



GOVERNMENT OF SAMOA

TENDERS BOARD

**GUIDELINES
FOR GOVERNMENT PROCUREMENT
AND CONTRACTING:
GOODS AND WORKS (GWG)**

Ministry of Finance
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I. INTRODUCTION

A. Purpose

1.01 These Guidelines describe the general principles and procedures which, except as the Tenders Board may otherwise agree, shall be observed in carrying out procurement of goods and works and non-consulting services for Government-financed projects.

B. Principles and Objectives of Procurement

1.02 Public funds must be used with due attention to economy and efficiency as mandated under the Public Finance Management Act 2001, Treasury Instructions and Operating Manuals, Cabinet Directives and the Cabinet approved B4 Schedule of Authorities. Therefore, procurement shall be conducted in accordance with the following basic principles and objectives:

- (a) Transparency;
- (b) Open and fair competition;
- (c) Value for money;
- (d) Accountability; and
- (e) Promoting integrity and combating corruption in procurement.

C. Definitions

1.03 For purposes of these Guidelines:

- (a) **B4 Schedule** means Treasury Instruction B.4, Authorities for Expenditure and Delegation Schedule and Purchasing Authorities Table, as amended.
- (b) **CIP** means carriage and insurance paid to (named destination).
- (c) **Consulting Services** means professional or technical services of an intellectual or advisory nature covered by the Tenders Board Guidelines (Goods and Works)
- (d) **EXW** means ex works, ex factory or off-the-shelf. The EXW price includes all duties, sales and other taxes already paid or payable for components and new materials used in the manufacture or assembly of the goods offered in the bid.
- (e) **FOB** means free on board.
- (f) **Goods** means physical objects of any kind and description, including raw materials, products and equipment.

- (g) **Non-consulting services** means services other than consulting services (including, without limitation, operation and maintenance of facilities or plant, surveys, exploratory drilling, aerial photography, satellite imagery, and services contracted on the basis of measurable physical output
- (h) **Services** means consulting services or non-consulting services.
- (i) **Works** means all work associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works.
- (j) **Tenders Board Guidelines (Consulting Services)** means the Guidelines for Government Procurement and Contracting: Consulting Services issued by the Tenders Board, as amended.
- (k) **Procurement** means the acquisition by contract subject to these Guidelines.

D. Application of Guidelines

1.04 These Guidelines apply to any procurement by a Ministry or Corporation subject to the Public Finance Management Act 2001, Treasury Regulations, Treasury Instructions and Operating Manuals, the B4 Schedule and Cabinet Directives, in order to ensure that procurement is carried out with due diligence, efficiency and in conformity with sound engineering or other appropriate professional practices.

1.05 Procurement under Government financed projects through the budget, aid and loan is covered by these Guidelines except that aid and loan procurement shall also observe applicable donor-financier guidelines.

1.06 The Guidelines apply to all Government Ministries, as well as Corporations in which the Government has more than a 50 percent share or voting rights.

1.07 Procurement of consulting services under Government-financed projects through the budget, aid and loan is covered by the Tenders Board Guidelines (Consulting Services); procurement of non-consulting services shall be subject to the Tenders Board Guidelines (Goods and Works), mutatis mutandis.

1.08 The nature of procurement as being for goods and works shall not be affected by the inclusion of a substantial amount of incidental or other or ancillary services, provided that the primary purpose of the transaction and the principal object of procurement is goods or works.

E. Record-Keeping

1.09 The keeping of full and accurate records of each major stage in the procurement process is essential to transparency and accountability, and will facilitate monitoring of compliance with the Guidelines. Therefore, Ministries and Corporations shall prepare and retain such records in accordance with standard Government practice.

