security must be redeemable on demand and will only be released in accordance with the conditions in the contract. It is essential that it is not being released until a minimum equivalent value of works have been delivered or performed. Mobilization payments are normally amortized i.e. set off in equal amounts, against following payments until fully off-set with the respective security reducing according.

Mobilization payment securities are financial instruments and therefore must be stored in a secure and fireproof environment.

C.6.6.3. Performance Security

The performance security is required for procurement valued above SAT$100,000 for goods (or goods and related services), general services and consultancy services, and for procurement valued above SAT$150,000 for works to ensure that the supplier or contractor fulfils its obligations under the contract and is intended to protect the procuring entity against default on the part of the supplier or contractor. The kinds of default must be specified in the ITB.

However, there is a cost to the supplier or contractor raising a security which inevitably will be passed on as part of their bid price. Therefore, the procuring entity should consider carefully the need for a performance security and the percentage specified in the ITB.

The procuring entity may request a performance security for the period of the supplier's warranty period or a contractor's defects liability period. This must be specified in the ITB. The procuring entity cannot request a value in excess of the amount specified in the ITB at the time of contract award.

The performance security shall not be less than 5% nor exceed 10% of the total contract award and should be commensurate with the complexity of the contract. The amount will be determined in the special conditions of contract and as a general note the amount of the security should be the maximum amount deductible for liquidated damages for delay. The value of the performance security may reduce in line with performance.

The performance security will be in a fixed amount and can be in the form of an unconditional bank guarantee or an irrevocable letter of credit. It must be issued by a financial institution acceptable to the procuring entity. A format for the bank guarantee is provided in the SBDs.

The procuring entity must review and approve the performance security. It may be appropriate to take legal/financial advice on the wording if it differs from the template provided. This advice is also particularly important in respect of irrevocable letters of credit.

The security must be redeemable on demand and will only be released in accordance with the conditions in the contract. It is essential that it is not to be released until the end of the warranty, defects liability period or any other conditions specified in the contract. Its validity should extend to any warranty or defects period by 30 days. In the case of a works contract with retention monies these will replace the performance security.

Performance securities are financial instruments and therefore must be stored in a secure and fireproof environment.

C.6.6.4. Letter of credit

A letter of credit (or documentary credit) is a written undertaking by a bank which can perform two roles in the procurement process:

i. as a payment method from the procuring entity to the supplier, contractor or consultant for goods shipped or consultancy services rendered, provided specified documents are presented in compliance with the terms of the letter of credit; or

ii. as the means of providing a security (as discussed above) from the supplier, contractor or consultant to the procuring entity.

The issuing bank agrees to pay another bank (the intermediate or respondent bank) against presentation of the documents. The terms confirming or advising the bank are used to identify the intermediate bank or a third bank when they agree to undertake one of the confirming or advising roles.

Letters of credit must be “Irrevocable” and cannot be cancelled or amended without the consent of all concerned parties. All presentations for payment will be honoured by the issuing bank provided the terms and conditions of the credit are met.

a). Letters of credit as a payment

Payment of suppliers, contractors or consultants using letters of credit for goods (or goods and related services), works, consultancy services or general services is not encouraged for contracts with national suppliers, contractors or consultants. Letters of credit attract bank charges which should be unnecessary given the security of payment from Government.

However, when an open bid is issued on an international basis payment by letter of credit must be allowed for in the ITB as some international markets may not bid unless payment is assured through an irrevocable letter of credit. In these instances, to ensure competition on an equal basis both international and national suppliers should be allowed avail of payment by letter of credit at their own option. The ITB must state that all letter of credit charges both inside and outside of Samoa will be to the beneficiaries (supplier's) account and will be deducted from the value of payments made.

There are a number of advantages of using letter of credit for payment;

- by issuing a credit through the banking system, the procuring entity ensures that no payment is made for goods (or goods and related services), works, consultancy services or general services unless the specified documents are presented.
- suppliers, contractors or consultants are guaranteed payment by a bank against presentation of the specified documents and therefore the supplier is not solely dependent on the procuring entity's willingness or ability to pay.
- under a letter of credit, banks deal in documents and not in goods (or goods and related services), works, consultancy services or general services – any disputes are matters for the procuring entity and the supplier, contractor or consultant to resolve and should not involve the banks concerned.

Once the contract has been signed for which payment is to be by letter of credit:

i). the procuring entity will instruct its bank (the Issuing Bank) to prepare a letter of credit in favour of the supplier, contractor or consultant to be advised through the Intermediate Bank.

ii). the procuring entity and the supplier, contractor or consultant will have agreed on the terms of settlement as stated in the contract, whether this be:

  - by payment at sight or at a future date;
  - negotiation at sight or at a future date; or
  - on deferred payment terms.

  The procuring entity should request a draft to ensure the terms of the letter of credit are in conformance with the contract. Once a letter of credit is issued it will attract bank charges for any amendments.

iii). The supplier, contractor or consultant will present all the required documents to the advising bank and receive payment of the amount due under the terms of the letter of credit.

iv). The procuring entity’s bank account will be debited directly by the issuing bank.

Irrevocable letters of credit cannot be amended without the consent of all parties. Amendments are rarely refused simply because they are essential to the working of a letter of credit. Reasons for amendments may include the following:

- the procuring entity may require more goods and wish to increase the amount and quantity of the letter of credit;
- the supplier, contractor or consultant cannot ship goods or present documents within the existing latest shipment and expiry dates;
- something essential may have been omitted from the original credit, such as a document or an instruction.
- most credits are amended at least once during their validity.

b). Letters of credit as a security

When a letter of credit is used as a security the supplier, contractor or consultant must have its issuing bank draft the letter of credit based on the terms contained within the guarantee formats contained within the ITB.

As part of any verification checks on the security the procuring entity should ensure its bank sends a swift message to the issuing bank as part of the checks.

C.6.6.5. Payments

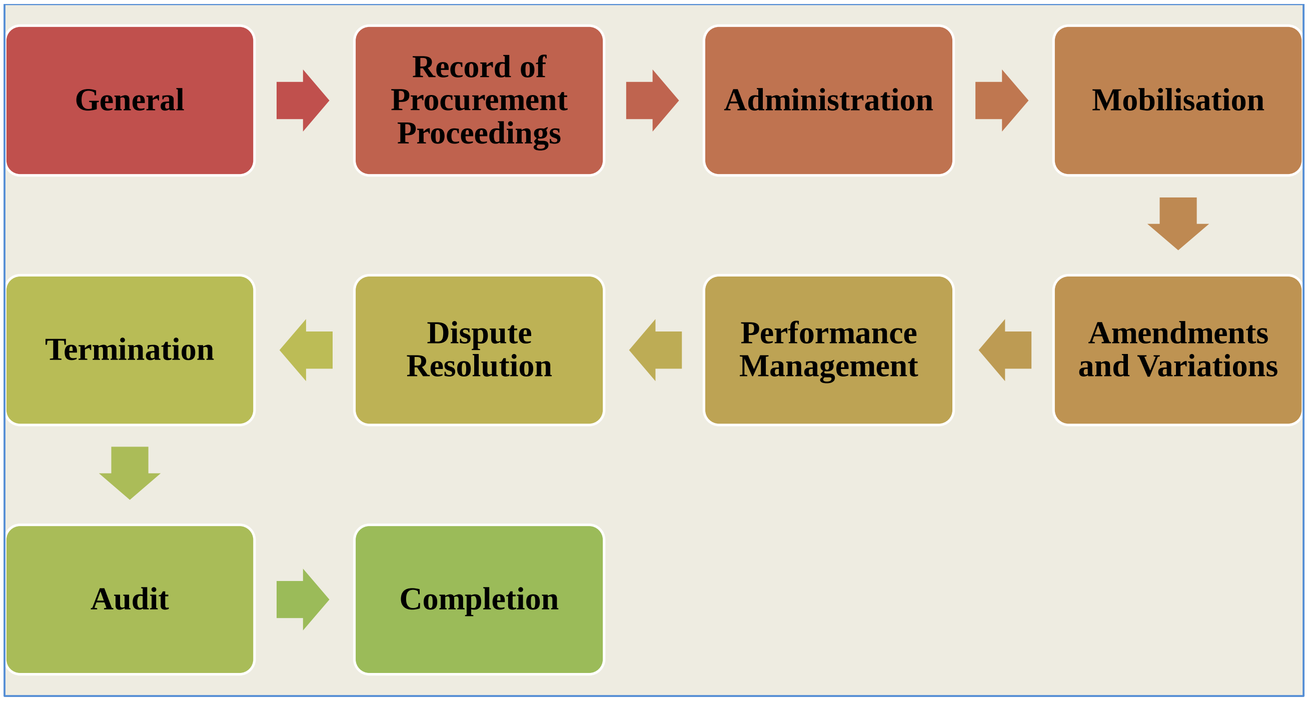
Each contract agreement will specify the manner in which the procuring entity must administer and settle any invoice or payment certificate from the supplier, contractor or consultant. The procuring entity shall ensure prompt payment. The Government has a payment policy of no more than 15 days (from the date on the invoice) to process a payment.

In the case of works contracts the contract agreement also covers the application of retention.

C.6.7. Contact Award Notice

Once the procuring entity has an effective contract it must publish the contract award notice in accordance with **Publication of Contract Award Notice**.

