



Tuvalu

PUBLIC PROCUREMENT REGULATIONS 2014



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Tuvalu

PUBLIC PROCUREMENT REGULATIONS 2014

MADE UNDER SECTION 2 OF THE PUBLIC PROCUREMENT ACT 2013

Commencement [31st January 2014]

PART 1 – PRELIMINARY

1 Citation

These Regulations may be cited as the Public Procurement Regulations 2014.

2 Interpretation

In these Regulations, unless the context otherwise requires:

“**Act**” means the Public Procurement Act 2013;

“**AUD**” means Australian dollar;

“**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 a procuring entity;

“**bid evaluation report**” means the report on bids prepared by a procuring entity;

“**Central Procurement Unit**” means the unit established under section 10 of the Act;

“**conflict of interest**” means a situation in which an individual has interests that could improperly influence that individual’s performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations; “**consultant**” means an individual or firm or consortium of firms or joint venture of firms that is a potential party or party to a contract with a ministry to provide consulting services;

“**contractor**” means a potential party or party to a contract with a Ministry for the construction of buildings, physical infrastructure and other works of a civil engineering nature;

“**day**” means calendar day;

“**direct contracting**” means awarding a contract without competitive bidding;

“**framework contract**” means a contract between one or more procuring entities and one or more suppliers the purpose of which is to establish the terms governing orders for the supply of goods, works, consulting services and non-consulting services to be placed during a given period;

“**head of a procuring entity**” means the Permanent Secretary of a ministry ;

“**intellectual and professional services**” means services provided by a consultant with outputs of advisory, design and transfer of know-how nature;

“**in writing**” or “**written**” means any worded or numbered expression that can be read, reproduced and later communicated and may include electronically transmitted and stored information;

“**model documents**” means the set of standard bidding and other documents issued pursuant to these Regulations for use in procurement proceedings;

“**Procurement Plan**” means an itemized schedule showing a procuring entity’s proposals for procuring goods, works, consulting services and non-consulting services under its capital and recurrent budget;

“**Procurement Review Committee**” means the committee established under section 9 of the Act to consider the recommendations of the Central Procurement Unit on major procurement proceedings;

“**procuring entity**” means for major procurement the Central Procurement Unit and for minor procurement the ministry that undertakes the procurement;

“**supplier**” means a potential party or party to a contract for the supply of goods or non-consulting services to a ministry;

“**technical input**” means the technical specifications, drawings and schedules that define a procurement package;

“**threshold**” means the monetary value for determining authorities, approvals and procurement methods as set out in Part 3 of these Regulations.

3 Scope of the Regulations

Subject to the exemptions set out in regulation 4, these Regulations apply to all procurement carried out by Government.

4 Exemptions

These Regulations do not apply to:

- (a) public employment contracts;
- (b) contracts for the acquisition or lease of real property;
- (c) procurement of goods, works and services by the overseas missions of Tuvalu for the sole benefit of those missions;
- (d) arbitration and conciliation services; and
- (e) the procurement or acquisition of fiscal agency or depositary services, liquidation and management services for regulated financial institutions, or services related to the sale, redemption and distribution of public debt, including loans and Government bonds, notes and other securities.

PART 2 – INSTITUTIONAL ARRANGEMENTS

5 Procurement Monitoring and Oversight

Pursuant to Section 8 of the Act, the Office of the Auditor- General shall appoint a Procurement Audit Officer to conduct sample audits of procurement transactions annually or audits of specific transactions at such time as the Minister may request.

6 Procurement Review Committee

- (1) Pursuant to Section 9 of the Act, the Procurement Review Committee shall comprise the following:
 - (a) Secretary to Government (Chairman);
 - (b) Secretary for Finance; (Deputy Chairman)
 - (c) Attorney-General
 - (d) Government Accountant;
 - (e) Director of the Department of Planning and Budget of the ministry responsible for finance; and
 - (f) Secretary of a line ministry involved in the procurement.
- (2) A member of the Procurement Review Committee may delegate his membership to a senior ranked person in the ministry.

- (3) A Secretary of a line ministry shall be involved in the Procurement Review Committee when reviews of procurement transactions listed in that ministry's Procurement Plan are being conducted and shall serve only until the issue of a notification of contract award is made.
- (4) The duties of the Procurement Review Committee shall be to:
 - (a) review and issue a letter of no objection to all major procurement bidding documents prior to calling of bids;
 - (b) review and issue a letter of no objection to a bid evaluation report and recommendation for contract award for all major procurement prior to the procuring entity issuing a notification of contract award; and
 - (c) establish a list of specialists from which shall be formed a number of Review Panels in the manner set forth in the Procurement Complaints and Appeals Procedure.
- (5) Pursuant to sub-regulation (4)(b) each member shall sign a Declaration of Ethical Conduct which shall be attached to the letter of no objection.
- (6) A quorum for any business of the Procurement Review Committee shall be three members.

7 Central Procurement Unit

- (1) The Central Procurement Unit established under Section 10 of the Act shall have such officers as are required for the efficient performance of its duties.
- (2) The duties of the Central Procurement Unit in respect of developing public procurement policy shall be to:
 - (a) formulate and propose to the Minister policy revisions or amendments to existing legislation and regulations and legislative and regulatory actions;
 - (b) advise the Minister on the issuance of standard forms of contracts and standard bidding documents for mandatory use by all procuring entities;
 - (c) provide technical assistance in public procurement through the preparation and dissemination of manuals and technical guidance notes;
 - (d) advise the Minister on the issuance of forms prescribing the content, format and the frequency or dates for submission of procurement reports to be submitted by procuring entities;
 - (e) develop a procedure to be issued by the Minister for the suspension and debarment of contractors, suppliers, consultants and non-consulting service providers who have breached their obligations under a Government contract, or provided false information with respect to their qualifications or offered inducements referred to in these Regulations;

- (f) develop a procedure to be issued by the Minister for selection of Review Panels and for the hearing and determination of complaints and appeals by Review Panels;
- (3) The duties of the Central Procurement Unit in respect of carrying out procurement shall be to:
- (a) review and issue a letter of no objection to the procurement packaging shown on the annual and updated Procurement Plan of each procuring entity;
 - (b) receive approved procurement plans prepared by procurement officers of each ministry and organise the purchase of common use items either under individual contract or framework contract arrangements on behalf of selected or all procuring entities;
 - (c) review Procurement Proposals submitted by procuring entities under regulation 35 and issue a no objection;
 - (d) for all major procurement above the threshold in regulation 10(b) and common use items, prepare the bidding documents including prequalification of bidders where appropriate, advertise for expressions of interest and bids, receive and safeguard bids, open and evaluate bids, prepare bid evaluation reports and recommendations for the consideration of the Procurement Review Committee, and prepare contract documents;
 - (e) monitor the performance of and compliance of ministries responsible for minor procurement and on request, provide advice and assistance to other procuring entities without diminishing the responsibility of a procuring entity;
 - (f) provide secretariat support to the Procurement Review Committee;
 - (g) request and receive information or records from procuring entities to the extent appropriate to its information needs;
 - (h) develop, promote and support training and professional development of officials and other persons engaged in public procurement, including their adherence to the highest ethical standards;
 - (i) present an annual report to the Minister regarding the overall functioning of the public procurement system, including recommendations on measures to be taken to revise and improve procurement approval methods and other measures to enhance the quality of procurement work;
 - (j) maintain and update a list of contractors, suppliers, consultants and non-consulting service providers who, by reason of having seriously neglected their obligations under a public procurement contract, or having provided false information about their qualifications, have been suspended or debarred under regulation 70 from participating in public procurement;

- (k) develop and implement a strategy for the use of electronic tools for procurement, including the development of a public procurement website for publishing information relating to public procurement in Tuvalu, including information concerning the award of contracts;
 - (l) provide administrative support to the Office of the Auditor- General in its audit of procurement transactions; and
 - (m) undertake other duties as the Minister may determine.
- (4) The Central Procurement Unit shall comply with the procurement procedures set down in Part 7 of these Regulations and the thresholds set down in Part 3 of these Regulations.

8 Procurement Officer

- (1) Pursuant to Section 11 of the Act, the duties of the procurement officer of each ministry shall be to:
- (a) undertake procurement planning in accordance with Part 4 of these Regulations;
 - (b) liaise with technical specialists and provide the technical input for each major procurement package to the Central Procurement Unit for incorporation into the bidding documents;
 - (c) if requested, provide technical advice to the Central Procurement Unit during evaluation of bids for major procurement packages; and
 - (d) for all minor procurement as defined in regulation 10(a), prepare the bidding documents, advertise for requests for quotations and expressions of interest, receive and safeguard quotations, open and evaluate quotations, prepare evaluation reports on quotations and make recommendations for the consideration of the Bid Evaluation Committee, prepare contract documents and administer awarded contracts.
- (2) A procurement officer shall comply with the procurement procedures set down in Part 7 of these Regulations and the thresholds set down in Part 3 of these Regulations.

9 Bid evaluation committees

- (1) For minor procurement, bid evaluation committees shall be appointed by the Head of the procuring entity and shall comprise three officers, being:
- (a) the Procurement Officer responsible for preparing the bidding document;
 - (b) the financial officer of the procuring entity; and
 - (c) a member to provide technical, legal or commercial expertise.

- (2) The duties of bid evaluation committees shall be to
 - (a) open bids in accordance with regulation 47;
 - (b) evaluate bids and prepare the bid evaluation report and recommendations for award of a contract and submit them to the Head of the procuring entity; and
 - (c) respond to any queries raised by the Head of the procuring entity.