II. PLANNING AND PREPARATION

2.01 Advance planning and preparation are essential to maximizing competition and otherwise achieving procurement objectives in an effective, economical and timely manner. For each procurement of significant size or complexity, a standing or ad hoc Tender Design Team should be assigned to manage this process in accordance with delegated authorities, duties, qualifications, interests and competence. In addition, pre-bid conference may be held to gather market and technical information while stimulating competition. Preliminary Notifications of Intent to Tender may also be issued for this purpose.

2.02 Procurement planning and preparation include such steps as (1) defining the object(s) of procurement and grouping them into appropriate bid packages; (2) performing market research as necessary to ascertain the availability of the items to be procured and the terms and prices under which they have been procured in the past by the Government and are normally procured in the commercial market; (3) formulating a specific procurement plan and schedule of key steps in the process; (4) delineating technical specifications and standards, with associated quality assurance measures; (5) selecting appropriate qualification requirements; (6) choosing the right method of procurement; (7) preparing advertisements; (8) drafting prequalification (where applicable) and bidding documents; (9) conducting or obtaining preparatory studies for works; and (10) projecting a performance schedule and cost estimate.

2.03 In preparing for procurement, particular attention should be given to obtaining all required approvals and confirming that sufficient funds are available and approved for expenditure prior to the advertisement and issuance of bidding documents.

III. THE OPEN COMPETITIVE BIDDING (PUBLIC TENDER) PROCESS

A. General

3.01 The open competitive bidding process gives all qualified and eligible prospective bidders adequate, fair and equal opportunity to bid on all Government procurements. To achieve this, the Tenders Board requires all Ministries and Corporations to observe certain requirements in preparing bidding and contract documents and to follow certain procedures in advertising bid invitations and in accepting, opening and evaluation of bids as stipulated in these Guidelines. In addition to this, the proposed awards of contract are subject to the approval of the Tenders Board or Cabinet, as appropriate in accordance with the provisions of the B4 Schedule of Authorities.

Advertisement and Notification

3.02 All invitations to prequalify or to bid and other procurement notices shall be advertised in a widely circulated newspaper, and internationally where required by a donor or financier, or otherwise when advisable in the interest of maximizing competition. In addition, electronic posting on Government websites is encouraged whenever appropriate and feasible. Invitations to bid and procurement notices are to be advertised in sufficient time to enable prospective bidders to prepare and submit bids. A copy of the invitation to bid shall be furnished to the Secretary of the Tenders Board.

3.03 Advertisements shall, at a minimum, identify the procuring Ministry or Corporation (with full contact information) and the object(s) and method of procurement. The scheduled date for availability of the prequalification or bidding documents, as applicable, shall be indicated. Notices of invitations to bid must also specify the nature, quantity and place of delivery of goods to be supplied or the nature and location of the works to be constructed; the desired or required time for supply of the goods or completion of the works; any required eligibility or qualification requirements other than the general factors stated in para. 3.13 below; the means of obtaining the bidding documents and the amount of any charge therefor; the language(s) in which the bidding documents are available; and the place and deadline for submission of bids. The English language shall be used; however, the Samoan language may be used in addition to English when required for clarity or otherwise deemed appropriate.

3.04 Bidding documents may be made available to eligible bidders upon request free of charge or, if a fee is charged, at a reasonable cost that reflects only the cost of printing, duplication and distribution.

Prequalification of Bidders

3.05 Prequalification of bidders shall be used for works contracts and contracts for the supply of technically complex equipment when the value of the procurement transaction is anticipated to exceed \$500,000, to ensure that only technically and financially capable firms will be invited to submit bids. Prequalification is also a requirement of donors or financiers for major works. Prequalification shall be based entirely upon the ability of the interested firm to perform the particular work or supply the particular equipment satisfactorily, taking into account: (i) relevant experience and past performance; (ii) capabilities with respect to personnel, equipment, and plant; and (iii) financial position.