C.7. Contract Management



C.7.1. General

In drafting the bidding documentation, the procuring entity will have given careful consideration to the contractual obligations and activities. Effective management is essential to ensure efficient and timely performance of the contract by all parties.

Procuring entities must adopt a routine monitoring procedure of all contracts to allow for swift remedial action to be taken when problems arise, or preventative action taken when problems are foreseen. This is separate from the responsibilities of monitoring the broader performance of suppliers.

The procurement officer is responsible for contract management, although they may consult with technical advisors or with the AGO on legal issues. The procurement officer will authorize any payments due under the contract, but these would be passed to the finance team for payment. Payment must be made promptly and at a minimum in accordance with the time or times specified in the contract or earlier.

As part of their responsibilities the procuring entity must ensure the application of relevant Government legislation, particularly in respect of the minimum labour standards.

It is recommended the procuring entity should prepare a contract implementation plan. The contents will vary based on the category of procurement but should include key milestones, such as dates for mobilization, deliveries or completion of certain deliverables or sections of work, and the procuring entity's obligations, such as providing access to a works site, payment or approval of reports.

The procurement officer should monitor progress and performance against the contract implementation plan. Action should be taken as appropriate for any variations.

Under the Framework Arrangement Method it is important that the lead procuring entity that put a framework agreement in place for use by other procuring entities provide easy access to the arrangements. This is particularly important for open frameworks. All procuring entities must also understand the circumstances in which they can use the framework arrangements.

Particular consideration should be given to performance measurement which can be harder to monitor under frameworks. This should be aligned to the award criteria and the scope and purpose of the arrangement, with all parties having an input. For this purpose, when initiating or re-letting such arrangements, there must be clear definition of the management information and analysis which will be required, e.g. regarding frequency/value/types of goods and consultancy services called off, and delivery performance; and which party will capture it. Often, the supplier, contractor or consultant is in the best position to do this.

C.7.2. Record of Procurement Proceedings

It is essential that the procuring entity maintains proper records at all times. These records are a matter of public record and shall be available to the Ministry of Finance. The records may be the subject of audit at any stage during and after the procurement process and must be retained by the procuring entity for a minimum seven years after the contract's completion in line with Government standards.

The entire process must be documented from beginning to end and as such proper minutes must be recorded and maintained for each meeting relative to the procurement.

It is recommended that the procuring entities adopt a pre-contract and post-contract file system.

The pre-contract file would include all notices, documents and approvals up to publication of the contract award notice. It must include copies of all amendments issued to the ITB, the minutes of bid opening and the evaluation report complete with all the clarification requests issued and received, minutes from any Bid Evaluation Committee or Tenders Board's review and all approvals. Attached to the file should be a copy of all of the bids received including the winning bid with copies of bid securities when required. The originals should have been returned to the bidders following contract effectiveness.

Copies of any complaints or applications for reconsideration received and their response must also be included in the pre-contract file. In the case of an application for a right to complain or right to review the procuring entity shall ensure the Tenders Board and Independent Adjudicator have access to all records.

The post contract file must include a copy of the contract and copies of all contractual correspondence including supplier/contractor/consultants' reports, letters of credit issued, shipping documents, invoices, contract amendments, insurance certificates, taking over and warranty certificates, and any post-contract approvals. The original contract must be stored in a fireproof safe and only a working copy maintained on the file. A summary page should be maintained on the front of this file and include as a minimum:

a). a brief description of the goods (or goods and related services), works, consultancy services or general services procured;

b). names and addresses of all bidders;

c). the procurement method used and authorization reference;

d). name of successful supplier, contractor or consultant;

e). date of approval;

f). contract price and actual completion cost;

g). contract duration;

h). reason for choice of procurement if not open competitive bidding or request for proposals;

i). information relative to the qualifications of suppliers, contractors or consultants;

j). summary of the evaluation and comparison of bids;

k). any domestic margin of preference applied and any corresponding authorization reference;

l). reason(s) for rejection of any or all bids;

m). summary of requests for clarification/verification of ITBs and any amendments made;

n). information relative to the successful supplier, contractor or consultant's performance on the contract; and

o). information relative to any complaint or review.

A complete list of documents and records that the procuring entity must maintain is provided at **Section D: Mandatory Documents and Records**.

C.7.3. Administration

Administration procedures will be largely determined by the terms and conditions of each individual contract and the description of requirements for the goods (or goods and related services), works, consultancy services or general services. The procuring entity will appoint an administrator with appropriate skills for the contract. This person may be outside of the unit for example in the case of goods it may be a stores supervisor or an engineer for works contracts. However, they must follow the procedures in the Operating Manual. At all times administrators must make use of the procuring entity's existing systems for making payments or seeking legal advice, whilst following the approvals of the procuring entity's normal finance and accounting procedures in accordance with the Operating Manual, Procurement/Purchasing Process, Accounts and Financial Reporting Division, Ministry of Finance.

In the case of large and complex contracts it may be necessary to appoint an administration team.

It is important that the administrator has clear reporting lines to raise any issues which may arise from the contract implementation plan. Where external administrators are appointed issues relating to contractual disputes or a supplier's failure to perform and any requirement for amendment of the contract must be referred within one day to the procuring entity. A format for engaging an external administrator along with contract administration for Goods, Works and Services supported by ancillary formats is provided in **Section D: Mandatory Documents and Records**.

C.7.3.1. Goods Contracts

Contracts administration for goods focuses on ensuring that goods are delivered on time, that the goods are acceptable to the procuring entity, in terms of quantity, quality and supporting documentation, and that the procuring entity meets its obligations to pay for the goods delivered.

For goods contracts, the contract administrator is typically responsible for:

- ensuring that the actual dates when deliveries are due are agreed with the supplier, based on the date of contract effectiveness;
- expediting during the delivery period, to ensure that manufacturing, freight forwarding and deliveries are proceeding on schedule;
- witnessing tests or approving samples, where required;
- arranging collection, freight-forwarding, customs clearance or delivery, where the procuring entity is responsible for any of these tasks;
- arranging for receipt and inspection of the goods;
- checking all documentation relating to the goods, such as delivery notes, and ensuring that documentation is correct before signing;
- recording any missing, damaged or incorrect items and initiating claims against insurance policies or the supplier;
- issuance of goods acceptance certificates for the goods received if a documentary requirement under the contract;
- reporting any contractual problems or requests for contract amendments to the procurement officer;
- checking invoices and supporting documentation for payment are correct and arranging payment;
- managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required and releasing them promptly, when all obligations have been fulfilled;
- ensuring all documentation and information relating to warranties and warranty claims are in good order;

- ensuring that assets are registered and labelled, where required; and
- ensuring all user guides, manuals, licenses etc. are kept with the goods or in an appropriate place.

Goods should be recorded in the procuring entity's asset records and issued to the end user in accordance with applicable stores and supply management procedures.

C.7.3.2. Works Contracts

Contracts administration for works is often complex and time-consuming, as it involves supervision of the progress of the works, ordering variations where unforeseen conditions are encountered and measuring the work completed for payment purposes. For major contracts, the procuring entity will normally use a fulltime supervising engineer or project manager, who will exercise control and supervision of the contact on behalf of the procuring entity. Where a project manager is used, the procuring entity must:

- ensure that the role of the project manager is clearly defined, in particular their powers to issue contract variations, which result in changes to the overall cost, completion date, quality and design of the works and to settle disputes;
- establish arrangements for keeping the procuring entity informed of contract progress, variations issued and any disputes;
- approve interim payment certificates; and
- designate a contract administrator within the procuring entity, who will be the contact point for the project manager.

This contract administrator is typically responsible for:

- ensuring that the actual mobilization and completion dates are agreed with the contractor, based on the date of contract effectiveness;
- monitoring the overall progress of the works and the performance of the project manager;
- referring any requests for contract variations, which are outside the authority of the project manager, to the procuring entity, or other designated authority, for approval;
- reporting any contractual problems or requests for contract amendments to the procuring entity;
- checking interim payment certificates and supporting documentation for payment are correct, authorized and arranging payment;
- managing any securities, such as mobilization or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required and releasing them promptly, when all obligations have been fulfilled;

- ensuring all final acceptance and hand-over arrangements are completed and documented satisfactorily; and
- ensuring all final drawings, manuals etc are received and kept in an appropriate place.

C.7.3.3. Consultancy Services Contracts

Contracts administration for consultancy services focuses on ensuring that consultancy services are delivered on time and to an acceptable quality. This can be difficult, as the quality of consultancy services, particularly consultancy services, can be subjective and difficult to measure. A good working relationship with the service provider and ongoing monitoring of consultancy services is therefore important, to ensure successful contract performance.

The procuring entity must also ensure that it meets its obligations, particularly where the performance of consultancy services is dependent on certain inputs or information from the procuring entity or where staff must be made available to benefit from capacity building initiatives.

For consultancy services contracts, the contract administrator is typically responsible for:

- ensuring that the actual dates for mobilization, key milestones or deliverables and completion are agreed with the supplier, based on the date of contract effectiveness;
- monitoring contract performance to ensure that levels of service are maintained and that deliverables are submitted or completed on time;
- ensuring that all required reports are submitted on time;
- ensuring that, where required, the procuring entity provides written comments or approvals to deliverables or reports in a timely manner;
- ensuring that any resources, assistance or counterpart staff to be provided by the procuring entity are made available at the appropriate time;
- checking invoices and supporting documentation for payment are correct and arranging payment;
- issuance of any acceptance certificates;
- managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required and releasing them promptly, when all obligations have been fulfilled;
- notifying the consultant in writing of any failings in performance or failure to meet targets;
- ensuring all reports or deliverables are circulated for comment; and
- ensuring that final deliverables are kept in an appropriate place and circulated or implemented as required.