PART 3 – THRESHOLDS

10 Minor and major procurement

For the purpose of these Regulations, all procurement of goods, works, non-consulting services and consulting services is deemed to be:

- (a) minor procurement where the estimated value of the contract does not exceed the threshold in Schedule 1; or
- (b) major procurement where the estimated value of the contract exceeds the threshold in Schedule 1.

11 Approval thresholds

- (1) Minor procurement contracts shall be approved and signed by the Head of the procuring entity;
- (2) Major procurement contracts shall be approved by the Procurement Review Committee through a “Letter of No Objection” prior to signature by the Secretary for Finance;
- (3) If the Procurement Review Committee does not accept the recommendation of the Central Procurement Unit, it shall do so only on the basis of written reasons.

12 Authority thresholds

For the purpose of Part 4 of these Regulations, the level of procurement authority shall be:

- (a) the Procurement Officer whenever the estimated value of any minor procurement contract does not exceed the threshold in Schedule 1;
- (b) the Bid Evaluation Committees whenever the estimated value of any minor procurement contract exceeds the threshold in Schedule 1; and
- (c) the Procurement Review Committee for all major procurement.

13 Financial thresholds for procurement methods

The financial thresholds applicable to the procurement methods established under Part 5 and Part 9 of these Regulations shall be as follows:

- (a) all contracts having an estimated value not exceeding the threshold in Schedule 1 shall be procured under the direct contracting method pursuant to regulation 21(1)(a);
- (b) all contracts for goods, works and non-consulting services having an estimated value between the upper and lower thresholds in Schedule 1 shall be procured under limited shopping pursuant to regulation 22;
- (c) all contracts for goods, works and non-consulting services having an estimated value between the upper and lower thresholds in Schedule 1 shall be procured under open shopping pursuant to regulation 23;
- (d) all contracts for goods, works and non-consulting services having an estimated value exceeding the threshold in Schedule 1 shall be procured under open competitive bidding pursuant to regulations 24, 25 and 26;
- (e) consultant services contracts with an estimated value not exceeding the threshold in Schedule 1 may be selected pursuant to regulations 56, 57 or 58;
- (f) the procedure for establishing the shortlist for consultant services shall be subject to sub-regulation 53(3) whenever the contract has an estimated value not exceeding the threshold in Schedule 1; and
- (g) the procedure for establishing the shortlist for consultant services shall be subject to sub-regulation 53(4) whenever the contract has an estimated value exceeding the threshold in Schedule 1.

PART 4 – PROCUREMENT PLANNING AND PACKAGING

14 Annual Procurement Plan

- (1) The Procurement Officer of each ministry shall prepare a procurement plan for each fiscal year in accordance with the template in the model documents and aligned with the annual budget application to the ministry responsible for finance. The procurement plan shall contain at least the following information:
 - (a) a detailed breakdown of the goods, works, consulting services and non-consulting services required under both recurrent and development budget;
 - (b) an estimate of the value of each package of goods, works, consulting services and non-consulting services required, details of the budget available and sources of funding;

- (c) the proposed procurement method for each procurement package consistent with the methods set down in Part 5 and Part 9 and the thresholds in Part 3 of these Regulations, including any need for prequalification and expressions of interest;
 - (d) the anticipated time for the complete procurement cycle, taking into account the applicable approval requirements;
 - (e) a schedule of the delivery, implementation and completion dates for each package;
 - (f) 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; and
 - (g) other details as may be relevant to any item in the plan.
- (2) The procurement plan shall be amended to align with the approved budget and be updated thereafter not more than every six months.

15 Publishing the Annual Procurement Plan

The Procurement Officer of each ministry shall provide the annual procurement plan, amended in accordance with regulation 14(2), to the Central Procurement Unit, which shall publish all Annual Procurement Plans for the forthcoming fiscal year.

16 Specific Procurement Plan

For each individual major procurement requirement, the Procurement Officer of each ministry shall prepare a specific procurement plan, which shall include:

- (a) a description of the requirement, including the schedule required for delivery, implementation or completion of the goods, works, consulting services or non-consulting services and any division into lots;
- (b) the estimated value of the requirement and, where applicable, individual lots;
- (c) the proposed procurement method, which shall be in accordance with the methods set down in Part 5 and Part 9 of these Regulations and the thresholds set down in Part 3 of these Regulations;
- (d) an estimate of the time required for each stage in the procurement cycle, taking into account publication requirements and the applicable approval requirements;
- (e) an indication of the resources required and available for management of the procurement process and contract administration; and
- (f) any other relevant information.

17 Procurement packaging

- (1) Procuring entities shall plan procurement to achieve maximum economy and efficiency for public expenditure so that it is carried out within available financial resources and other applicable limitations and at the most favourable time.
- (2) Where practical, procuring entities shall aggregate procurement requirements in order to achieve economies of scale.
- (3) Before commencing a procurement process, a procuring entity shall:
 - (a) inquire as to whether or not its requirements can be met by the transfer of goods from another ministry;
 - (b) ensure that a reliable estimate of the cost of the procurement including the cost of contingencies that might reasonably be expected to arise under a contract for the procurement has been prepared; and
 - (c) commit the amount of the estimate in accordance with the provisions of the Financial Regulations.

18 Artificial division of procurements

A procuring entity shall not artificially divide an object of procurement with the intention of avoiding the financial thresholds set out in these Regulations for the purposes of determining the appropriate procurement method.

19 Division into Lots

- (1) Notwithstanding the prohibition of regulation 18, procuring entities may divide a procurement requirement which could be procured as a single contract into a package consisting of several lots which are to be bid together but may be awarded as more than one contract if that results in the best overall value for the procuring entity.
- (2) A requirement shall not be divided into lots:
 - (a) for the sole purpose of avoiding thresholds; or
 - (b) where the award of several separate contracts would create problems of compatibility or inter-changeability between items procured as separate lots, or would unduly strain contract administration resources; or
 - (c) where the award of several separate contracts would invalidate or otherwise restrict any supplier's warranty or liability; or
 - (d) where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements.
- (3) Where a requirement which could be procured as a single contract is divided into lots, the procuring entity 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 the procuring entity.

PART 5 – PROCUREMENT METHODS

20 Selection of procurement method

- (1) Procuring entities shall select the method of procurement for each requirement as part of procurement planning under regulation 14.
- (2) Methods of procurement for goods, works and non-consulting services other than open competitive bidding are permitted only in the circumstances set down in regulations 21, 22 and 23 and the procuring entity shall include in the Procurement Proposal under regulation 35 the justification for the method selected..
- (3) Consulting services shall be procured in accordance with Part 9 of these Regulations.

21 Direct Contracting method

- (1) Direct Contracting is procurement without competition and shall not be used except in the following restricted circumstances:
 - (a) for minor and low value goods estimated to cost less than the threshold given in regulation 13(a);
 - (b) in exceptional or unforeseeable cases, for example where extreme urgency is required such as in response to a calamity or natural disaster, but not where urgency is attributable to the actions or inactions of the procuring entity;
 - (c) where only one supplier, contractor or non-consulting service provider has the exclusive right to manufacture the goods, carry out the works, or perform the services to be procured, and no suitable alternative is available; or
 - (d) when the goods, works, consulting services or non-consulting services represent the natural continuation of an ongoing or recently completed contract that was procured through competition, provided the value of the continuation is not more than 20 percent of the original contract value.
- (2) Direct Contracting under sub-regulation 1(b), (c) and (d) shall be subject to the prior written approval of the Minister. A single supplier, contractor or

non-consulting service provider may be contacted to provide a quotation and a contract may be negotiated based on the quotation.

22 Limited Shopping method

- (1) The Limited Shopping method of procurement shall be used when the estimated value of the goods, works or non-consulting services required is between the upper and lower thresholds set forth in regulation 13(b). It shall be undertaken by means of a single stage request for quotations which shall be sent by the procuring entity to as many bidders as practicable but to at least three bidders, inviting them to submit quotations.
- (2) The request for quotations shall be prepared in accordance with the template in the model documents.
- (3) Bidders shall submit their quotations in writing, including by facsimile and electronic mail.

23 Open Shopping method

- (1) The Open Shopping method of procurement shall be used when the estimated value of the goods, works or non-consulting services required is between the upper and lower thresholds set forth in regulation 13(c). It shall be undertaken by means of single stage request for quotations, advertised in accordance with regulation 37 to which equal access shall be provided to all eligible and qualified bidders without discrimination.
- (2) After advertising, the procuring entity may send a copy of the request for quotations directly to recognized providers.
- (3) The request for quotations shall be prepared in accordance with the template in the model documents.
- (4) Bidders shall be required to submit sealed quotations.

24 Open Competitive Bidding method

- (1) Public procurement of goods, works and non-consulting services estimated to cost more than the threshold prescribed in regulation 13(d) shall be undertaken by means of single stage competitive bidding, except where two stage competitive bidding is appropriate under regulation 25, and shall be advertised in accordance with regulation 37 to provide equal access to all eligible and qualified bidders without discrimination.
- (2) The invitation to bid shall be prepared in accordance with the template in the model documents.
- (3) Bidders shall be required to submit sealed quotations.