3.06 Invitations to prequalify shall be advertised and notified in accordance with para. 3.02 above (including provision of a copy to the Secretary of the Tenders Board). The scope of the contract, abbreviated specifications and a clear statement of the requirements for prequalification shall be provided to all those who have indicated their desire to be considered for prequalification. There shall be no limit to the number of firms to be prequalified, and all firms found capable of performing the work satisfactorily in accordance with the approved prequalification criteria shall be prequalified and invited to bid. All applicants shall be provided with written notice of the results of prequalification.

3.07 When bidders have been prequalified, the invitations to bid and the bidding documents shall be transmitted directly to the prequalified bidders.

General Eligibility Requirements

3.13 All contractors and suppliers who wish to submit bids must meet the following general eligibility requirements:

- (a) possession of a valid business license;
- (b) freedom from insolvency, bankruptcy or similar status;
- (c) having legal capacity to enter into contract;
- (d) current with payments of taxes and social charges;
- (e) not being excluded pursuant to Part VI of these Guidelines;
- (f) for works contractors and their subcontractors, valid registration in the appropriate category; and
- (g) the firm and its principals have not been convicted within the last year of, or currently under indictment for, a criminal offense involving corruption or other misconduct reflecting a lack of suitability to participate in government procurement.
- (h) Suppliers or contractors may bid independently or as a joint venture. In joint ventures, one of the member firms must be designated to represent the others as lead; all member firms shall sign the contract and shall be jointly and severally liable for contract performance. Firms shall not be required to form joint ventures with any specific firm or group of firms, but association to foreign firms with qualified national firms in general may be encouraged by inclusion of an appropriate margin of preference approved by the Tenders Board.

Domestic Preferences

3.14 In order to encourage competition and achieve value for money, Government procurements are normally open to all qualified and eligible bidders regardless of nationality and without restriction as to the origin of their inputs. Nevertheless, when appropriate and effective to build local capacity or the utilization of local know-how and materials, the Tenders Board may approve, on a case-by-case basis, the use of a margin of preference for domestic manufactured goods or registered works contractors, as applicable. If approved, the amount and procedures for application of the domestic preference margin shall be specifically described in the bidding documents. Criteria for determining domestic manufactured goods and domestic works contractors must also be stipulated. In no event will a preference for domestic goods exceed fifteen percent of the lowest evaluated EXW price offered by a foreign supplier, nor

may a preference for domestic contractors exceed seven and one-half percent of the lowest evaluated price offered by a foreign contractor.

Electronic Procurement

3.15 It is recognized that electronic procurement offers many benefits over traditional manual processes in terms of speed, efficiency and transparency, among other things. The Tenders Board, therefore, intends to develop appropriate procedures for electronic procurement, including bid submission, advertisement and disclosure of information on procurement, rules, policies and practices.

B. Bidding Documents

General

3.16

- (a) Bidding documents shall contain provisions which give effect to the requirements of these Guidelines.
- (b) It is essential that all bidding documents provide in a clear and unambiguous manner all the information necessary for bidders to prepare responsive bids. Whilst the detail and complexity of these documents may vary depending upon the kind of goods to be procured and the size of the contract, they shall normally include the following: invitation to bid; instructions to bidders; bid form; conditions of contract, both general and special; technical specifications; bill of quantities and drawings; schedules of prices; and necessary appendices; proforma bid securities or statements and performance securities. The bidding documents should also provide bidders with notice of their right to submit award inquiries or challenges.
- (c) Ministries shall use standard bidding documents where required by donors or financiers in respect of procurement financed by donor and financing agencies. Standard bidding documents issued by the Government for application to self-financed procurement shall be used when applicable, subject to exceptions granted by the Tenders Board.

Clarity of Bidding Documents

3.17 In order to facilitate the submission of responsive bids, the bidding documents should specify the required form, content, language and organization of bids, as well as required supporting documents and information. The minimum bid validity period shall also be stated.