C.7.3.4. General Services Contracts

General services contracts have the potential to be the most complex of the four types of procurement. It may be a simple output-based contract which would be relatively simple to monitor or it may include elements of goods, works and services. Therefore it is recommended that a checklist is created for each contract which pulls together the various advices above for contract administration of goods, works and services.

Depending on the size of any works component it may be appropriate to appoint a supervising engineer or project manager.

C.7.4. Mobilisation

The main responsibility for mobilizing resources will fall to the supplier/contractor or consultant. However, the Administrator needs to be aware of any resources that the procuring entity may have committed during the bidding process. These generally relate to visas, office facilities, vehicles, counterpart staff etc. It is important that the procuring entities are comprehensively captured and all actions initiated at an early stage as the supplier/contractor/consultant will rely on that support and the possible cost saving in their bid price. Whilst performing these actions may be beyond the scope of the Administrator they are responsible for advising and expediting the actions of the appropriate team within the procuring entity.

C.7.5. Contract Amendments and Variations

Any issue requiring an amendment or variation to a contract must be referred within one day to the procurement officer. The officer responsible must assess the effect and impact on the performance and delivery of the contract. This may require consultation with other members of the procuring entity who supported the technical management of the contract.

The procurement officer (subject to any internal approvals) will:

i. identify and agree with the supplier, contractor or consultant the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply, which may be more than the single specific change which may have initiated the amendment, for example, a change in delivery terms from air to sea would also require a change in the delivery date;
ii. prepare a draft contract amendment document for approval by the head of the procuring entity;
iii. if the new contract value exceeds the original contract tier threshold approval, obtain further approvals in line with **Procurement Thresholds** before the commencement of the additional services/works;
iv. record any other contractual/value changes;
v. the procuring entity must follow the procedures detailed in the specific contract for any amendment or variation;
vi. obtain from the supplier/contractor/consultant any necessary addition or extensions to the performance and advance payment security;

vii. arrange for signature of the contract amendment in two copies;
viii. distribute copies in the same way as the original contract.

C.7.6. Performance Management

For more complex or phased contracts the procuring entity may consider including performance management of the supplier, contractor or consultant as part of their contract management approach. In doing so the procuring entity will be able to manage risk more closely, monitor costs (particularly on work based contracts), identify any performance gaps and achieve the contractual objectives.

The key tasks are to:

1. Establish key performance indicators (KPIs) (minimum service levels and performance target must be defined).
2. Analyse, measure and record the performance against the KPIs on a regular basis.
3. Discuss the performance with the supplier to allow any adjustments so they may work to achieving the performance target.

It is important that any plans to include performance management are considered as part of the procurement preparation stage and it is essential that the requirements are specified in the SBD.

It is expected that the Contract Manager would manage these tasks; however, technical elements may need input from any technical advisers involved with the contract.

It is recommended the procuring entity follows the following steps during the relevant stage of the procurement process:

1. Planning Stage
   - Review any similar Government contracts which may have include KPIs
   - List key successes and risks in performance of the contract
   - Create KPIs including the following:
     - KPI service level
     - KPI performance target
     - Minimum KPI service level
     - How the KPI will be measured or calculated
     - The data required for the KPI
     - How frequently the KPI will be measured
2. Invitation to Bid/Request for Proposal Phase
   - Include the KPIs in the SBD
   - Include reporting requirements for KPIs.

- Include meeting schedule to discuss KPIs.

3. Contract Award
   - Include KPIs in the Contract
4. Contract Management
   - Include KPIs in the Contract Management Plan
   - Analyse, measure and record performance against KPIs.
   - Feedback to supplier, contractor or consultant.

C.7.7. Dispute resolution

Any dispute raised by either party must be managed in the line with the specific conditions of the contract. It is essential that any dispute is raised immediately with the head of the procuring entity and the procuring entity's legal team or AGO.

C.7.8. Termination

If following legal advice the decision is taken to proceed with termination of the contract, the procuring entity must follow these steps:
1. Identify the need and contractual basis to terminate the contract. **2.** Ensure that the procuring entity has sufficient justification for using the selected grounds. **3.** Estimate the amount of money, if any, which will be due to the supplier following termination. **4.** Prepare a formal notice, terminating the contract and stating the grounds for termination. **5.** Issue the termination notice and ensure that it is received by the supplier. **6.** Take any follow-up action required, including returning any securities, making any payments due to the supplier under the contract and referring any default or corrupt practices by the supplier to the Procurement Division.

Every effort should be made to resolve an issue under a contract. Termination of the contract is the last resort; however, sometimes it is necessary:

- to avoid or minimize further loss to the procuring entity or poor performance by the supplier;
- where contract performance has become impossible; or
- where a supplier is no longer qualified or has engaged in corrupt practices.

The procuring entity must always seek legal advice before initiating any action in respect of termination. The head of the procuring entity must be copied in all correspondence.

The grounds under which the procuring entity may normally terminate a contract are defined in the contract. The consequences of termination need to be carefully considered.

The procuring entity should note that a contract will also give the supplier grounds for termination, which normally include failure by the procuring entity to make payments which are overdue by a specified period of time, force majeure or failure of the procuring entity to comply with an agreement reached through a dispute resolution mechanism.

C.7.8.1. Goods Contracts

a). Termination for Default

i) If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract plus the maximum period allowed for liquidated damages or within any extension that may have been granted provided that the delay was not caused by force majeure;
ii) If the supplier fails to perform any other obligation(s) under the contract such as commissioning of equipment and training if so required in the contract; or
iii) If the supplier has engaged in fraudulent or corrupt practices in competing for or in executing the contract.

When terminating for default the procuring entity may not terminate the whole contract, in which case the supplier remains responsible for the performance of the rest of the contract.

In order to complete the procurement the procuring entity may procure the goods (or goods and related services), works, consultancy services or general services which shall be at the cost of the supplier.

b). Termination for Insolvency

The procuring entity may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent.

In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the procuring entity.

c). Termination for Convenience

If the procuring entity decides to terminate for convenience the following steps must be taken:

i) The procuring entity, by written notice sent to the supplier, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the procuring entity's convenience, the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.
ii) The goods that are complete and ready for shipment within twenty-eight (28) days after the supplier's receipt of notice of termination shall be accepted by the procuring entity at the contract terms and prices. For the remaining goods, the procuring entity may elect:
    1. to have any portion completed and delivered at the contract terms and prices; and/or

2. to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and related services and for materials and parts previously procured by the supplier.

C.7.8.2. Works Contracts

The principles for termination are similar to goods contract but the format is different. The procuring entity shall be entitled to terminate the contract if the contractor:

a). abandons the works, refuses or fails to comply with a valid instruction of the Project Manager or fails to proceed expeditiously and without delay or is, despite a written complaint, in breach of the contract, the procuring entity may give notice referring to the clause in the contract document, stating the default.

b). abandons the works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the contract, has not taken all practicable steps to remedy the default within 28 days after the contractor's receipt of the Project Manager's notice, the Project Manager may, by a second notice given within a further 21 days, terminate the contract. The contractor shall then demobilize from the Site leaving behind Materials and Plant and any contractor's Equipment which, as the Project Manager instructs in the second notice, which the procuring entity will retain until the completion of the Works.

c). subcontracts the whole of the works or assigns the contract without the required agreement of the procuring entity,

d). is declared insolvent under any applicable law, the other procuring entity may by notice terminate the contract immediately. The contractor shall then demobilize from the Site leaving behind any contractor's Equipment which the procuring entity instructs in the notice is to be used until the completion of the Works.

e). gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

(i) for doing or forbearing to do any action in relation to the contract, or

(ii) for showing or forbearing to show favour or disfavour to any person in relation to the contract,

(iii) or if any of the contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (e). However, lawful inducements and rewards to contractor's Personnel shall not entitle termination.

The procuring entity must be aware though that the contractor also has rights to terminate if:

a). the contractor may suspend the execution of all or parts of the Works. If the payment certificate is not issued, payment is not made, or the reason for non-payment established and not within the contractual rights of the Project to withhold, within after the Project's receipt of the contractor's notice

b). the procuring entity substantially fails to perform his obligations under the contract in such manner as to materially and adversely affect the ability of the contractor to perform the contract,

c). a prolonged suspension affects the whole of the works, or

d). the procuring entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

If either the procuring entity or the contractor is or will be prevented from performing any of its obligations by Force Majeure, the party affected shall notify the other party immediately. If necessary, the contractor shall suspend the execution of the works and, to the extent agreed with the procuring entity, demobilize the contractor's equipment. Further action must be in accordance with the contract terms.

C.7.8.3. Consultancy Services Contracts

The procuring entity may terminate this contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the procuring entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

a). If the Consultant has been issued with a notice of suspension and fails to remedy a failure in its performance;

b). If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;

c). If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings;

d). If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the consultancy services for a period of not less than sixty (60) calendar days;

e). If the procuring entity, in its sole discretion and for any reason whatsoever, decides to terminate this contract;

f). If the Consultant fails to confirm availability of Key Experts.