25 Two stage Open Competitive Bidding method

- (1) Open Competitive Bidding may be conducted in two stages when:
 - (a) it is not feasible to define fully the technical or contractual aspects of the procurement to elicit competitive bids; and
 - (b) because of the complex nature of the goods, works or non-consulting services to be procured, the procuring entity wishes to consider various technical or contractual solutions, and to discuss with bidders about the relative merits of those variants before deciding on the final technical or contractual specifications.
- (2) The first stage of the two stage open competitive bidding method shall seek only technical proposals in response to a performance specification in the bidding documents. Priced bids shall not be sought. The procuring entity may engage in discussions with any or all bidders whose technical proposals satisfy the conditions set forth in the bidding documents with a view to understanding the proposals or to indicate changes required to make them acceptable and to seek the bidder's willingness to make such changes, and minutes of these discussions shall form part of the procurement records.
- (3) At the end of the first stage, the procuring entity may:
 - (a) reject those bids which do not, and cannot be changed to meet the basic requirements, minimum performance, or required completion time or have any other weakness which makes the bid substantially non-responsive; or
 - (b) modify the technical specifications, evaluation criteria, and contract conditions, while seeking to maximize competition and articulate appropriate evaluation methodology.
- (4) In the second stage, the procuring entity shall invite bidders whose bids have not been rejected to submit final bids with prices responsive to the revised bidding documents.
- (5) A bidder not wishing to submit a final bid, may withdraw from the bidding proceedings without forfeiting any bid security or activating any bid securing declaration that the bidder may have been required to provide, and the final bids shall be evaluated and compared in accordance with the criteria and methodology included in the revised bidding documents.
- (6) The procedures for the competitive bidding method apply to the two-stage competitive bidding method, except to the extent they are modified by this regulation.

26 Prequalification

- (1) Open Competitive Bidding may be preceded by prequalification for large or complex civil works, or in circumstances in which the high costs of preparing detailed bids for civil works contracts could discourage competition, in order

to identify, prior to the submission of bids, those bidders that are qualified. Prequalification should not be used for goods contracts except in the case of procurement of specialised plant and equipment that is not widely available.

- (2) An invitation to prequalify shall be advertised and notified in accordance with regulation 37 and the procuring entity shall provide prequalification documents to all bidders responding to the invitation to prequalify.
- (3) The prequalification documents shall include:
 - (a) instructions for preparing and submitting applications;
 - (b) the scope and the principal terms and conditions of the proposed contract;
 - (c) a list of documentary evidence and information that must be submitted to demonstrate the qualifications and experience of the applicant;
 - (d) the criteria upon which an application will be evaluated; and
 - (e) the manner and place for the submission of applications and the closing date and time for the submission, such date not to be less than 20 days from the date of the advertisement.
- (4) The procuring entity shall respond to any request that it receives for clarification of the prequalification documents within a reasonable time prior to the closing date for the submission of applications. The request and the procuring entity's response shall be copied to all applicants to whom prequalification documents have been issued but without identifying the applicant that raised the request.
- (5) The procuring entity shall evaluate the applications and prepare a list of applicants that prequalify based only on the criteria set forth in the prequalification documents. An evaluation report and the proposed list of prequalified applicants shall be presented to the Procurement Review Committee for its review and final decision not more than 15 days after the closing date for submission of applications.
- (6) After receiving the Procurement Review Committee's decision, the procuring entity shall promptly notify each applicant whether or not it has been pre-qualified. Only those that prequalify are entitled to participate further in the procurement proceedings. Upon request, the procuring entity may advise unsuccessful applicants of the reasons for their failure to prequalify.
- (7) At any time prior to contract award, the procuring entity may require a bidder that has been prequalified to demonstrate again its qualifications in accordance with the same criteria used to prequalify such bidder and the procuring entity shall disqualify any bidder that fails to demonstrate again its qualifications if requested to do so.
- (8) In all other respects, the provisions of the open competitive bidding method apply.

PART 6–TECHNICAL SPECIFICATIONS AND CRITERIA

27 Defining the object of procurement

- (1) The detailed requirements with respect to quality and quantity, including any certification, testing and test methods or other means for evaluating the conformity of the performance of the contract to these requirements, shall be set out clearly by the procuring entity in the bidding documents.
- (2) All relevant bidding and pre-qualification documents shall provide objective descriptive information and state the desired performance or output requirements of the object of the procurement and shall not state design or descriptive characteristics that favour a particular bidder.

28 Technical Specifications

- (1) Technical specifications shall include, where appropriate:
 - (a) the purpose and objectives of the object of procurement;
 - (b) a full description of the requirement;
 - (c) a generic specification to an appropriate level of detail;
 - (e) a functional description of the requirements, including any environmental or safety features;
 - (f) performance parameters, including outputs, timescales and any indicators or criteria by which satisfactory performance can be judged;
 - (g) process and materials descriptions;
 - (h) applicable standards;
 - (i) dimensions, symbols, terminology language, packaging, marking and labelling requirements; and
 - (j) inspection and testing requirements.
- (2) References to standards shall where possible be references to international standards or national standards incorporating international standards.
- (3) No requirement or reference is to be made in the technical specifications to a particular trademark or name, patent, design or type, specific original, producer or non-consulting service provider, unless there is no other practical way of describing the procurement requirements, and words such as “or equivalent” are included in the specifications.

29 Eligibility and non-discrimination

- (1) Bidders shall not be excluded from participation in public procurement on the basis of nationality, race or any other criterion not having to do with their

qualifications or decisions taken against any bidder under regulation 70, except where the procuring entity decides to limit participation in procurement proceedings on the basis of provisions in the law of Tuvalu.

- (2) A procuring entity that decides to limit the participation of suppliers or contractors in procurement proceedings shall include in the record of the procurement proceedings a statement of the reasons and circumstances on which it relied, and shall make this statement available to any person upon request.

30 Communications

- (1) Communications between bidders or potential bidders and procuring entities shall be in writing.
- (2) In any meeting held with bidders or potential bidders, the procuring entity shall use only those means that ensure that suppliers or contractors can fully and contemporaneously participate in the meeting, and written minutes shall be prepared and agreed by signature of all parties present.
- (3) The procuring entity shall put in place appropriate measures to secure the authenticity and integrity of information that is communicated.

31 Confidentiality

- (1) All communications between the procuring entity and a bidder or potential bidder shall be confidential. In such communications, a procuring entity shall not disclose any information if non-disclosure of such information is necessary for the protection of essential security interests of Tuvalu or if disclosure of such information would be contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the bidder or potential bidder or would impede fair competition, unless disclosure of that information is ordered by the Court.
- (2) Unless required by law or ordered by the Court, no party to any such discussions, communications, negotiations or dialogue shall disclose to any other person any technical, price or other information relating to those discussions, communications, negotiations or dialogue without the written consent of the other party.

32 Qualification criteria

- (1) Qualification criteria shall be limited to those criteria which are designed to demonstrate that a bidder possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the procurement object, and business reputation and personnel to perform the contract.

- (2) Qualification criteria shall not be unduly restrictive or designed to reduce competition and shall be prepared for each procurement requirement, taking into account the size, complexity and technical requirements of the proposed contract.
- (3) The procuring entity shall clearly state the qualification criteria in all bidding documents and shall, where it deems fit, require bidders to provide signed statements or documentary evidence to certify their eligibility.
- (4) The procuring entity shall not impose any requirement as to qualifications in the invitation to bid other than a requirement specified in this regulation.

33 Evidence of qualification criteria

- (1) Subject to regulation 32, the following evidence may be requested from bidders to satisfy the qualification criteria established in the bidding documents.
- (2) Evidence of the bidders' technical abilities may be furnished by one or more of the following means according to the nature, quantity or importance, and use of the goods, works or non-consulting services, including evidence of:
 - (a) experience and reliability;
 - (b) financial resources, equipment and other physical facilities;
 - (c) personnel;
 - (e) managerial capability;
 - (f) possession of the necessary professional and technical qualifications and competence; and
 - (g) subject to the right of the bidder to protect its intellectual property rights and trade secrets, possession of the requisite intellectual property rights or trade secrets.
- (3) Evidence of the bidder's legal capacity to carry out the contract may be furnished by any of the following means, including evidence that:
 - (a) it has satisfied all the legal requirements to carry on business in Tuvalu and, if the bidder has its headquarters outside Tuvalu, of his entitlement to carry on business in that jurisdiction;
 - (b) the bidder is not insolvent, in bankruptcy, in receivership or under liquidation; and
 - (c) legal proceedings have not been taken and are not reasonably anticipated to be taken that would materially affect the ability or the legal capacity of the bidder to carry out the contract.
- (4) As applicable, evidence may be provided that the bidder is in good standing with the Government and has fulfilled its obligations, to pay taxes, levies, license fees and other fees.

- (5) All bidders shall provide evidence of their integrity to the effect that the bidder and any director, officer, manager or supervisor of the bidder has not been, within a period of three years preceding the date of issuance of the invitation to bid:
- (a) convicted of any criminal offence, whether in the Tuvalu or elsewhere, relating to his professional conduct or the making of false statements or misrepresentations as to his qualifications to enter into a procurement contract, or involving dishonesty, or under anti-corruption legislation; or
 - (b) suspended or debarred by administrative or judicial proceedings from participating in procurements, whether in Tuvalu or elsewhere.

34 Disqualification

The procuring entity shall disqualify a bidder if it finds that the information submitted in a bid concerning its qualifications is false or misleading or materially inaccurate or materially incomplete.

PART 7 – PROCUREMENT PROCEDURES

35 Procurement Proposal

- (1) Prior to starting a procurement proceeding, except for direct contracting under regulation 21(1)(a), the Procurement Officer shall prepare and submit a written Procurement Proposal to the Central Procurement Unit providing the following information:
- (a) the name of the ministry and concerned department;
 - (b) the object of proposed procurement, its estimated value and its reference number in the Annual Procurement Plan;
 - (c) the source of funds and, if the Government's own funds, the approved budget head and amount;
 - (d) if not previously budgeted, a detailed justification of the proposed procurement; and
 - (e) the method of procurement proposed.
- (2) The Procurement Proposal shall be signed by the Secretary of the ministry responsible for the procurement and no proceeding shall be started until the procuring entity has received a written notice of no objection from the Central Procurement Unit.