3.18 Bidding documents shall describe clearly and precisely the works to be done or the goods to be supplied, the place and period of delivery or installation, the warranty and maintenance requirements, and other pertinent terms. The technical requirements, while promoting the broadest possible competition, shall describe all the essential features of the items(s) to be procured and shall state that any nonconformity to these essential features would render the bid

as substantially non-responsive. Drawings shall be consistent with the text of the technical specifications. However, in the event of conflict or inconsistency between the two, the specifications shall govern unless otherwise specified in the bidding documents. If alternative bids are acceptable, this shall be expressly stated, along with a description of how they will be evaluated. The bidding documents shall indicate the criteria and methodology of bid evaluation, as well as the factors to be taken into account in comparing bids (including but not limited to any domestic preferences approved by the Tenders Board under para. 3.14 above).

3.19 It is each bidder's responsibility to study the bidding documents carefully and note any issue of ambiguity, internal contradiction, inconsistency with the Guidelines, omission or other relevant matter prior to submission of its bid, to facilitate a responsive and compliant bid. Bidders must raise such issues with the procuring Ministry or Corporation in writing within the time specified in the bidding documents for seeking clarifications.

3.20 For works or complex goods supply contracts, a pre-bid conference may be arranged whereby potential bidders may meet with representatives from the procuring Ministry or Corporation to seek clarifications. Minutes of the conference should be prepared and provided to all prospective bidders. Any additional information, clarification, correction of errors or alteration in bidding documents shall be provided in writing to all those who have received the original documents. In the event of any substantive amendment to the bidding documents whether due to bidder-requested clarifications, pre-bid conferences or otherwise, adequate time shall be allowed for bidders to make necessary changes in their bids in response to such amendments. A period of 30 days is considered adequate for this purpose where the changes involved are substantial; a shorter period may be allowed when the changes are not substantial.

Bid Security

3.21 In conformity with the requirements of donors or financiers, or otherwise when determined to be in the public interest and specified in the bidding documents, a bid security may be required to secure validity of the bid within the period specified in the invitation to bid. However, it shall not be set too high to discourage technically qualified and eligible bidders. The amount shall reflect the Ministry's or Corporation's reasonable assessment of the amount of loss it will suffer in the event of bid withdrawal or the bidder's refusal to execute the contract upon acceptance of their successful tender. Two percent of the bid price is generally considered fair and reasonable. Unless otherwise expressly stated, the bid security, at the bidder's option, shall be in the form of a certified cheque, a letter of credit or a bank guarantee from a reputable bank "acceptable to the Purchaser" and also "selected by the bidder". Such securities shall be independent, unconditional and payable on demand. Bid securities shall be returned to the unsuccessful bidders as soon as the successful bidder has been selected. All bid securities shall have a minimum validity period of thirty to ninety days as specified in the bidding documents (depending on the complexity of the procurement) after the end of the bid validity period.

3.22 The bidding documents may provide for the use of bid-securing statements when such an approach is determined to provide adequate protection to the Government (and, with respect to aid or loan procurements, if permitted by the donor or financier). Such statements are written declarations, signed by an authorized representative of the bidder, acknowledging that if the

bidder withdraws or modifies its bid during the validity period, or receives award of a contract but fails to sign it or provide the required performance security before the deadline specified in the bidding documents, the bidder will be declared ineligible for one year from participating in any procurement by the Government, whether aid or loan funded or otherwise.

Conditions of Contract

3.23 The contract shall contain general conditions which will cover, inter alia, the definition of the scope of the works to be constructed or the kind of goods to be supplied; the rights and obligations of the Ministry or Corporation and the contractor or supplier, and the powers and authority of the engineer or architect who may be employed by the Ministry or Corporation in the administration of the contract; payment terms; securities; retention money; warranties; price adjustment clauses; insurance; quality assurance (inspection and acceptance); liquidated damages for late delivery and/or bonus payments for early delivery; passage of title, force majeure; variations and changes; subcontracts; claims and disputes; governing law and language; and termination. In addition to the customary general conditions, special conditions appropriate to the nature of the goods or works or the project shall be included.