Furthermore, if it is determined that the Consultant under the Applicable Law has engaged in fraud and corruption in competing for or in executing the contract, then the procuring entity may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the contract

The Consultant may terminate this contract, by not less than thirty (30) calendar days' written notice to the procuring entity, in case of the occurrence of any of the events specified in paragraphs a) through d) of this Clause.

a). If the procuring entity fails to pay any money due to the Consultant pursuant to this contract and not subject to dispute within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.

b). If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the consultancy services for a period of not less than sixty (60) calendar days.

c). If the procuring entity fails to comply with any final decision reached as a result of arbitration;

d). If the procuring entity is in material breach of its obligations pursuant to this contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the notice specifying such breach.

C.7.8.4. General Services Contracts

The principles for termination are similar to goods and works contract but the format is different. The procuring entity shall be entitled to terminate the contract if the service provider:

a). if the service provider does not remedy a failure in the performance of its obligations under the contract, within thirty (30) days after being notified or within any further period as the procuring entity may have subsequently approved in writing;

b). if the service provider become insolvent or bankrupt;

c). if, as the result of Force Majeure, the service provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

d). if the service provider, in the judgment of the procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

For the purposes of this Sub-Clause:

i. "corrupt practice"4 is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

ii. "fraudulent practice"[5] is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

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4 For the purpose of this contract, "another party" refers to a public official acting in relation to the procurement process or contract execution. In this context, "public official" includes Government of Samoa staff and employees of other organisations taking or reviewing procurement decisions.

5 For the purpose of this contract, "party" refers to a public official; the terms "benefit" and "obligation" relate to the procurement process or contract execution; and the "act or omission" is intended to influence the procurement process or contract execution.

iii. "collusive practice"[6] is an arrangement between two (2) or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

iv. "coercive practice"[7] is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

v. "obstructive practice" is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the procuring entity's inspection and audit rights provided for under the Government's Treasury Instructions.

The procuring entity must be aware though that the contractor also has rights to terminate if:

a). if the procuring entity fails to pay any monies due to the service provider pursuant to this contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the service provider that such payment is overdue; or

b). if, as the result of Force Majeure, the service provider is unable to perform a material portion of the services for a period of not less than sixty (60) days.

C.7.9. Audit

The Government has the right to audit the procurement and financial records of the procuring entity. Any audit may be undertaken by internal staff or external consultants appointed by them.

All personnel must fully cooperate with any auditor in the performance of their duties. Suppliers, contractors and consultants shall also be required to cooperate in accordance with the terms of their contract.

C.7.10. Completion

On completion the procuring entity must make final checks to ensure the following

- all payments have been made to the supplier/contractor/consultant
- the final payment schedule is consistent with the contract and any amendments or variations

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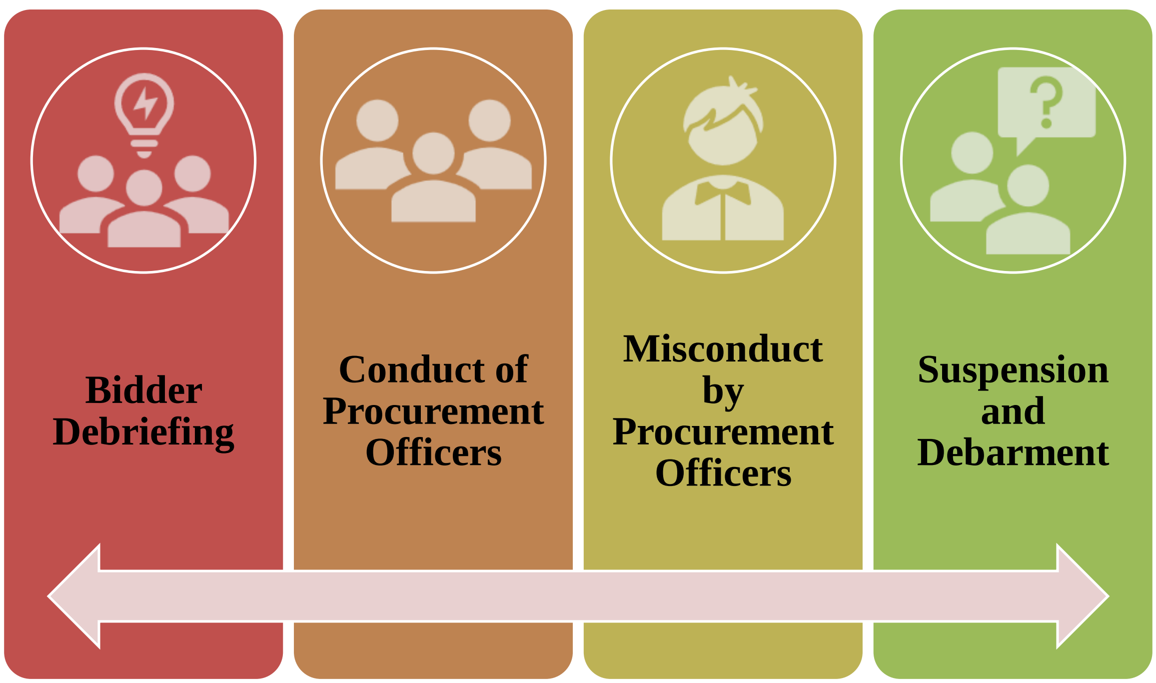
6 For the purpose of this contract, "parties" refers to participants in the procurement process (including public officials) attempting to establish tender prices at artificial, non competitive levels.

7 For the purpose of this contract, "party" refers to a participant in the procurement process or contract execution.

- all deliverables have been received including any hard and soft copies of reports
- there are no outstanding claims for missing goods with the supplier or an insurance company
- warranties have been provided and filed securely
- taking over certificate have been provided
- any guarantees and securities have been returned
- all records are correctly filed
- any reporting is completed
- any performance reporting captured

The file should be closed with a destroy date seven years from the date of closing.

C.8. Transparency and Integrity



Upholding transparency and integrity in all aspect of public procurement is a mandatory requirement for all Government procurement.

The Government has identified the following key areas as requiring additional scrutiny:
▪ Bidder debriefing (see below) ▪ Contract award (see below)

- Prompt payment (see Contact Management: General)
- Records and reports of procurement activities (see Section C.7.2. Record of procurement proceedings)
- Conduct of procurement officers (see below)
- Misconduct by procurement officers (see below)
- Suspensions and debarments (see below)

C.8.1. Bidder debriefing

As part of the notice of award, the procuring entity must provide a debrief to the unsuccessful bidders. The debriefing is an important part of the procurement process and offers the procuring entity a number of benefits;

- bidders are encouraged to participate in future procurements;
- it allows bidders to improve the quality and effectiveness of their bids;
- demonstrates the professional decision making process;
- contributes to the experience of national bidders;
- provides a definite start and end date for any aggrieved parties; and
- the profile of Government is enhanced through transparency and fairness.

Whilst the debrief letter should explain why a bid has been unsuccessful it should not breach confidentiality of other bidders nor take a long time to prepare. Adopting a structured format and focus on the content will assist the procuring entity in achieving the right balance.

Each letter must be unique for each unsuccessful bidder therefore a careful review should be undertaken to ensure the correct data is included to avoid ‘cut and paste’ scenarios, with the exception of the strengths of the successful bid. The letter should not make any reference to another bidder’s bid.

A bid may have been rejected at a number of stages. Where this was part of the post qualification then the letter should state the factual reasons for rejection. For example, your bid did not contain a bid security or the financial statements in the bid did not exceed the mandatory thresholds required as part of the post-qualification process.

Where a bid has been rejected during the detailed evaluation then a more particular response must be provided, whilst comparing the characteristics and relative advantages of the successful bid. This format also includes consultancy services where a consultant may have failed to pass the minimum threshold. The use of a table format highlights the comparative nature and ensures no omissions. The debrief letter should therefore address:

a). the stage at which the bid was rejected or unsuccessful;
b). the factual reason for rejection or details addressing c) and d) below;
c). the comparative scores of the successful bidder against the unsuccessful bidder.

This should be consistent with the level of evaluation criteria in the bidding document.

d). comparison of understanding, for example

Successful bid	Your Bid
The successful bidder considered the risks associated with delivering the service during the hurricane season.	Your bid did not consider these significant risks.
The successful bidders offered the 250cc motorbikes as per the technical requirements.	Your bid offered 175cc motorbikes which was below the technical requirements.
The Team Leader had a degree in environmental engineering which was a mandatory qualification.	Your Team Leader had a degree in electrical engineering.

The debrief letter may elicit a request for further clarification. It will be the decision of the procuring entity whether further response will be provided or the unsuccessful bidder advised that no further debrief can be provided. Any further engagement with unsuccessful bidders must be conducted in writing. Face to face meetings are not permitted.

C.8.2. Conduct of procurement officers

Government procurement requires the highest levels of ethical conduct and represents a minimum standard. Each profession within Government is required to meet standards of ethics and conduct which addresses its own special circumstances. However, such codes must be consistent with, and not derogate from the principles below.

The principles must not be read as a prescriptive document i.e. it must not be inferred that if it not stated then it must be permitted, but should instead be interpreted considering the spirit of the law and the broader objects of the Act and the Instructions.