36 Invitation to bid

- (1) An invitation under the Direct Contracting method shall be issued in accordance with regulation 21(2) and regulation 37.
- (2) An invitation under the Limited Shopping method shall be issued in accordance with regulation 22 and regulation 37.
- (3) An invitation under the Open Shopping method shall be issued in accordance with regulation 23.
- (4) The Open Competitive Bidding and Open Shopping methods shall be invited through an advertisement of bidding proceedings in accordance with regulation 37.

37 Publication of procurement notices

- (1) The notice of invitation to bid or to pre-qualify for the Open Competitive Bidding method or the Open Shopping method, as the case may be, shall be published on the Government's website and either broadcast on radio in Tuvalu or printed media with adequate circulation to attract interested bidders.
- (2) The procuring entity may send the notice directly to potential bidders after the date of publication of the notice. The procuring entity shall keep a record of bidders to whom the notice is sent directly, which shall form part of the procurement record.
- (3) The invitation to bid or, as the case may be, the invitation to prequalify shall include information regarding:
 - (a) identity and address of the procuring entity and the contact details of the person from whom further information can be obtained;
 - (b) nature and time-frame of the procurement, including the place of delivery of goods or non-consulting services, and the location of any works;
 - (c) manner of obtaining and the price of the bidding documents, or, if applicable, the prequalification documents;
 - (d) place and deadline for submission of bids, or of applications to prequalify; and
 - (e) such other matters as may be prescribed in the standard forms issued by the Central Procurement Unit.

38 Minimum bidding periods

- (1) The bidding documents shall be ready for distribution prior to the publication of the invitation to bid.
- (2) The bidding period shall start on the date of the first publication of the invitation and shall finish on the date for submission of bids.

- (3) The minimum bidding period shall be:
 - (a) 25 days for open shopping under regulation 23; and
 - (b) 42 days for open competitive bidding under regulation 24.
- (4) Potential bidders shall be given a minimum of 30 days following a notice to pre-qualify to submit their pre-qualification applications under regulation 26.
- (5) In determining the appropriate bidding period for each requirement, the procuring entity shall take into account, in addition to the minimum bidding period:
 - (a) the complexity of bids and the level of detail required;
 - (b) the time required to obtain authenticated legal documents or similar documents if required by the bidding documents to be included in their bids;
 - (c) the location of potential bidders and the time required to obtain the bidding document and for the delivery and submission of bids to the procuring entity; and
 - (d) any restrictions relating to the time the goods, works or non-consulting services are required.

39 Bidding documents

- (1) A procuring entity shall use the prescribed standard bidding document including any manuals or guidelines pertaining thereto and issued by the Central Procurement Unit.
- (2) The procuring entity shall provide, in an expeditious and non-discriminatory manner, the bidding documents to all potential bidders that respond to the invitation to bid or, in the case of selective bidding, to all bidders that have been prequalified, and the price that may be charged for the bidding documents shall reflect only the cost of printing and distributing the documents.
- (3) The bidding documents shall provide bidders with all the information that they require in order to submit bids that are responsive to the needs of the procuring entity. In particular, the bidding documents shall inform bidders concerning:
 - (a) the nature and time frame of the procurement, including, but not limited to the contractual terms of the procurement, and the manner of entry into force of the contract;
 - (b) in all cases other than open competitive bidding preceded by prequalification, bidder qualification requirements and the documentation required to satisfy those requirements which will require the bidder to show that it possesses the necessary professional and technical qualifications and competence, financial resources, equipment and other physical facilities, managerial capability, experience in the

- procurement object, business reputation and personnel, to perform the contract as set out in these regulations and the prescribed standard bidding documents;
- (c) information as to site visits and pre-bid conferences;
 - (d) instructions for preparation and submission of bids, including the deadline for submission of bids and the time and place of bid opening;
 - (e) components to be reflected in the price, the currency or currencies in which the bid price may be stated, and the currency and related exchange rate to be used for comparison of bids;
 - (f) the criteria and methodology for evaluation of bids and the selection of the successful bidder, which shall all be quantified in monetary terms or expressed in the form of pass or fail requirements, and when considering evaluation criteria, the procuring entity shall consider only the following:
 - (i) the bid price;
 - (ii) the cost of operating, maintaining and repairing the goods or works, the time for delivery of the goods, completion of works or provision of the non-consulting services, the functional characteristics of the goods or works, the terms of payment and of guarantees in respect of the goods, works or non-consulting services; and
 - (iii) the cost of safe and environmentally acceptable disposal of the goods or decommissioned works at the end of their useful life.
 - (g) the preference, if any, for domestic goods and contractors as the Central Procurement Unit may prescribe;
 - (h) any grouping of goods, works or non-consulting services into lots and packages and the manner of evaluation of the lots and packages;
 - (i) whether alternatives to the technical or contractual specifications would be considered and, if so, how those alternatives would be evaluated;
 - (j) where suppliers are permitted to submit bids for only a portion of the goods, works or non-consulting services to be procured, a description of the portion or portions for which bids may be submitted;
 - (k) the required validity period of bids;
 - (l) the amount and acceptable forms of any required bid, performance or other security;
 - (m) the conditions of contract which will be entered into with the successful bidder;
 - (n) a notice of conflict-of-interest restrictions and anti-fraud and corruption rules;
 - (o) the manner in which bidders may obtain review of actions, omissions and decisions of the procurement unit; and

- (p) such other matters as may be required in regulations, manuals and standard forms as may be prescribed.
- (4) For the purposes of subsequent communications, the procuring entity shall make a record of the name, postal address, telephone and fax number and e-mail address of all persons to whom an invitation to bid is issued and shall file a copy of it in the procurement records.

40 Clarification of bidding documents

- (1) Bidders shall be permitted to seek clarification from the procuring entity of any aspect of the bidding documents.
- (2) Requests by bidders for clarification shall be made in writing to the procuring entity not later than 14 days before the prescribed closing date for bids and the procuring entity shall provide such clarification in writing within 3 days of receiving the request.
- (3) The procuring entity shall send a copy of its written clarification, together with the request received but without identifying the bidder that made the request, to all bidders to whom an invitation to bid has been issued.
- (4) In the event that the clarification requires an amendment to the bidding documents or otherwise has a significant effect upon bid preparation, the procuring entity may, at its discretion or shall upon receipt of written requests from at least two bidders, propose an extension of the deadline for receipt of bids.
- (5) The procuring entity shall notify in writing all bidders to whom an invitation to bid has been issued of the extended deadline for submission of bids and require them to extend the validity of their bid securities or bid securing declarations accordingly.

41 Domestic preference

- (1) Where so indicated in the bidding document and strictly in accordance with any rules or schemes for domestic preference issued by the Central Procurement Unit through circulars, a margin of preference may be applied to eligible bids.
- (2) Any rules or schemes issued under sub-regulation (1) shall clearly state the:
 - (a) eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;
 - (b) documentation required as evidence of eligibility for the margin of preference; and

- (c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.
- (3) The percentage of preference in rules or schemes issued by the Central Procurement Unit shall be between 5 and 10 per cent. The Central Procurement Unit may review these percentages annually.

42 Cancellation of procurement proceeding

- (1) The cancellation of procurement proceedings shall be avoided whenever possible but is permitted where there is a written finding, approved by the Minister, that:
 - (a) the procurement need has ceased to exist or has 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 recommencement 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.
- (2) If so specified in the bidding documents or in a request for proposals or a request for quotation a procuring entity, after obtaining the approval of the Head of a procuring entity, may reject all bids or proposals at any time prior to their acceptance.
- (3) Such grounds for rejection are justified when the bids or proposals submitted are not substantially responsive, or where there is evidence of lack of competition.
- (4) A procuring entity shall upon request by the bidder communicate the grounds for rejecting a bid.
- (5) A procuring entity shall incur no liability towards bidders solely by virtue of its invoking this regulation.
- (6) Notice of the rejection shall be given promptly to all participating bidders.
- (7) If a procuring entity decides to annul the procurement proceedings before the bid submission deadline, all bids received shall be returned unopened to the bidders.

43 Unsuccessful procurement

- (1) The procuring entity shall investigate a failed procurement proceeding where no responsive bids are received or procurement proceedings are otherwise unsuccessful, and take appropriate action before repeating the proceeding.

- (2) The investigation should consider all relevant issues, including whether:
 - (a) the bidding period was sufficient, considering the factors listed in regulation 38(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) the 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 Regulations 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.
- (3) The procuring entity shall record in the procurement record the reasons why the procurement was unsuccessful and the course of action taken when repeating the proceeding which may include, but are not limited to:
 - (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; and
 - (c) alternative publication of any invitations to bid, similar notices or bidding documents.

PART 8 – BID SUBMISSION, OPENING AND EVALUATION

44 Bid submission

- (1) For all procurement by Open Competitive Bidding and Open Shopping, bids shall be submitted in writing, duly signed and in a sealed envelope.
- (2) Invitations for prequalification and bidding documents shall permit submission of applications to prequalify or bids by hand or mail or by courier at the option of the bidder.

- (3) For procurement by Limited Shopping, written bids may be submitted by facsimile and electronic mail.
- (4) Notwithstanding sub-regulation (2) and subject to any e-procurement policy laid down by the Central Procurement Unit, the bidding documents for Open Competitive Bidding and Open Shopping may authorise other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured, including the prevention of the opening and reading of bids by anyone until the opening of bids at the time set in accordance with regulation 47.
- (5) Bids shall remain valid for the period of time indicated in the bidding documents, but modification or withdrawal of a bid during the bid validity period is subject to forfeiture of the bid security or activation of the bid securing declaration.
- (6) The validity period of a bid may be deemed extended only on the basis of the agreement of the bidder concerned and a bidder that agrees to an extension of the validity period of its bid shall also obtain a corresponding extension of the bid security or bid securing declaration, if such a security was required.