3.24 If particular standards with which equipment or materials must comply are cited, the specifications shall state that goods meeting other authoritative standards, which ensure equal or higher quality standards, may also be accepted. Internationally recognized standards should be used when appropriate and practicable.

Bid Samples and Descriptive Literature

3.25 The bidding documents should state whether bid samples are permitted or required. If not, any samples nonetheless submitted will be disregarded. When permitted or required, bid samples (1) shall be provided at no cost to the Ministry or Corporation; (2) will not be returned to the bidder after evaluation and award; (3) may be tested or evaluated for compliance with any aspect(s) of the technical specifications or any other factor specified in the bidding documents; and (4) testing or evaluation shall not be deemed to waive or modify the specifications. Bid samples must be submitted with the bids. Late submissions will not be considered. Samples that do not conform to the material requirements of the bidding documents will be rejected.

3.26 The bidding documents should specify whether descriptive literature is permitted or required. Descriptive literature must be marked to clearly identify the item(s) to which it applies. Any statement or information that indicates non-compliance with or qualification of the technical specifications or any other material requirements of the bidding documents may result in rejection of the bid as non-responsive. Descriptive literature must be submitted with the bids; late submissions will not be considered.

Use of Brand Names

3.27 Specifications shall be based on relevant characteristics and/or performance requirements. Reference to brand names, catalogue numbers or the like shall be avoided unless this is deemed

necessary to ensure inclusion of certain essential features, in which case, the reference shall be followed by the words “or equivalent” and the specifications shall permit offers of alternative goods which provide performance and quality at least equal to those specified.

Pricing

3.28 Unless otherwise specified in the bidding documents, bids for goods shall be invited on the basis of CIP for all goods offered from abroad, and EXW for locally available or manufactured or assembled goods, including those previously imported.

3.29 Bidders for works contracts shall be required to quote unit prices or lump sum prices for the performance of the works, and such prices shall include all duties and taxes.

Currency of Bid

3.30 The currency in which the bid price may be stated shall be indicated in the bidding documents. Bidding documents shall normally require bidders to state the bid price either in the bidder’s own currency or in the local currency.

Currency of Bid Comparison

3.31

- (a) For comparison of bids, each bid price shall be valued in terms of the Samoan Tala or other single currency stated in the bidding documents. The rates of exchange to be used in such valuation shall be the selling rates officially prescribed for similar transactions and prevailing on the date specified in the bidding documents. Where such official exchange rates are not available, the rates of exchange to be used shall be determined by the Ministry or Corporation in consultation with the Tenders Board.
- (b) The date to be specified in the bidding documents for the purpose of bid comparison in accordance with sub-para. (a) above shall not be earlier than 30 days prior to the deadline for submission of bids, nor later than the original date for the expiry of bid validity.

Currency of Payment

3.32 Payments under the contract shall be made in the currency or currencies specified in the invitation to bid, except where a different arrangement is agreed by the Government and the bidder.

Terms & Methods of Payment

3.33 Payment terms shall be specified in the contract and shall be in accordance with standard practices and procedures set down by the Ministry of Finance under the Public Finance

Management Act 2001 and Treasury Instructions. The use of advances is authorized in connection with works contracts as described in para. 3.36 below.

Price Adjustment Provisions

3.34 The contract documents shall clearly indicate whether price adjustments are allowed in the event changes occur in the major cost components of the contract such as labour, equipment, and materials, over which the contractor has no control. Price adjustment provisions are not necessary for simple supply contracts involving short delivery periods. However, for contracts with longer delivery periods (beyond 18 months), including major works contracts, price adjustment provisions shall be provided. Contracts which contain a large commodity component whose price may vary sharply in the short term shall contain a rise and fall clause which protects the Government or the contractor from losses in case of any abrupt changes in price.