An officer responsible for any aspect of the procurement of a procuring entity, including the requisitioning, planning, preparing and conducting procurement proceedings and administering the implementation of procurement contracts, shall, as a procurement officer adhere to the following principles:

a) ensure that each decision is based on adequate information in light of the circumstances, and is made in good faith, for a proper purpose in accordance with these Instructions and in the best interest of the Government;

b) assure fair competitive access by contractors to procurement proceedings and contract awards;

c) avoid circumstances in which he or she might personally benefit from a decision, either directly or indirectly through family and associates, from his or her official actions or that would give the appearance of the same;

d) not commit corrupt or fraudulent acts, such as the solicitation or acceptance of bribes; or

e) not reveal confidential information received in connection with procurement proceedings and bids, including bidders‟ proprietary information.

C.8.3. Misconduct of procurement officers

"A breach by an officer involved in procurement of any of these Instructions is deemed to be a misconduct, which shall be dealt with:

a) for an officer in a Ministry–under the Public Service Act 2004, with relevant amendments; or

b) for an officer in a public body– under the provisions of the relevant public body's empowering legislation, where applicable, or in accordance with the public body's human resource policy and/or disciplinary procedure."

C.8.4. Suspensions and debarments

Details to be incorporated when the relevant information is approved accordingly and made available

C.9. Procurement Independent Complaints and Review Procedure (PICRP)

An actual bidder in procurement proceedings who claims to have suffered, or to be likely to suffer harm due to a breach of a duty imposed on a procuring entity by or under the Instructions, may complain to a procuring entity." (Instructions K.10).

The complaints and review proceedings form two stages:

(i) Right to Complain

(ii) Right to Review

This process does not negate the rights of an actual bidder to apply to the court for a judicial review on a point of law at any stage.

Details of the PICRP can be found in Part K.10 of the Instructions (as amended in 2020).

In the event of any conflict, the Act and Instructions will prevail over the Review Procedure at all times.

SECTION D: MANDATORY DOCUMENTS AND RECORDS

ANNEXURE 1: Standard Bidding Documents

Low Value Standard Bidding Document	Description	Document
RFQ	Minor General Services	RFQ GS.docx
RFQ	Minor Goods & Related Services	
RFQ	Minor Works	
RFP	Consulting Services	

High Value Standard Bidding Document	Description	Document	BER
Open Competitive Bidding	General Services		
Open Competitive Bidding	Goods & Related Services		
Open Competitive Bidding	Works		
RFP	Consulting Services		
RFP	(Selective Prequalification) Consulting Services		
RFP	Design & Supervision		

Invitations to Negotiations	Description	Document
Letter	General Services	
Letter	Goods & Related Services	
Letter	Works	
Letter	Consulting Services	

Bid Opening Checklist	Description	Document
Checklist	Goods & Related Services, Works and General Services	
Checklist	Consulting Services	

ANNEXURE 2: Annual Procurement Plan Format

Document

ANNUAL PROCUREMENT PLAN *[Enter Period date]*

MINISTRY: *[Enter Ministry Name]*

					ESTIMATED:						
CATEGORY	TENDER/ RFQ? (Method)	BUDGET CODE	LOCAL/INTL	DESCRIPTION (TENDER/RFQ 50K+)	Estimated COST (SAT$)	PROCESS START DATE	CONTRACT START DATE	CONTRACT FINISH DATE	TOTAL DAYS OF PROCUREMENT	TOTAL DAYS OF CONTRACT	TOTAL DAYS OVERALL
				Example:							
W	*RFQ*		*LC*	*Minor Renovation Works for the Minister's office*	*$80,000.00*	*01-Aug-20*	*01-Sep-20*	*09-Oct-20*	*4 weeks*	*5 weeks*	*9 weeks*

Category: e.g. General Services (GS), Goods & Related Services (GRS), Works (W) or Consulting Services (CS)

Tender/RFQ (Method): e.g. Open Competitive Bidding (IFB), Request for Quotation (RFQ), Limited Bidding (LB), Restrictive Bidding (RB), Framework Arrangement (FA), Single Source Selection (SS)/Direct Purchase (DP) etc.

Budget Code: refer to the Chart of Accounts

Local/Intl.: Whether the bid is for Local Suppliers/Contractors/Consultants only or opens to international bidders

Total Days of Procurement: Accounts for publication period, evaluation of bids and approval by Tenders Board and or Cabinet where necessary. Example given – due to the threshold able to publicise for 2 weeks, 1 week to account for evaluation and 1 week to account for weekly tenders Board meetings

Total Days of Contract: Depending on the scope of the works. Example given – Minor renovations should take around 10 weeks or less

ANNEXURE 3: Declaration of Impartiality and Confidentiality[8] Form

Document

[Insert Ministry/Public Body Logo]

RfP/ITB Reference: *[Insert Reference Number]*
[Insert the name of the Procurement/Project]
[Insert Date of Evaluation]

I, the undersigned, hereby declare that I agree to participate in the evaluation of the above-mentioned tender evaluation. By making this declaration, I confirm that I have familiarised myself with the information available to date concerning this tender procedure. I further declare that I shall execute my responsibilities honestly and fairly

I am Independent[9] of all parties which stand to gain from the outcome of the evaluation process[10]. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, which might call into question my independence in the eyes of any party, and, should it become apparent during the course of the evaluation process that such a relationship exists or has been established, I will immediately cease to participate in the evaluation process.

I agree to hold in trust and confidence any information or documents ("confidential information") disclosed to me or discovered by me or prepared by me in the course of, or as a result of the evaluation and agree that it shall be used only for the purposes of this evaluation and shall not be disclosed to any third party. I also agree not to retain copies of any written information or prototypes supplied.

Confidential information shall not be disclosed to any employee or expert unless they agree to execute and be bound by the terms of this Declaration.

Name	
Signed	
Date	

[8] Includes Request for Proposals and Framework Arrangement Methods.

[9] Taking into consideration whether there exists any past or present relationship, direct or Indirect, whether financial, profession or of another kind

[10] i.e. all (tenderers/applicants) who are participating in the tender/call for proposal), whether individuals or members of the consortium, or any of the partners or subcontractors proposed by them

Guidance Contract Management Documents & Records

In order to assist the facilitation of the Procurement Processes and Management of Contracts the following documents can be used as guidance. While the format of the documents is not mandatory their intent is. Their use will assist the Procuring Entity to fully comply with the Procurement Operations Manual, and satisfy Government of Samoa audit oversight.

TABLE OF CONTENTS

ANNEXURE A: Contract Administration Forms (CAF)

Contract Administration Form for Small and Large Works

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

CONTRACT ADMINISTRATION FORM FOR *[INSERT SMALL AND LARGE WORKS]*

PROJECT TITLE			
PROCUREMENT REQUISITION NO.		**CEO**	
WORKS			
Contract Ref		**Date of Letter of Acceptance Issued**	
Currency		**Contract Amount**	
Name of Contractor			

	Forecast	***Actual***	***Modification No.***	***Date***	***Approval Contract Admin***	***Approval PO***	***Tenders Board***	***Revised duration***	***Revised Price***	***Revised Completion date***
Performance Security										
Full Contract Signed/Issued										
Date of Commencement of Services										
Duration (in weeks)										
Advance Payment Guarantee										
Completion Date										
Contractor Performance Report Due										

Contractor Performance Report Issued										
Date of Close Out										

Contract Modifications

Modifications	***Reason for Modification***	***Date of Modification***	***Revised Cost***	***Revised Duration***	***Revised Completion Date***
Modification 1					
Modification 2					
Modification 3					
Modification 4					
Modification 5					
Modification 6					

Summary of Payment Certificates (IPC and Final) – Bill of Quantities Measures and Costs

IPC (BOQ Measures and Cost)		**Forecast**	**Amount Requested**	**Amount Certified**	**IPC (BOQ Measures and Cost)**		**Forecast**	**Amount Requested**	**Amount Certified**
Month 1: *(insert description)*	**Due Date**				**Month 13:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 2: *(insert description)*	**Due Date**				**Month 14:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 3: *(insert description)*	**Due Date**				**Month 15:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 4: *(insert description)*	**Due Date**				**Month 16:** *(insert description)*	**Due Date**			
	Value					**Value**			

Month 5: *(insert description)*	**Due Date**				**Month 17:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 6: *(insert description)*	**Due Date**				**Month 18:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 7: *(insert description)*	**Due Date**				**Month 19:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 8: *(insert description)*	**Due Date**				**Month 20:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 9: *(insert description)*	**Due Date**				**Month 21:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 10: *(insert description)*	**Due Date**				**Month 22:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 11: *(insert description)*	**Due Date**				**Month 23:** *(insert description)*	**Due Date**			
	Value					**Value**			
Month 12: *(insert description)*	**Due Date**				**Month 24:** *(insert description)*	**Due Date**			
	Value					**Value**			

NOTES TO THE CONTRACT ADMINISTRATION FORM

1. Once the Letter of Acceptance is signed and issued this form must be completed by the Procuring Entity Lead.
2. The form should then be emailed to: the Entity’s CEO/GM and MOF Procurement Division.
3. Diarize all key dates.
4. For Performance Security and Advance Payment Guarantee diarize the expiry dates at least 3 months in advance.