45 Bid security and bid securing declaration

- (1) A procuring entity may require bid securities or bid securing declarations to be submitted by bidders with their bids, if such requirement is prescribed in the bidding documents, in order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids.
- (2) When required, bid securities shall be a fixed amount of two per cent of the estimated value of the contract.
- (3) The bidding documents shall state that bid securities shall be:
 - (a) in accordance with the format and wording provided in the bidding document;
 - (b) in a form acceptable to the procuring entity, which may be:
 - (i) a certified bankers cheque; or
 - (ii) a bank guarantee; or
 - (iii) any alternative form acceptable to the procuring entity; and
 - (c) valid for the period prescribed in the bidding document, which shall normally be 28 days after the expiry of the bid validity period.
- (4) A bid security may be forfeited by the procuring entity only in the event of:
 - (a) a modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
 - (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;

- (c) failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or
 - (d) failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.
- (5) Where the requirement for bid securing declarations is prescribed in the bidding documents, the period of their validity shall be prescribed in the bidding documents and shall normally be 28 days after the expiry of the bid validity period.
 - (6) The bidding documents shall state that a bid securing declarations shall be in the form prescribed in the bidding documents or request for quotations, which shall include, in the event that it is invoked, debarment of the bidder from bidding for and accepting Government contracts under regulation 73.
 - (7) A bid securing declaration shall be invoked by the procuring entity only when one or more of the events in sub-regulation (4) occur.
 - (8) The procuring entity shall release bid securities and bid securing declarations promptly to unsuccessful bidders upon expiry of the term of the security or formation of a contract with the successful bidder and submission of any required performance security, whichever is earlier.
 - (9) The bid security or bid securing declaration of the successful bidder shall not be released until any required performance security has been received.

46 Amendment or withdrawal of bid

- (1) A bidder may amend or withdraw a bid by submitting a notice of amendment or withdrawal to the procuring entity not later than the deadline for submission of bids.
- (2) The notice of amendment or withdrawal shall be submitted in an envelope identifying the invitation to bid and clearly labelled “Amendment of Bid or Quotation or Proposal” or “Withdrawal of Bid or Quotation or Proposal” and shall comply with any additional directions, if any, in the invitation to bid.

47 Bid opening for Open Competitive Bidding and Open Shopping

- (1) Bids received before the deadline for submission shall be placed unopened under lock and key until five minutes before the deadline when they shall be moved to the designated location of bid opening.
- (2) Bids shall be opened by the procuring entity at the time and place indicated in the bidding documents, and the time of bid opening shall coincide with the deadline for submission of bids and a minimum of two representatives of the procuring entity shall be present at the opening of bids

- (3) Bids received after the deadline has passed shall be rejected and returned unopened to the bidder.
- (4) Bidders, their representatives and members of the public shall be invited by the procuring entity to attend the bid opening.
- (5) The following shall be read aloud and recorded for each bid upon being opened:
 - (a) the name of the bidder and country of registration;
 - (b) whether the bid has been signed;
 - (c) the presence or absence of a bid security or signed bid securing declaration, if required, and the amount of the bid security;
 - (d) in the event of bids for individual lots being invited, the lots that have been offered and the bid prices for each lot;
 - (e) the total bid price;
 - (f) the amount of any discounts offered; and
 - (g) whether alternative bids have been offered.
- (6) All persons present at the bid opening shall sign an attendance sheet to confirm their presence and the organisation they represent.
- (7) The procuring entity representatives shall initial the covering letter, the bid form and the price schedule summary or the bills of quantities summary as appropriate.
- (8) No decision regarding the disqualification or rejection of any bid shall be taken or announced at the bid opening.
- (9) The procuring entity representatives present shall not answer questions from attendees about specific details of any bid unless it is simply a request to repeat an earlier announcement.
- (10) Copies of the information read aloud, the attendance sheet and any questions raised and answers given shall be provided to any attendee upon request not later than 2 working days after the bid opening.
- (11) Following opening of the bids and until the preliminary decision on award has been notified to the successful bidder, a bidder shall not make any unsolicited communication to the procuring entity or attempt in any way to influence the examination and evaluation of the bids.
- (12) Upon closure of the bid opening, the opened bids shall be transferred to storage under lock and key pending commencement of the bid examination and evaluation.

48 Evaluation of bids

- (1) The procuring entity shall first examine the bids in order to determine whether the bids are complete and include the signed Bid Form, and whether required documents to establish legal validity and required bid security or bid securing declaration have been furnished.
- (2) Bids which are not complete, not signed, not accompanied by a bid security or bid securing declaration in the prescribed form, if one is required, shall be rejected as non-conforming bids.
- (3) Where prequalification has preceded bidding, a bid received from any entity other than the prequalified bidders shall be rejected.
- (4) The procuring entity shall then check whether conforming bids are substantially responsive to the technical specification and contract conditions set forth in the bidding documents.
- (5) Bids which do not substantially comply with the technical specifications or contract conditions or other critical requirements in the bidding documents, shall be rejected as non-responsive and excluded from further evaluation and comparison.
- (6) Bids not excluded from consideration under sub-regulations (2), (3) and (5) shall be evaluated in accordance with the criteria and methodology stated in the bidding documents.
- (7) The procuring entity may seek clarification in writing from any bidder to facilitate evaluation but shall neither ask nor permit any bidder to change the price or any other aspect of the bid and if a bidder amends its bid in any manner, such a bid shall be rejected and its bid security forfeited or bid securing declaration invoked.
- (8) In carrying out the evaluation, if there are minor deviations in any bid which did not merit rejection of the bid as non-conforming or non-responsive, the cost of such minor deviation shall be ascertained, if possible, and the evaluated cost of such a bid shall then be compared to those of other bids to determine the lowest evaluated bid.

49 Post-qualification

- (1) The qualifications of the lowest evaluated substantially responsive bidder shall be checked against the criteria specified in the bidding documents and, if that bid fails, the same check shall be applied to the next ranked bid.
- (2) Where prequalification has preceded bidding, the qualifications of the lowest evaluated bidder shall be verified again to take account of any change since the prequalification.
- (3) This sub-regulation shall not come into force until the procurement website has been established under regulation 7(3)(k). The Central Procurement Unit

shall establish an online registration system for all companies, firms and individuals wishing to obtain Government funded contracts for the purpose of facilitating post qualification during bid evaluation. The online registration system shall:

- (a) allow secure and exclusive access to dedicated pages of the website to each company, firm and individual for the purpose of uploading and updating at any time information on its domicile, registration, corporate structure, resources, experience and references;
 - (b) permit procuring entities to view the information on all companies that register on the website on a read only basis;
 - (c) deny access to the website pages by all companies, firms and individuals to the website pages of all other companies, firms and individuals;
- (4) No company, firm or individual shall be prevented from bidding or have a bid disqualified solely on the basis of not being registered, or having an out-of-date registration, on the website but procuring entities shall require that a first-ranked bidder for any procurement proceeding shall register, or update its existing registration details, before a contract is signed.
- (5) A procuring entity may disqualify a company, firm or individual at any time during a procurement proceeding if it finds that the information on the online registration website is deliberately misleading or materially inaccurate.

50 Negotiation

- (1) Except as provided in sub-regulations (2)(b) and (3), there shall be no negotiation between the procuring entity and a supplier or contractor or non-consulting service provider with respect to a bid submitted by the supplier or contractor or non-consulting service provider.
- (2) If the lowest evaluated responsive bid exceeds the budget for the contract by a substantial margin, the procuring entity shall investigate the causes for the excessive cost and may:

consider requesting new bids in accordance with regulation 39; or

subject to approval by the Head of the procuring entity, negotiate a reduction in the scope of the contract with the lowest evaluated bidder, which can be reflected in a reduction of the contract price.

- (3) For procurement using the direct contracting method, the procuring entity shall determine the prevailing market rate for the goods or works or non-consulting services based on evidence of the price it previously paid, the price it paid for similar goods or works or non-consulting services and the price paid by other purchasers for the same goods or works or non-consulting services.

- (4) If the price submitted by the proposed direct contractor is substantially higher than the prevailing market rate, the procuring entity may negotiate the price.

51 Contract award

- (1) The contract shall be awarded to the bidder having submitted the lowest evaluated and substantially responsive bid which meets only those evaluation criteria as specified in the bidding documents as confirmed by post-qualification under regulation 49.
- (2) Prior to the expiry of the period of bid validity, the procuring entity shall notify the successful bidder of the proposed award, which shall specify the time within which the contract shall be signed, subject to any intervening complaints filed in accordance with Part 13 of these Regulations.
- (3) In all cases of competitive bidding, if any contract is proposed to be awarded with a value in excess of the upper thresholds set down in regulation 13 for the procurement method used, notice shall be given to the other bidders, specifying the name and address of the proposed successful bidder and the price of the contract, but the contract shall not be signed until at least 14 days have passed following the giving of that notice.
- (4) If the bidder whose bid has been accepted fails to sign a written contract, when required to do so, or fails to provide any required security for the performance of the contract within the time limit set out in sub-regulation (3), the procuring entity shall accept the next ranked bidder from among the remaining bids that are in force, but in selecting the next ranked bidder, the procuring entity shall comply with the provisions of this regulation, as well as with the notice requirements provided in sub-regulation (3).
- (5) Contracts shall be signed by the Head of a procuring entity or a person delegated by him, and shall come into effect as stated in the Contract Agreement.