3.35 The amount of price adjustment shall be based on changes in the cost of the major components of the contract. The method of adjustment shall be according to the formula provided in the contract documents, and may allow for adjustments to be made in the course of performance on the basis of documentary evidence provided by the contractor or calculated by the use of a price adjustment formula or formulae.

Advance Payment

3.36 It is common practice for advances to be made in construction contracts to cover mobilization expenses and the cost of materials delivered to the site for incorporation in the works. The bidding documents shall set out the basis for determining the amount of advance in each case, time and method of payment, the kind of security required, and the manner of repayment by the contractor. With respect to mobilization advances, the items subject to mobilization shall be described in the bill of quantities and the advance limited to these items.

Performance Security, Retention Money

3.37 The bidding documents should specify the amount, form(s), type(s) of issuer(s), content and duration of any required performance security, as well as the conditions under which the security may be collected. Some form of security shall be required to help ensure that the works will be carried to completion in the case of failure of the contractor to perform under the contract. In works contracts, a performance security in the form of a bank guarantee, standby letter of credit or bank cheque shall be required of the contractor, the validity of which shall cover the contract period. Performance securities may also be required for complex equipment when deemed necessary and appropriate to protect the Government; such securities shall extend through the warranty period. The amount of the security will depend upon the type and magnitude of the works to be done or goods to be supplied, as the case may be. Unless otherwise stipulated in the bidding documents, the security must be independent, unconditional and payable on demand.

3.38 In addition, for works contracts, a retention sum to ensure compliance by the contractor with its warranty or maintenance obligations may be retained for a specified period after the completion of the contract in an amount not to exceed 10 percent of the total contract price. Such retention sum will be withheld until the expiration of the warranty or maintenance period. After completion of the works, but before the expiration of the warranty or maintenance period, the retention sum may be replaced with a suitable bank guarantee or other appropriate security.

Changes and Variations

3.39 In order to respond effectively to unforeseen circumstances, contracts may provide for the Government's right to issue unilateral written change or variation orders as needed. Change orders adjust terms and conditions, but only within the general scope of the contract. Variation orders require supply of additional quantities of items not to exceed (in the aggregate over the entire contract period) ten percent of the original awarded quantity of any individual item of goods, or, in the case of works, ten percent of the original awarded contract amount. Change or variation orders shall only be issued when provision therefore is made in the contract and only by authorized Ministry or Corporation officers, who shall be responsible to ensure that sufficient funds are available. Tenders Board approval is not required for change or variation orders that strictly comply with this paragraph.

Insurance and Transportation

3.40 The bidding documents shall state precisely the types of insurance to be provided by the successful bidder and shall indicate the kinds of risks insured against, the liabilities to be covered, and the duration and amount of the insurance. In contracts for the supply of goods on CIP or similar basis, cargo insurance and transportation are left to be arranged by the supplier as part of the contract.

Preparation of Bids

3.41 All bids in order to be accepted as conforming bids and eligible to be awarded the tender contract must generally fulfill all of the following requirements:

- (a) Be responsive to the technical specifications set out in the bidding documents;
- (b) Be presented on the provided Bid Form, follow the instructions to bidders, provide the information requested, and otherwise comply with the requirements of bidding documents;
- (c) Be clearly marked with the name of the company bidding (which in the case of works is the company registered for the category of works tendered) whose details such as company registration and current business license can be confirmed;
- (d) Be received by the deadline, and valid for at least the minimum period, set out in the bidding documents;

- (e) Be submitted as separate bids and not in one envelope or package; and
- (f) Be accompanied by any required bid security or bid-securing statement.

3.42 Excessive formalities, i.e. non-substantive requirements for proposals such as official seals and stamps on documentation (which are not generally necessary in Samoa), may unnecessarily discourage competition. Ministries or Corporations should keep such requirements to the minimum necessary to ensure a legally binding and conforming bid. Notwithstanding the foregoing, bidders should comply with all formalities stipulated in the bidding documents.