5. For monthly reporting always highlight the key deliveries/activities expected the next month for each contract.
6. Monitor the diary entries on a monthly basis and advise the Entity's CEO, by email, of each item due in the next month.
7. Ensure the Contractor Performance Report is undertaken and submitted to the MOF Procurement Division.

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

CONTRACT ADMINISTRATION FORMFOR CONSULTING SERVICES

PROJECT TITLE										
PROCUREMENT REQUISITION NO.		**CEO**								
CONSULTANCY SERVICES										
Contract Ref:		**Date of Contract Signature**								
Currency		**Contract Amount**								
Name of Consultant Firm										
	Base Period		***Option Year 1***		***Option Year 2***		***Option Year 3***		***Option Year 4***	
	Forecast	***Actual***	***Forecast***	***Actual***	***Forecast***	***Actual***	***Forecast***	***Actual***	***Forecast***	***Actual***
Date of Commencement of Services										
Duration (in weeks)										
Insurance Certificates										
Advance Payment Guarantee										
Completion Date										
Contractor Performance Report Due										
Contractor Performance Report Issued										
Date of Close Out										
Deliverables							***Forecast***		***Actual***	
Deliverable 1: *(Insert description)*					Value					
					Due date					

Deliverable 2: *(Insert description)*	Value		
	Due date		
Deliverable 3: *(Insert description)*	Value		
	Due date		
Deliverable 4: *(Insert description)*	Value		
	Due date		
Deliverable 5: *(Insert description)*	Value		
	Due date		

Contract Amendments					
Modifications	***Reason for Modification***	***Date of Modification***	***Revised Cost***	***Revised Duration***	***Revised Completion Date***
Amendment 1					
Amendment 1					
Amendment 1					
Amendment 1					
Amendment 1					
Amendment 1					
Amendment 1					

NOTES TO THE CONTRACT ADMINISTRATION FORM

1. Once the Letter of Acceptance is signed and issued, this form must be completed by the Procuring Entity.
2. The form should then be emailed to: the Entity's CEO and MOF Procurement Division
3. Diarize all key dates
4. For Performance Security and Advance Payment Guarantee diarize the expiry dates at least 3 months in advance
5. For monthly reporting always highlight the key deliveries/activities expected the next month for each contract.

6. Monitor the diary entries on a monthly basis and advise the Entity's CEO by email, of each item due in the next month
7. Ensure the contract Performance Report is undertaken and submitted to the MOF Procurement Division

Contract Administration Form for Goods

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

CONTRACT ADMINISTRATION FORMFOR GOODS

PROJECT TITLE			
PROCUREMENT REQUISITION NO.		**CEO**	
GOODS			
Contract Ref		**Date of Letter of Acceptance Issued**	
Currency		**Contract Amount**	
Name of Supplier			

	Forecast	*Actual*	*Modification No*	*Date*	*Approval Contract Admin*	*Approval PO*	*Tenders Board*	*Revised duration*	*Revised Price*	*Revised Completion date*
Performance Security										
Full Contract Signed/Issued										
Date of Commencement of Services										
Duration (in weeks)										
Advance Payment Guarantee										
Delivery Completion Date										
Warranty period										

Contractor Performance Report Due										
Contractor Performance Report Issued										
Date of Close Out										

Deliverables		***Forecast***	***Actual***
Delivery 1*: (Insert description/item numbers)*	Value		
	Due date		
Delivery 2*: (Insert description/item numbers)*	Value		
	Due date		
Delivery 3*: (Insert description/item numbers)*	Value		
	Due date		
Delivery 4*: (Insert description/item numbers)*	Value		
	Due date		

Contract Modifications					
Modifications	***Reason for Modification***	***Date of Modification***	***Revised Cost***	***Revised Duration***	***Revised Completion Date***
Modification 1					
Modification 2					
Modification 3					
Modification 4					
Modification 5					
Modification 6					
Modification 7					

NOTES TO THE CONTRACT ADMINISTRATION FORM

1. Once the Letter of Acceptance is signed and issued this form must be completed by the Procuring Entity.
2. The form should then be emailed to: the Entity's CEO and the MOF Procurement Division
3. Diarize all key dates
4. For performance Security and Advance Payment Guarantee diarize the expiry dates at least 3 months in advance
5. For monthly reporting, always highlight the key deliveries/activities expected the next month for each contract.
6. Monitor the diary entries on a monthly basis and advise the Procuring Entity's CEO by email, of each item due in the next month.
7. Ensure the Contractor Performance Report is undertaken and submitted to the Procurement Division on time where applicable

ANNEXURE B: Goods Receipt Note/Form

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

GOODS RECEIPT NOTE/FORM

CONTRACT OR PURCHASE ORDER NUMBER:

NAME OF THE PERSON RECEIVING THE GOODS:

DESIGNATION OF THE PERSON RECEIVING GOODS:

PHONE NUMBER AND E-MAIL ADDRESS OF PERSON RECEIVING GOODS:

ITEM NO.	ITEM DESCRIPTION (INCLUDING SERIAL NO.)	ARE ALL LINE ITEMS SUPPLIED AS PER P.O CONDITIONS (IF NOT PROVIDE COMMENTS)	QUANTITY OF GOODS AS PER P.O (IF NOT PROVIDE COMMENTS)	DELIVERY PLACE	STORAGE LOCATION	COMPLIANCE WITH SPECIFICATION
1						
2						

COMMENTS/RECEIPT:

RECEIVED BY (SIGNATURE)		DATE OF RECEIPT	

ANNEXURE C: Replacement of Key Personnel Assessment Form

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

REPLACEMENT OF KEY PERSONNEL ASSESSMENT FORM

CONTRACT TITLE:
CONTRACT REF:
CONSULTANT FIRM:
POSITION:

Original Consultant:

Proposed Replacement:

Item	**RFP Requirement**	**Original Consultant**	**Proposed Consultant**
Educational Qualifications			
Years of Work Experience			
Countries of Work Experience			
Language Capabilities			
Work Undertaken Relevant to the Assignment			
Experience in-country (in years)			
Experience in the Region (in years)			

References Provided:	**Summary of Responses Received**
1.	
2.	

3.	

Recommendation:	**Approved by:**
______________________	______________________
Name, Title and Date	**Name, Title and Date**

ANNEXURE D: Contract Administrator Appointment Form

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

MEMO FOR: ***[NAME OF CONTRACT ADMINISTRATOR]***

FROM: ***[NAME OF CEO]***

SUBJECT: **DELEGATION AND APPOINTMENT AS CONTRACT ADMINISTRATOR**

You are hereby appointed as the Contract Administrator for ***<Contract Number>*** with ***<Name of Contractor>*****.**

Your designation as Contract Administrator shall remain in effect throughout the duration of the Contract unless sooner revoked by the Sector Director. Any such revocation of the designation shall be in writing.

Details of your responsibilities as Contract Administrator are contained in Annexure I hereof and in the Contract Administration and Management Manual (CAMM) under roles and of Contract Administrator.

The undersigned acknowledges the Contract Administrator appointment on ***<Contract Number>***and accepts the duties, responsibilities and limitations described in this appointment memo.

______________________________________ ____________________

Name of Administrator Date

______________________________ ____________________

Name of CEO Date

You are required to sign this page of the memo and return it to Sector Director's office within 5 working days to acknowledge your appointment as Contract Manager and your receipt of this memo.

Annexure I

Contract Administrator Responsibilities are to:

1. Be accountable to the Procuring Entity Sector Procurement Officer who shall supervise the work of Contract Administrator.
2. Recommend items for approval to the Sector's Procurement Officer for consideration by the Procuring Entity's Director (Sector Director signs all approvals).
3. Be the first point of contact within the Procuring Entity for the Contracted Party.
4. Coordinate and follow-up on all aspects of the contract on behalf of the Procuring Entity Director.
5. Receive invoices and obtain a technical opinion, where required, before recommending the invoice for approval to the Sector's Procurement Officer.
6. Ensure that the Contract Party, or the Construction Supervising Engineer (in case of works) performs and delivers on time what is contractually agreed upon;
7. Receive deliverables, and be physically present for the receipt of Goods.
8. Be responsible for distribution of Consultants' reports to all stakeholders.
9. Attend the official acceptance of Works where possible (in case of works)
10. Update the information on contract performance in the relevant files/fields.
11. Maintain a Contract Administration File for Audit and contract-monitoring purposes, including establishing and maintaining, an efficient Contract Administration environment including a proper filing system to ensure quick retrieval of contract administration information (by Project staff, auditors, Procurement Officers, and the Ministry of Finance), and keeping accurate and up-to-date files and records of contract administration activities to serve as a basis for audit and Financial Management Reporting.
12. Maintain regular communication with the Procuring Entity's Procurement Officer and with the financial/accounting staff to ensure that contract tracking information is well coordinated with other planning, budgeting and financial reporting information.
13. Provide contract information to the financial/accounting staff.
14. Carry out day-to-day Contract Administration duties related to the contract between the Contractor and the Procuring Entity and between the Construction Supervising Engineer and Public Works or Land and Transport Authority (in case of works); liaise between the Procuring Entity and the Construction Supervising Engineer on matters related to the execution of the Works including the acceptance processes.
15. Supervise, jointly with Project staff and the Construction Supervising Engineer, all administrative aspects of the implementation of the Works Contract (In case of works).
16. Report regularly on the implementation of the Contract.
17. Obtain payment clearance from the Entity Procurement Officer and manage the payment process, within the MOF (Work in Progress), final payment, devolution of the performance security and retention guarantee (in case of works).