52 Performance security

- (1) The bidder whose bid has been accepted shall provide a performance security, if such requirement is stated in the contract, to secure his obligation to fulfil the contract and any requirement for a performance security shall be set out in the bidding documents.
- (2) The value of any required performance security may be expressed either as a fixed amount or as a percentage of the contract value and shall be no more than ten per cent of the contract value.
- (3) In determining the amount of performance security required, the procuring entity shall take into account the cost to the contractor of obtaining a performance security, the value of the contract, the risk of a contractor failing

to fulfil his contractual obligations and the extent of protection offered to the procuring entity through alternative means, such as payment retentions.

- (4) Where appropriate, the value of the performance security may be progressively reduced, in line with the contractor's progress in delivering or completing the goods, works or non-consulting services to which the security relates.
- (5) The bidding documents and contract shall state that the performance security shall be:
 - (a) in accordance with the format and wording provided in the bidding document;
 - (b) in a form acceptable to the procuring entity;
 - (c) from an institution acceptable to the procuring entity, where the security is issued by a financial institution; and
 - (d) valid for the period prescribed in the contract.
- (6) The conditions for forfeiture of the performance security shall be specified in the contract.
- (7) The procuring entity shall release the performance security promptly to the contractor upon completion of all the contractor's contractual obligations which are subject to the security or termination of the contract for a reason that is not attributable to any fault of the contractor.

PART 9 – PROCUREMENT OF CONSULTING SERVICES

53 Methods of selection

- (1) With the exception of methods of consultant selection under regulations 56, 57 and 58, the request for proposals method shall be used for the procurement of intellectual and professional services.
- (2) For the purposes of procuring the services of a consultant, the procuring entity shall prepare a shortlist of three to six consulting firms, to the greatest extent feasible comprising consultants of the same category, and similar capacity and business objectives, to which it shall provide the request for proposals for services, and the short-list shall be established from among those who have capacity to perform the required services, as demonstrated in their submissions.
- (3) For assignments of a value lower than the threshold set forth in regulation 13(f), the assignment shall be broadcast on radio in Tuvalu and the short-list may be established from responses and market knowledge or available databases.

- (4) When the estimated value of the procurement exceeds the threshold set forth in regulation 13(g), or is below the threshold but is a particularly complex assignment, in order to establish the short-list, the procuring entity shall seek expressions of interest by publishing a notice on the procurement website and either broadcast on radio in Tuvalu or published in printed media with adequate circulation to attract interested bidders.
- (5) The request for proposals shall provide shortlisted bidders with the information necessary to enable them to participate in the procurement proceedings and to submit proposals that are responsive to the needs of the procuring entity including, in particular the:
 - (a) name and address of the procuring entity;
 - (b) nature, time frame and location of the services to be provided, terms of reference, required tasks and outputs;
 - (c) criteria to be used in evaluating and comparing proposals, and their relative weights as compared to price;
 - (d) contractual terms of the procurement, and the manner of entry into force of the contract;
 - (e) instructions for preparation and submission of proposals, and the place and deadline for submission of proposals;
 - (f) final selection procedures to be applied;
 - (g) notice of conflict of interest restrictions and anti-fraud and anticorruption rules, including the grounds for potential debarment from future participation in procurement of goods, non-consulting services or works that may result from the assignment under consideration; and
 - (h) such matters as may be prescribed in the model documents issued by the Central Procurement Unit.
- (6) The price of a proposal shall be considered by the procuring entity only after completion of the technical evaluation.
- (7) Further steps in the execution of selection methods under regulations 54 to 58 shall be issued by the Central Procurement Unit.

54 Quality and Cost Based Selection

- (1) This method uses a competitive process among short listed consultants that takes into account the quality of the proposal and the cost of the services in the selection of the successful consultant.
- (2) The request for proposals shall require consultants to prepare a technical proposal and a financial proposal and submit each in a separate sealed envelope and a minimum of 30 days for preparation and submission shall be allowed from the date of requesting proposals.

- (3) The evaluation of the technical proposals shall be carried out first, using the criteria set forth in the request for proposals, and the evaluators of technical proposals shall not have access to the financial proposals until the technical evaluation is concluded.
- (4) Consultants whose technical proposals fail to meet or exceed a minimum score set forth in the request for proposals shall be considered non-responsive to the request for proposals and shall be notified that their financial proposals will not be evaluated and will be returned to them unopened after the signature of the contract.
- (5) The procuring entity shall simultaneously inform consultants whose technical proposals exceed the minimum weighted score set forth in the request for proposals of the date, time, and place set for opening the financial proposals. The opening date shall be defined allowing sufficient time for consultants to make arrangements to attend.
- (6) The financial proposals shall be opened publicly in the presence of representatives of the consultants and members of the public who choose to attend and the name of the consultant, the technical points, and the proposed prices shall be read aloud and recorded when the financial proposals are opened.
- (7) The proposal with the lowest cost shall be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices.
- (8) The total score shall be obtained by weighting the technical and financial scores as set forth in the request for proposals and adding them. The weighting shall be in the range of 70-90 per cent for the technical score and 10-30 per cent for the financial score.
- (9) The procuring entity shall invite the consultant with the highest total score to negotiate a contract and the negotiations may include the methodology, staffing inputs, the procuring entity's provision of supporting facilities and special conditions of the contract but shall not alter the charging rates of individual staff proposed in the consultant's proposal or substantially alter the original terms of reference or the terms of the contract.
- (10) If the negotiations fail to result in an acceptable contract, the procuring entity shall terminate the negotiations and invite the next ranked firm for negotiations. The consultant shall be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the procuring entity shall not reopen the earlier negotiations. After negotiations are successfully completed, the procuring entity shall promptly notify other firms on the short list that they were unsuccessful.

55 Quality Based Selection

- (1) This method is similar to Quality and Cost Based Selection except that ranking of consultants' proposals and selection of the successful consultant shall be based entirely on technical merit. Quality Based Selection shall be used for the following types of assignments:
 - (a) complex or highly specialized assignments for which precise terms of reference and inputs are difficult to define and for which the short listed consultants are required to demonstrate innovation in their proposals;
 - (b) assignments that have a high downstream impact requiring the best expertise and experience available regardless of cost; and
 - (c) assignments that can be carried out in substantially different ways, such that the value of the services depends on the quality of the analysis and technical and financial proposals are hard to compare.
- (2) The request for proposals shall provide the estimated input of key members of the consultant team, specifying that this information is given as an indication only and that consultant shall be at liberty to propose its own estimates.
- (3) The request for proposals shall require the preparation and submission of only a technical proposal.
- (4) The procuring entity shall, after evaluation of technical proposals, request the consultant with the highest ranked technical proposal to submit a detailed financial proposal.
- (5) The procuring entity shall evaluate the financial proposal and invite the consultant to negotiate a contract in accordance with regulation 54 (9).

56 Selection Based on Consultants' Qualifications

- (1) The Selection Based on Consultant's Qualifications method shall be used for assignments or emergency situations declared by the Government and estimated to cost not more than the threshold set forth in regulation 13(e), for which the issue of a request for proposals and preparing and evaluating competitive proposals is not justified.
- (2) The procuring entity shall prepare the terms of reference and advertise for and obtain expressions of interest from at least three qualified consultants with relevant experience, which shall include information on the consultants' qualifications and experience relevant to the assignment.
- (3) The procuring entity shall evaluate the expressions of interest and determine the best qualified and experienced consultant for the assignment and shall request that firm to prepare and submit a combined technical and financial proposal.

- (4) If, after evaluation, the procuring entity determines that the combined technical and financial proposal is responsive and acceptable, it shall invite that consultant to negotiate a contract.
- (5) If the procuring entity finds that the combined technical and financial proposal is either not responsive or not acceptable, it shall invite the firm ranked next based on its expression of interest to prepare and submit a combined technical and financial proposal and repeat sub-regulation (4) for that consultant.

57 Single Source Selection

- (1) The Single Source Selection method shall be used only in exceptional cases that present a clear advantage over competitive methods, such as:
 - (a) for tasks that are a natural continuation of a previously completed assignment;
 - (b) where a rapid selection is essential in response to a catastrophe or emergency;
 - (c) for small assignments estimated to cost not more than the threshold set forth in regulation 13(e);
 - (d) when only one consultant is qualified or has experience of exceptional worth for the assignment.
- (2) The procuring entity shall prepare terms of reference for the assignment and a detailed justification for recommending a single consultant and obtain the prior approval of the Head of the procuring entity.
- (3) If the assignment is a natural continuation of a previous assignment that was awarded competitively, the procuring entity shall ask the consultant to prepare technical and financial proposals on the basis of the new terms of reference, based on which a contract shall then be negotiated.
- (4) In all other cases, the procuring entity shall invite the consultant to negotiate a contract directly.

58 Selection of Individual Consultant

- (1) Individual consultants may be selected for assignments when:
 - (a) the qualifications and experience of the individual are the paramount requirement;
 - (b) a team of consultants is not required; and
 - (c) no corporate professional support is required.
- (2) The procuring entity shall prepare terms of reference for the assignment.

- (3) If the assignment is estimated to cost more than the threshold set forth in regulation 13(e), the procuring entity shall advertise for expressions of interest and the advertisement shall specify selection criteria that are solely based on experience and qualifications of an individual.
- (4) Simultaneously, the procuring entity may approach suitable candidates directly.
- (5) Selection by the procuring entity shall be based on a comparison of the relevant experience, qualifications, and knowledge of local conditions, culture, and government organization, of at least three candidates.
- (6) The selected candidate shall be asked to submit a combined technical and financial proposal and then be invited to negotiate a contract.
- (7) If the selected individual consultant is under contract with a firm, the procuring entity shall invite the parent firm to provide the individual consultant for the assignment, in which case the procuring entity shall negotiate and sign a contract with the firm.
- (8) Individual consultants may be selected on a single-source basis when justified in exceptional cases such as:
 - (a) work that is a continuation of a previous assignment for which the consultant was selected competitively and performed satisfactorily;
 - (b) assignments lasting less than three months;
 - (c) urgent situations; and
 - (d) when the individual is the only consultant qualified for the assignment.