C. Bid Opening, Evaluation and Award of Contract

Time Interval for Bid Invitation and Bid Submission

3.43 The time allowed for preparation and submission of bids will depend on the nature, magnitude and complexity of the contract. The particular circumstances of the project shall also be taken into account. Unless good cause exists for designation of a shorter period, a minimum of thirty days (forty-five days if international bidding is anticipated) will be allowed, from the later of the date on which bids were invited or the actual date of availability of the invitation to bid. Extension of the deadline for submission of bids may be allowed where an extension would result in greater competition. When the bidding period is extended, notice thereof shall be furnished to all those who have been sent or provided with invitations to bid. A copy shall also be promptly provided to the Secretary of the Tenders Board.

3.44 Bids shall be submitted by hand or, when approved by the Tenders Board and specified in the bidding documents, by mail. All bids are to be addressed to the Secretary of the Tenders Board. Bids submitted by hand shall be deposited in the Tender Box specified for such tender located at Level 4 Ministry of Finance at the Central Bank Building. Bidders shall be required to obtain a receipt upon deposit of the bid. Mailed bids shall follow the directions contained in the instructions to bidders including, but not limited to, being sealed and marked as required. All bids received shall be held unopened and safeguarded until the time specified for opening. The Government shall not be responsible for delays in delivery by mail. Misdirected bids or modifications of bids that are received at the specified place after the time stipulated for bid closing shall be returned unopened.

Bid Opening Procedures

3.45 The date, hour and place for the latest delivery of bids shall be stated in the invitation to bid. Unless otherwise advised by the Tenders Board, all bids are to close on a Monday (when this does not fall on a public holiday) at 1.30pm. The time for the opening of bids shall be promptly thereafter, or at 2.00pm. The Secretary of the Tenders Board shall advise bidders of the time of bid opening if there is any change in the time specified beforehand. The Secretary shall also advise bidders of the place where bids will be opened.

3.46 The Tenders Board shall open all bids received at the stipulated time and place. After verification that each bid is sealed and the seal remains intact, bids shall be opened in the presence of bidders or their representatives. The name of each bidder; the currency and total amount of its bids, including alternative bids, if any, together with any discounts offered; any modifications received; shall be read aloud and recorded, along with confirmation that each bid is signed and there is only one original of each. The opened bids shall be marked as originals. Official minutes of bid opening shall be prepared for distribution to all of the bidders. The bidders' representatives who are present shall be requested to sign an attendance sheet. The bids shall be delivered to the Ministry or Corporation with instructions to continue to hold them in safe storage for prompt examination, evaluation and comparison.

Organizing for Bid Evaluation and Award

3.47 For each procurement of substantial size or complexity, a Bid Evaluation Committee should be formed by the Ministry or Corporation to conduct the examination, evaluation and comparison of bids and to prepare a bid evaluation report. The Bid Evaluation Committee shall be composed of an odd number, not less than three, of Government personnel or private experts, headed by a Chair selected by the members. Regardless of institutional affiliation, each member shall exercise objective and independent judgment, and decide all matters in the public interest.

3.48 All Bid Evaluation Committee members and other persons involved in assessing, evaluating or deciding on the award of a contract must declare any interest in any company or close family relationship to the principals of any company which has made a bid and shall be excluded from the evaluation and decision making process on that particular tender and shall not have access to any documents or information relating to that particular tender. Private sector experts shall, as a condition of their participation, sign appropriate forms declaring that they have no interests of the types described in the preceding sentence; accepting the application of Government personnel ethics standards in the performance of their duties; and undertaking not to use any information relating to or resulting from the bid evaluation for any non-Governmental purpose nor to disclose it outside of the Government.