In your capacity as **Contract Administrator** you **DO NOT** have the authority to:

1. Award, agree to, or sign any contract, delivery order or task order. All contractual agreements, commitments, or modifications shall be made only by the Sector Director.
2. Make any commitments or otherwise obligate the Procuring Entity, or to make any changes to the contract.
3. Grant deviations from or waive any of the terms and conditions of the contract.
4. Impose or place a demand upon the Contractor to perform any task or permit any substitution not specifically provided for in the contract.
5. Increase the dollar limit of the contract, or authorize work beyond the dollar limit of the contract, or authorize the expenditure of funds. Give direction to the Contractor or to the employees of the Contractor except as provided for in the contract.
6. Change the period of performance.
7. Authorize the purchase of equipment, except as required under the contract.
8. Authorize the furnishing of the Procuring Entity property, except as required under the contract.
9. Authorize subcontracting or the use of consultants.
10. Approve shifts of funding between line items of the budget.
11. Approve travel and relocation expense over and above that provided for in the contract.

ANNEXURE E: Contract Closeout Forms

Contract Closeout Form for Works

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

CONTRACT CLOSE-OUT FORM FOR WORKS

Contract No:		
Contract Title:		**Large Works □** **Small Works □** *Tick as required*
The closure of the above-mentioned contract file is certified by Procuring Entity on:		

The actual physical and financial status of the contract implementation is detailed below:

Name and Address of Contractor:		
Contract Period:	Start date:	
	End date:	
	Defects Liability Period (if applicable):	____________months
	Final Acceptance Date:	
	Justification for any over-runs/delays:	
Place of Contract Implementation:		
Variations issued during the Contract period:		
Contract Amount including amendments: *[in currency of the contract]*		
Final amount paid: *[in currency of the contract]*	*(to be completed by MOF)*	

All parties now confirm that there are no outstanding claims and Procuring Entity is free of all contractual obligations pertaining to the above-mentioned contract. Signatures for the closure of the contract:

Contract No:	Sector:
Contract Title:	

Signed for Final Closure of the Contract:

Certification that all Works (and any associated services if applicable) have been Provided and Completed:			
Entity Contract Administrator	Name:	Date	Signature

Certification that Procurement has been completed			
Entity Procurement Officer	Name:	Date	Signature

Certification that Advance Payment Guarantee has been returned (if applicable)			
Entity Legal Officer:	Name:	Date	Signature

Certification that Works have been Accepted by User Department			
Entity Chief Executive Officer	Name:	Date	Signature
Entity Contract Administrator			

Certification that Final Payment has been effected			
MOF	Name:	Date	Signature
Certification that Defects Liability Period has been completed			

Entity CEO	Name:	Date	Signature
Entity Contract Administrator			

Certification of Contract Close Out Procedures			
Entity Contract Administrator	Name:	Date:	Signature:

Final Approval of Contract Close Out			
Procuring Entity Chief Executive Officer	Name:	Date:	Signature:

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

CONTRACT CLOSE-OUT FORM FOR CONSULTING SERVICES

Contract No:		**Sector:**	
Contract Title:		Firm □ Individual Consultant □ *Tick as required*	
The closure of the above-mentioned contract file is certified by Procuring Entity on:			

The actual physical and financial status of the contract implementation is detailed below:

Name and Address of Consultant:		
Contract Period:	Start date:	
	End date:	
	Final Acceptance Date:	
	Justification for any over-runs/delays:	
Place of Contract Implementation:		
Variations issued during the Contract period:		
Contract Amount including amendments: *[in currency of the contract]*		
Final amount paid: *[in currency of the contract]*	*(to be completed by MOF)*	

All parties now confirm that there are no outstanding claims and Procuring Entity is free of all contractual obligations pertaining to the above-mentioned contract. Signatures for the closure of the contract:

Contract No:	
Contract Title:	

Signed for Final Closure of the Contract:

Certification that all Services have been Provided and Completed:			
Entity Contract Administrator	Name:	Date	Signature

Certification that Procurement has been completed			
Entity Procurement Officer	Name:	Date	Signature

Certification that the Services have been Accepted by User Department			
Entity Chief Executive Officer	Name:	Date	Signature

Certification that Final Payment has been effected			
MOF	Name:	Date	Signature

Certification of Contract Close Out Procedures			
MOF PO	Name:	Date:	Signature:

If Services value is above SAT 500,000

Final Approval of Contract Close Out			
*Procuring Entity Chief Executive Officer	Name:	Date:	Signature:

* Not required for Individual Consultants

Contract Closeout Form for Goods/General Services

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

CONTRACT CLOSE-OUT FORM FOR

[INSERT GOODS OR GENERAL SERVICES]

Contract No:		
Contract Title:		Goods □ General Service □ *Tick as required*
The closure of the above-mentioned contract file is certified by the Procuring Entity on:		

The actual physical and financial status of the contract implementation is detailed below:

Name and Address of Supplier:		
Contract Period:	Start date:	
	End date:	
	Warranty Period (if applicable):	____________ weeks/months
	Final Acceptance Date:	
	Justification for any over-runs/delays:	
Place of Contract Implementation:	Procuring Entity.	
Variations issued during the Contract period:		
Contract Amount including amendments: *[in currency of the contract]*		
Final amount paid: *[in currency of the contract]*	*(to be completed by MOF)*	

All parties now confirm that there are no outstanding claims and Procuring Entity is free of all contractual obligations pertaining to the above-mentioned contract Signatures for the closure of the contract:

Contract No:	
Contract Title:	

Signed for Final Closure of the Contract:

Certification that all Goods (and any associated services if applicable) / Services have been Delivered and Accepted			
Entity Contract Administrator	Name:	Date	Signature

Certification that Procurement has been completed			
Entity Procurement Officer	Name:	Date	Signature

Certification that Final Payment has been effected			
MOF	Name:	Date	Signature

Certification that Warranty and Maintenance Provisions Completed (if applicable)			
Entity Contract Administrator	Name:	Date	Signature

Certification that Goods/Services have been Accepted by User Department			
Entity CEO	Name:	Date	Signature

Final Approval of Contract Close Out			
MOF Procurement Division	Name:	Date	Signature

ANNEXURE F: Contract Modification/Amendment Forms

Contract Modification/Amendment Authorisation Form

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

CONTRACT MODIFICATION/AMENDMENT AUTHORIZATION FORM

Contract Title:	
Name of Vendor:	

Contract/PO No.:	Contract Date:
Project/Sector:	Contract Modification/Amendment No.:

Original Contract Term:	Contract Term with this Modification:

Original Contract Amount: Amendment 1: Variation 1: [choose one, not both]	Contract Amount with this Modification:
Nominal Increase/(Reduction) in Contract Amount:	Percentage Increase/(Reduction) in Contract Amount:

Reasons for contract modification/amendment: ☐Change in scope of work ☐ Additional services ☐ Others: _____________ Explanation:

Requested by Contract Administrator (where applicable) Signature: Name: Date:	*Chief Executive Officer (if Requestor, delete box)* ☐Recommended ☐Not Recommended Signature: Name: Date:
Entity Procurement Officer	*DCEO MOF (if additional/reduced funds required)*

☐Approved ☐Not Approved (attach supporting documents) <u>Additional Approvals Required</u>: ☐Tenders Board ☐Procuring Entity PO ☐Procuring Entity Director (attach excerpt of minutes of the meeting)	☐Recommended ☐Not Recommended Signature: Name: Date:
Deputy CEO – MOF ☐Recommended ☐Not Recommended Signature: Name: Date:	*Tenders Board* ☐Recommended ☐Not Recommended Signature: Name: Date:

Contract Modification/Amendment Summary Form

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

Contract Modification/Amendment Summary

Contract Title:	
Name of Vendor:	

Contract/PO No.:	Contract Date:
Project/Sector	Contract Modification/Amendment No.:

Original Contract Amount:	Original Contract Term:

Modifications/Amendments			Variations/Change Orders		
#	Change	Total	#	Change	Total

Checked by:

Procurement Entity Head

Signature:

Name:

Date:

ANNEXURE G: Procurement Document(s) Filing Checklist

Hard Copy and Electronic File Content

[INSERT MINISTRY/PUBLIC BODY NAME AND LOGO]

File No.:

Procurement Title:

Procurement Reference Number:

Contract Amount:

	Electronic File Contents	Check	Notes
	Methodology:		If other than dictated by the thresholds then the Tender Board Approval is required
Folder 1	**Preliminary Documentation**		
1.1	Copy of Approved Procurement Plan showing relevant procurement, and Tender Board Approval		If the activity came as an amendment to the PP, ensure it is the amended PP along with the Tender Board's new Approval that's on file
1.2	Procurement Requisition Note (PRN) (or similar form used by the relevant sector to initiate a specific procurement action).		
1.3	Issued Prequalification/IEOI (advertisement) (if used).		
1.4	Record of Prequalification/EOIs received (if used)		
1.5	Record of Prequalification determination and Ministerial/TB clearance of Shortlist Report (if required)		
Folder 2	**Documents to Submission**		
2.1	Request for Solicitation (IFB/RFP) document and TB approval of the same		
2.2	Copies of dg Market, UNDP, MOF Procurement Portal and/or Newspaper advertisements		Depending on the procurement method
2.3	Minutes of Pre-Bid/Solicitation Conference (if used)		
2.4	Clarification Requests (Queries) and Responses (if any)		
2.5	Record of IFB/RFP Addenda (if any)		