PART 10 – CONTRACT MANAGEMENT

59 Contract register

- (1) The Central Procurement Unit shall establish and maintain a Contract Register for all contracts funded by Government or development partner funds.
- (2) Access to the Contract Register for making entries shall be limited to staff of the Central Procurement Unit but it shall be made available on the procurement website on a read only basis to all Government staff.
- (3) Contracts shall be added to the register within 3 working days of their having been signed.
- (4) The contract register shall include the following information for all contracts:
 - (a) the name of the contract and allocated reference number;
 - (b) a summary description of the contract and its deliverables and outputs;

- (c) the source of funds for the contract and, for Government funds, the reference to the approved budget head;
- (d) the names and addresses of the parties to the contract;
- (e) the date when the contract was signed, the date when it became effective and its scheduled closing date;
- (f) the duration of the any warranty or defects liability period beyond the closing date of the contract;
- (g) the contract amount when signed;
- (h) the scope and value of amendments to the contract and the dates when they were agreed;
- (i) the dates and amounts of liquidated damages imposed;
- (j) the dates and amounts of approved claims by the contractor; and
- (k) the total amount paid to the contractor upon closing of the contract.

60 Contract effectiveness

A contract shall become effective when all conditions specified in the contract have been met. In addition to signing of the Form of Contract, these may include, if specified in the contract, receipt by the procuring entity of a performance security, receipt by the procuring entity of an advance payment security, receipt by the contractor of the advance payment, and receipt by the contractor of an acceptable Letter of Credit.

61 Advance payment

- (1) Where a contract provides for an advance payment to the contractor, the procuring entity shall secure from the contractor an advance payment guarantee in the form set forth in the contract before releasing the payment.
- (2) Without prior justification, such as for contracts requiring high front-end expenditure, the advance payment shall be not more than 15 per cent of the contract value.
- (3) Recovery of advance payments by the procuring entity from the contractor shall be in the manner and amounts set forth in the contract.
- (4) Individual consultants shall not be required to provide an advance payment guarantee.

62 Responsibility for contract management

- (1) A procurement proceeding shall not be considered concluded until the resultant contract has been performed or otherwise completed. Procuring entities shall manage and administer contracts diligently to ensure that all

contractual obligations and activities are performed in a timely, efficient and effective manner by all parties to the contract.

- (2) The Central Procurement Unit shall be responsible for management of contracts procured through major procurement and the Procurement Officer of the concerned ministry shall be responsible for management of contracts procured through minor procurement.
- (3) Procuring entities may delegate responsibility for day to day contract administration to other senior technical and financial management staff of the concerned ministry, subject to the prior written approval of the Head of the concerned department.

PART 11 – PROCUREMENT RECORDS MANAGEMENT

63 Responsibility for record keeping

- (1) The Central Procurement Unit shall keep and maintain comprehensive records of all public procurement from procurement planning to the closure of procurement contracts.
- (2) For minor procurement, the Procurement Officer shall provide copies of all relevant documents to the Central Procurement Unit on a monthly basis or more frequently if requested.
- (3) Procurement records shall be kept for a minimum period of five years following completion or termination of the contract or cancellation of the procurement proceedings.
- (4) When requested by the Office of the Auditor- General, the Central Procurement Unit shall make procurement records available for audit.

64 Organisation of records

- (1) The Central Procurement Unit shall maintain an individual record for each procurement proceeding, except direct contracting under regulation 26(1)(a), and the contract awarded, which shall be marked with the relevant procurement reference number and subsequent contract number. Each record shall be divided into two parts:
 - (a) the first part, referred to as the pre-contract record, containing records of all activities commencing with procurement planning and ending with the decision to award the contract; and
 - (b) the second part, referred to as the post-contract record, containing records of all activities commencing with signing of the contract and ending with the conclusion of the warranty and defects liability period after completion of the contract.

- (2) The record shall contain the originals and copies, where appropriate, of all information, documents and communications related to that procurement proceeding. The pre-contract record shall include at least the following:
- (a) the original annual procurement plan and specific procurement plan and all subsequent updates;
 - (b) the Procurement Proposal and the response from Procurement Review Committee;
 - (c) a statement of the reason for choice of a procurement method other than competitive bidding or request for proposals;
 - (d) requests for expressions of interest, prequalification documents, bidding documents and requests for proposals as issued at the time of advertisement or invitation;
 - (e) formal amendments to the above documents issued during the response periods;
 - (f) any requests for clarification of the bidding documents and responses thereto;
 - (g) a record of the pre-bid conference, if held;
 - (h) notices of extensions to the bid or proposal period;
 - (i) all expressions of interest, prequalification applications, and bids and proposals received;
 - (j) copies of the bid security or bid securing declaration submitted by each bidder;
 - (k) minutes of the opening of bids and technical and financial proposals;
 - (l) notes and calculations made by the procuring entity during the examination and evaluation of bids and proposals;
 - (m) the bid or proposal evaluation report;
 - (n) a summary of any review proceedings, including minutes of the Procurement Review Committee meeting considering the bid or proposal evaluation report, and the related decisions;
 - (o) minutes of contract negotiations; and
 - (p) notice of the proposed award of contract
- (3) The post-contract record shall include at least the following:
- (a) the signed contract and any signed sub-contracts awarded under provisional sums in the main contract;
 - (b) the performance security;
 - (c) contract variations;
 - (d) all contractual correspondence;
 - (e) certificates of insurance taken out by contractors;
 - (f) independent inspection and testing reports;

- (g) shipping documents and delivery and acceptance reports for goods and materials for works;
- (h) invoices for progress payments and payment certificates;
- (i) claims submitted by contractors and decisions taken on the claims;
- (j) arbitration proceedings;
- (k) completion reports, taking over certificates for goods and works, warranty certificates for goods, and measurement books for works;
- (l) acceptance of consultants' final reports; and
- (m) correspondence and records relating to remedial work carried out during warranty and defects liability periods.

65 Reporting on procurement activities

- (1) Procuring entities shall submit an annual report on their procurement activities to the Central Procurement Unit in accordance with a template issued by the Central Procurement Unit.
- (2) The Central Procurement Unit shall submit an annual consolidated report of all procurement activities to the Minister in accordance with a template issued by the Minister.

PART 12 – TRANSPARENCY AND INTEGRITY

66 Debriefing of unsuccessful bidders

- (1) A procuring entity shall, upon request, communicate promptly to a bidder the reason for the rejection of its application to pre-qualify, or of its bid.
- (2) Any debriefing shall be provided in writing, within a reasonable period of time of the receipt of the request.
- (3) The debriefing shall state at which stage of the evaluation the bid was rejected, provide brief details of any material deviation, reservation or omission leading to rejection of the bid or state that a bid was substantially responsive, but failed to offer the lowest evaluated price or highest score, as required.
- (4) The debriefing shall not provide details of any other bids other than information that is publicly available from bid openings or published notices.

67 Fraud and corruption

- (1) The Government shall reject a proposal for award of a contract, or cancel a contract already awarded, if it determines that the bidder or consultant

concerned, or any of its personnel, agents, sub-consultants, subcontractors, non-consulting service providers, and suppliers has directly or indirectly engaged in fraud and corruption in securing a contract or implementing the contract.

- (2) Procuring entities shall include in all bidding documents for goods, works and non-consulting services and in all requests for proposals for consulting services, a declaration on ethical conduct, which shall be signed by all bidders and consultants and submitted with their bids and proposals.
- (3) The signed declaration of a winning bidder shall be in the format included in the model documents and shall be included in his contract.

68 Conduct of procurement staff

Every officer of a procuring entity responsible for any aspect of the procurement, including the planning, requisitioning, preparing and conducting procurement proceedings and administering the implementation of procurement contracts, shall, as a procurement officer:

- (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 Regulations 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 might personally benefit from a decision, either directly or indirectly through family and associates, from his 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.

69 Offences by procurement officers

Every officer involved in procurement who breaches any provisions of these Regulations commits a disciplinary offence which shall be dealt with under Section 16(2) of the Act and Chapter 6 of the General Administrative Orders.

70 Debarment

- (1) This regulation shall not come into force until such time as the Procurement Suspension and Debarment Procedure has been prepared by the Procurement

- Review Committee and issued by the Central Procurement Unit under regulation 7(2)(e).
- (2) Any bidder responding to an invitation to bid under Part 7 of these Regulations who is found to have committed an offence listed under regulation 33(5), provides false information as to qualifications, or breaches a bid securing declaration during the submission of a bid in accordance with these Regulations may be suspended or debarred from future procurement opportunities invited under these Regulations.
 - (3) After reasonable notice is given to the bidder involved, and a reasonable opportunity has been given to such bidder to be heard, the Procurement Review Committee may, for cause, suspend or debar a person for a period not exceeding two years, in accordance with the procedure prescribed in the Procurement Suspensions and Debarments Procedure.
 - (4) A person may be suspended or debarred for any of the following:
 - (a) conviction for an offence involving corruption;
 - (b) conviction for an offence involving dishonesty, obstruction of justice or a lack of honesty or business integrity;
 - (c) conviction for engaging in anti-competitive practices, whether or not involving collusion; or
 - (d) deliberate neglect or failure without good cause to perform a contract in accordance with its terms of so serious a nature as to justify suspension or debarment.
 - (5) A person may also be suspended or debarred for unethical conduct including:
 - (a) offering or making a payment or offer of employment, or offering or giving a gratuity or other reward, in connection with a procurement;
 - (b) offering to pay or paying a bribe whether in the form of a payment, gratuity, offer of employment or otherwise by or on behalf of a subcontractor under a contract to the prime contractor or a higher tier subcontractor or any person associated therewith, as an inducement for the award of a contract; and
 - (c) knowingly soliciting or obtaining confidential information, or attempting to obtain confidential information, in relation to a procurement for the purpose of obtaining an advantage over other persons who submit or might reasonably be expected to submit a bid, proposal, quotation or offer in relation to an emergency procurement.
 - (6) A contract shall not be awarded to a person when he is suspended or debarred.