2.6	Proposed Evaluation Panel No Objection/Clearance (if required)			
2.7	Minutes of Technical Submission or Proposal/Bid Opening			
Folder 3	**Documents from Evaluation to Award Recommendation**			
3.1	Technical Evaluation Report (TER) (inclusive of Annexes (all of the above] and No Objections/clearances			
3.2	Notifications of TER Results to all participants			
3.3	Debriefings, Reviews and Appeals (if any)			
3.4	Minutes of the Opening of Financial Proposal (if required)			
3.5	Combined Evaluation Report (CER) and its TB clearance			
3.6	Notifications of CER outcome and Letter of Award			
3.7	Invitation to Negotiations			
Folder 4	**The Contract and Amendments including Change or Variation Orders**			
4.1	Signed Contract – inclusive of Minutes of Negotiations Guarantees (if any) and Ministerial/Tender Board Clearances			
4.2	Notice of Award – MOF website, dgMarket, UNDB (if required)			
4.3	Contract Amendment(s) and their clearances		Variation and Change Orders are to be treated as Amendments because both are likely to impact time and cost. Since there are review thresholds for both time and cost the Procurement Officer must also make themselves aware of these changes	
4.4	Variation Orders (if any) and their Clearances			
4.5	Change Orders (if any) and their Clearances			
Folder 5	Cure Letter(s) Termination Notice(if any) and its Clearance			
Folder 6	Contractor Performance Report			

Folder 7	Closeout Documents – and Payment Certificate		

ANNEXURE H: Bid Proposal Opening Tools

Registration of Bids/Proposals Received

Name of Tender:

Tender No.:

Opening Date and time:

No.	Name of Bidder/Company	Date Received	Time Received	Delivered by	Signature
1					
2					
3					
4					
5					

BID OPENING CHECKLIST

Name of Tender:

Tender No.:

Procuring Entity

Opening Date and time:

Name of Bidder____

A.	Are there any "Substitutions" Modifications" or Withdrawal" submitted? If so describe them here. (ITB 25)	
B.	Is the outer and inner envelope of the bid sealed? (ITB 22)	
C.	Is the Financial Offer submitted in a separately sealed envelope/parcel? (ITB 22.1)	
D.	Is the Bid Form completed and signed? (ITB 22.2)	
E.	Is the documentary authority (POA) for signing the bid enclosed (ITB 21.2)	
F.	Is the period of the Bid's validity in conformity with the ITB (ITB 19.1)	
G.	Is the amount of the Bid Security (if required) in conformity with the ITB (ITB 20.1)	
H.	Is there a Representative of the Bidder Present?	

Name of bidder representative present: ____________________________________

Name & Signature of responsible officials ________________________________

Additional comments:

Signature of responsible MOF PO official: _________________________

Signature of responsible AG official: ______________________________

Signatures of those in attendance _______________________________

_______________________________ _______________________________

_______________________________ _______________________________

BID OPENING CHECKLIST

Name of Tender:

Tender No.:

Procuring Entity:

Opening Date and time:

Name of Consultant____

Are there any "Substitutions" Modifications" or Withdrawal" submitted? If so describe them here	
Is outer envelope of proposal sealed (ITC 21)?	
Is Financial Offer Submitted in separate sealed Envelope or Parcel (ITC 21)?	
Is Technical Proposal initialed by authorized representative (ITC 20.2)?	
Is documentary authority for signing enclosed (ITC 20.3)?	
(No. of) Hard copies (1 original + copies), electronic versions as either a CD or flash drive)?	

Name of bidder representative present: ___________________________________

Name & Signature of responsible officials _______________________________

Additional comments:

Signature of responsible MOF PO official: ________________________

Signature of responsible AG official: _____________________________

Signatures of those in attendance ______________________________

______________________________ ______________________________

______________________________ ______________________________

Attendance of Bid Opening

ATTENDANCE OF BID OPENING

Name of Tender:

Tender No.:

On **…………….. 20….** Bid Opening for the **……….** took place at ….hrs **local time in the Ministry of Finance, Level 4** Conference Room, Apia Samoa.

The following were present during bid opening ceremony:

#	NAME	COMPANY	POSITION	E-MAIL	PHONE	SIGNATURE
1						
2						
3						
4						
5						
6						
7						
8						

SECTION E: WEBLINKS

Incoterms

Ministry of Finance Procurement

OECD Public Procurement

UNCITRAL

World Bank Procurement

SECTION F: QUICK REFERENCE

SECTION G: GLOSSARY

“accountable officer” has the same meaning in the Public Finance Management Act 2001;

“Act” means the Public Finance Management Act 2001;

“bid” means, according to the type of procurement method being used, a bid, a proposal or a quotation submitted by a bidder in response to an invitation by a procuring entity;

“bidder” means a natural or legal person who submits a bid pursuant to solicitation by the relevant procuring entity;

“Board” means the Government Tenders Board established under section 88 of the Act;

“Cabinet” means the Cabinet of Ministers appointed under Article 32 (Cabinet) of the Constitution;

“Chief executive” has the same meaning in the Public Bodies (Performance and Accountability) Act 2001;

“consultant” means the provider of intellectual and professional services for a specific project;

“contractor” means the provider for the construction of works;

“days” means calendar days;

“financial institution” means a person doing banking business and includes all offices and branches of any such person;

“Financial Secretary” means the Financial Secretary appointed under section 8 (The Financial Secretary);

“general services” means the provision of services commonly involving technical services using machinery or human labour: this may for example include building services management and maintenance, cleaning & sanitation;

“goods” means objects of every kind and description, including commodities, raw materials, products and equipment and objects in solid, liquid or gaseous form as well as services incidental to the supply of goods, if the value of these incidental services does not exceed that of the goods themselves;

“Government” means the executive Government of Samoa established under Part 4 (The Executive) of the Constitution;

“Government agency” or **“agency”** means an office, entity or instrument of the Government other has a department, ministry, public body or a Minister;

“Head of a procuring entity” means the Chief Executive Officer, General Manager or Managing Director of a Government Ministry or a public body;

“intellectual and professional services” means assignments performed by consultants with outputs of advisory, design and transfer of know-how nature;

“Ministries” has the same meaning as in section 4 of the Ministerial and Departmental Arrangements Act 2003;

“officer” means any person employed in the service of a Government Ministry or public body;

“procurement” means all activities that pertain to the solicitation and entering into a procurement contract by the Government for the supply of goods, works and services;

“procurement contract” means a formal agreement between Government and supplier, contractor or consultant resulting from procurement proceedings;

“procuring entity” means any Government Ministry or public body engaging in procurement;

“public body” has the same meaning as in section 2 of the Public Bodies (Performance and Accountability) Act 2005;

“public money” means all money other than trust money received by the Government, including all revenues, grants, loans and other monies, and all bonds, debentures, and any other securities received by, or on account of, or payable to, or belonging to, or deposited with the Government or any department by:

(a) an officer of the Government in his or her capacity as such; or

(b) a person on behalf of the Government;

“records”:

(a) means information recorded and kept by any means; and
(b) includes—(i) all books, accounts, rolls, files, vouchers, receipts, cheques, records, registers, papers, documents, photographic plates, microfilms, photo static negatives, prints, tapes, disks, computer reels, diskettes and hard disk, perforated rolls, and any other type of written, printed, copied, magnetic tape, electronic data record or other information whatsoever; and (ii) all papers and other records relating to accounting operations and practice or information recorded and kept by any means;

“supplier” means the provider for the supply of goods and ancillary services, or for the provision of supply services;

“thresholds” means the financial limits as established in Schedule B.4;

“Treasury Instructions” means Treasury Instructions issued under section 127 (Treasury Instructions and Operating Manuals);

“works” means all works associated with the construction, reconstruction, demolition, repair, maintenance or renovation of a building or structure, or any construction works such as railways, roads, highways, site preparation, excavation, installation of equipment and materials, decoration, as well as physical services incidental to works, if the value of those services does not exceed that of the works themselves.

SECTION H: ABBREVIATIONS AND ACRONYMS

the Act	The Public Financial Management Act (No 10 – 2001)
AGO	Attorney General's Office
BER	Bid Evaluation Report
BOQ	Bill of Quantities
CSO	Community Service Organizations
CV	Curriculum Vitae
Government	Government of Samoa
Instructions	Treasury Instructions
IT	Information Technology
ITB	Invitation to Bid
JV	Joint Venture
LCS	Least cost selection
M&E	Monitoring and Evaluation
MSME	Micro, Small and Medium Sized Enterprises
NGO	Non-governmental Organization
Operating Manual	Operating Manual (Public Procurement) 2019
PQ	Prequalification
QBS	Quality Based Selection
QCBS	Quality and cost based selection
REOI	Request for expressions of interest
RFP	Request for Proposals
RFQ	Request for Quotations
SAT$	Samoan Tālā
SBD	Standard Bidding Document
SFB	Selection under fixed budget
SIC	Selection of individual consultants
SSS	Single source selection
TOR	Terms of Reference