71 Conflict of Interest

All public employees directly or indirectly involved with any stage of a procurement proceeding, including management and administration of a contract awarded as a

result of the procurement, shall declare to his superior a potential conflict of interest and recuse himself from involvement in that procurement and administering the implementation of the procurement contract.

72 Public Disclosure of Procurement Proceedings

Procuring entities shall publish the following information on the procurement website and on public notice boards within one week of the information becoming available:

- (a) the Public Procurement Regulations including amendments issued from time to time;
- (b) the Procurement Suspensions and Debarment Procedures;
- (c) the Procurement Complaints and Appeals Procedure;
- (d) approved annual procurement plans of all ministries and their updates from time to time;
- (e) requests for expressions of interest, requests for quotations and invitations to bid, as advertised or issued;
- (f) lists of contracts awarded with the name and address of the contractor;
- (g) where a contract is awarded to other than the lowest bidder, an explanation of why lower priced bids were not accepted;
- (h) details of a contract that is terminated and reasons for the termination; and
- (i) details of a contract that is completed and closed, including the final price paid to the contractor.

PART 13 – PROCUREMENT COMPLAINTS AND APPEALS

73 Procedure

Not later than three months after these Regulations shall come into force, the Procurement Complaints and Appeals Procedure shall be prepared by the Central Procurement Unit, and issued by the Minister.

74 Right to complain

- (1) Subject to sub-regulations (4) and (5) a potential or actual bidder who claims to have suffered, or that is likely to suffer, loss or injury due to a breach of a duty imposed on a public officer by these Regulations, may seek review at any stage of the procurement proceedings.

- (2) An application for review shall not be entertained unless it identifies the specific act or omission alleged to contravene these Regulations and the bidding document.
- (3) Where an application for review concerns alleged improprieties in the solicitation of applications to prequalify or in solicitation of bids, which are apparent prior to bid opening, such applications shall be entertained only if submitted prior to bid opening. The closure of applications to prequalify or the bid opening shall not be delayed by the receipt of complaints, which shall be taken into account during examination and evaluation of prequalification applications or bids.
- (4) Where alleged improprieties come to light after bid opening, applications for review shall also be entertained and shall follow the procedures prescribed.
- (5) If a procurement contract has not already entered into force the bidder shall submit his complaint in the following manner:
 - (a) a bidder shall submit his complaint for consideration through the review stage of prequalification and bidding as described under regulation 75; and
 - (b) where the bidder is dissatisfied with the outcome of the complaint considered under regulation 75, or fails to receive a response within the time limit mentioned under regulation 75, the bidder may apply to the Minister for review of the complaint by a Review Panel under regulation 77.
- (6) If a procurement contract has already entered into force, the bidder shall submit his complaint directly to a Review Panel in accordance with regulation 77(2)(c).

75 Review by procuring entity

- (1) Prior to the entry into force of a contract, a complaint shall be made, in the first instance, in writing, to the Head of the procuring entity.
- (2) Pursuant to sub-regulation (1), the Head of the procuring entity shall not entertain the complaint unless it was submitted within 14 days of when the bidder submitting it became aware of the circumstances giving rise to the complaint or when the bidder should have become aware of those circumstances, whichever is earlier.
- (3) Unless the complaint is resolved by mutual agreement, the Head of the procuring entity shall suspend the procurement proceedings unless he is satisfied that urgent public interest considerations require the procurement to proceed and shall, within five days after submission of the complaint issue a written decision stating the reasons and, if the complaint is upheld, indicating the corrective measures to be taken.

- (4) If the Head of the procuring entity does not issue a decision within the five days stated in sub-regulation (3), or if the complainant is not satisfied with the decision the complainant may submit a complaint to a Review Panel under regulation 77(2)(b).
- (5) Complaints under sub-regulation (4) shall not be heard unless submitted to a Review Panel within 10 days from the elapse of the time stated in sub-regulation (3) or from the date on which the procuring entity's decision was communicated to the complainant.

76 Review Panels

- (1) Pursuant to Section 12 of the Act, the List of Specialists shall be selected by open competition and on such terms and conditions, and operate under the rules of procedure, as prescribed in the Procurement Complaints and Appeals Procedure.
- (2) The List of Specialists shall be formed from legal professionals and persons with experience in the area of public procurement. Specialists shall not be Public Officers.
- (3) The Specialists shall be grouped into a number of Review Panels each with a nominated Chairperson on a case-by-case basis as approved by the Minister. Each panel shall have a minimum of three members. The Central Procurement Unit shall maintain the List of Specialists and the List of Review Panels and it shall be made available to any interested person.

77 Appeals to a Review Panel

- (1) A person who is aggrieved by a decision of the Head of procuring entity made pursuant to regulation 75 may make an application to the Minister for review of that decision by a Review Panel.
- (2) An application for review may be brought before a Review Panel in the following circumstances:
 - (a) in the form of an appeal by the complaining bidder against a decision by a Head of procuring entity, provided that the appeal is submitted within 10 days of the date of the decision;
 - (b) where the Head of procuring entity to whom a complaint is made pursuant to regulation 75 fails to render a decision within the required time frame, provided that the application for review is filed within 10 days of the expiry of the time for the decision referred to in regulation 75;
 - (c) in the case where the contract has already entered into force, any application for review submitted in the first instance to a Review Panel shall not be entertained unless it is submitted to a Review Panel within 10 days of when the bidder submitting it became aware of the

circumstances giving rise to the complaint or of when that bidder should have become aware of those circumstances, whichever is earlier.

- (3) Within seven days of receiving a complaint, the Minister shall select a Review Panel to hear the complaint in accordance with this regulation and the Procurement Complaints and Appeals Procedure.

78 Review Panel decisions

- (1) The Review Panel shall make a written decision containing the reasons for the decision within 14 days after the date of selection. If the Review Panel requires additional time to make its decision, it shall inform the parties within 14 days after the date of selection of the additional time required.
- (2) Such decision shall be binding on all the parties.
- (3) A complaint may be dismissed for:
 - (a) failure to comply with any of the requirements of regulation 77;
 - (b) setting forth only allegations that do not state a valid basis for a complaint, or that do not set forth a detailed factual statement of events;
 - (c) having been filed in an untimely manner, either at the initial level of review by the procuring entity or with respect to deadlines for filing with the Review Panel; or
 - (d) concerning contract implementation or administration rather than contract award.
- (4) When a complaint is upheld, the remedies that may be ordered by the Review Panel include:
 - (a) prohibiting the procuring entity from acting or deciding in an unauthorised manner or from following incorrect procedure;
 - (b) annulling in whole or in part any unauthorised act or decision of a procuring entity, other than any act or decision bringing the contract into force; or
 - (c) requiring the procuring entity to follow the correct procedure in accordance with the Regulations.
- (5) The Review Panel may recommend to the Minister to cancel a contract, if it determines that either party to the contract or any of its personnel or agents have directly or indirectly engaged in fraud and corruption in securing or awarding a contract or implementing the contract.
- (6) The timely submission of a complaint in accordance with deadlines set in this regulation suspends the procurement proceedings until a decision on the complaint is issued by the Review Panel.
- (7) Notwithstanding sub-regulation (5), the Review Panel may, upon the application of the procuring entity, end the automatic suspension in sub-

regulation (6) where the procuring entity satisfies the Review Panel that the continuation of the suspension would cause disproportionate harm to the public interest, the procuring entity or to other suppliers and contractors.

- (8) The lifting of the automatic suspension provided for in sub-regulation (7) allows the procuring entity to continue with the procurement procedure up to contract but does not allow any contract to be concluded before the determination of the Review Panel.
- (9) The proceedings of the Review Panel shall be governed by the rules of procedure adopted in accordance with regulation 76(1) but shall, in all cases, ensure that all parties to the dispute are heard and given fair opportunity of making their case.

SCHEDULE 1

(Regulations 10, 12 and 13)

Regulation	Item	Amount AUD
	Minor and Major Procurement thresholds	
10 (a)	Minor procurement	Not exceeding 5,000
10 (b)	Major procurement	Exceeding 5,000
	Authority thresholds	
12 (a)	Procurement Officer	Not exceeding 500
12 (b)	Bid Evaluation Committee	Exceeding 500 but not exceeding 5,000
12 (c)	Procurement Review Committee	Exceeding 5,000
	Procurement method thresholds for goods, works and non-consulting services	
13(a)	Direct contracting	Not exceeding 500
13(b)	Limited Shopping	Exceeding 500 but not exceeding 25,000
13(c)	Open Shopping	Exceeding 25,000 but not exceeding 100,000
13(d)	Open Competitive Bidding	Exceeding 100,000
	Procurement method thresholds for consulting services	
13(e)	Methods under regulations 56, 57 and 58	Not exceeding 50,000
13(f)	Request for proposals – shortlist established under regulation 53(3)	Exceeding 50,000 but not exceeding 100,000
13(g)	Request for proposals – shortlist established under regulation 53(4)	Exceeding 100,000