Extension of Bid Validity

3.49 Every effort shall be made to complete bid evaluation before the expiration of bid validity and the validity of bids shall not be extended, except in exceptional circumstances. When an extension is considered necessary, all those who submitted bids shall be asked to extend their bids. Bid extension is voluntary. Bidders who are willing to extend the validity of their bids shall neither be required nor permitted to modify the substance of their bids. Bid validity extensions shall be requested for as short a time as necessary to complete the evaluation and award process. Bid securities of bidders who do not wish to extend will be promptly returned.

Clarification or Alteration of Bids

3.50 No bidder shall be permitted to alter its bid after the bids have been opened, but obvious mathematical or computational mistakes or manifest clerical errors and clarifications not changing the substance of the bid may be accepted. The Tenders Board may ask any bidder for a clarification of its bid but shall not ask any bidder to change the substance of its bid.

Confidentiality of Bids and Bidder-Supplied Information

3.51 No information relating to the examination, clarification, and evaluation of bids and recommendations concerning awards shall be communicated after the public opening of bids to any person not officially concerned with these procedures before announcement of the award of a contract to the successful bidder. If prior to this point, a bidder wishes to bring additional information to the notice of the Government, it should do so in writing.

3.52 In order to ensure that bidders are willing to supply complete and accurate information, information supplied by bidders shall be used only for procurement purposes and is to be kept confidential even after award.

Initial Examination of Bids

3.53 Following the opening, an initial assessment shall be made as to whether the bids are substantially responsive to the bidding documents, which shall include an assessment as to whether the required securities have been provided; whether the documents have been properly signed; whether all the information required to be submitted has been submitted. Bids must be from eligible bidders. If a bid is not substantially responsive to the bidding documents or contains inadmissible reservations, qualifications, conditions or deviations from the bidding documents, it shall be rejected. Bids from bidders who do not meet the general eligibility requirements set forth in para. 3.13 above shall also be rejected. A technical analysis shall be made to evaluate the eligible bidders' responsive bids and to enable such bids to be compared.

3.54 A bidder who wishes to propose an alternative bid if alternative bids are acceptable should quote the price for a fully compliant bid and then separately indicate the adjustment in price that can be offered if the deviation or alternative solution is accepted.

Evaluation and Comparison of Bids

3.55 Bids from eligible bidders which conform to the technical specifications and are substantially responsive to the bidding documents shall be compared on the basis of their evaluated costs and the bid with the lowest evaluated cost, which shall not necessarily be the lowest priced bid, may be selected for award.

3.56 Bid evaluation must be consistent with the method, terms and conditions set forth in the bidding documents. Apart from the price, other relevant factors such as the efficiency of the equipment, including its operating costs; the time of completion of construction or delivery;

warranty terms; payment schedules; training; safety and environmental benefits and hazards; and the availability of after sales service and spare parts, shall be taken into account in determining the lowest evaluated bid to the extent and in the manner specified in the bidding documents. When approved by the Tenders Board under para. 3.14 above, domestic preferences shall also be applied. The foregoing factors shall, whenever possible, be expressed in monetary terms in the evaluation provisions of the bidding documents. Bids shall be compared on the basis of base price without taking into account any contractual provisions for price adjustment.

Postqualification of Suppliers and Contractors

3.57. For contracts for which prequalification is not required pursuant to para. 3.05 above, postqualification must be conducted. Qualification requirements shall be as objective as possible. In the case of works, contractors (and any subcontractors) must be registered in the appropriate category and at the appropriate level. In all cases, contractors and suppliers must meet any additional qualification requirements stated in the bidding documents. Information concerning the bidder's experience, financial position, and when appropriate technical staff shall be required in the bidding documents. Normally, the information will be considered during the initial examination of bids in light of the three factors specified in para. 3.05 and the bid of any bidder who does not satisfactorily meet these requirements will not be considered for evaluation. In any case, the bidder whose bid has been evaluated as the lowest must have the technical and financial capability to perform the contract satisfactorily and, if the bidder does not meet these requirements, its bid shall be rejected.

Rejection of all Bids and Rebidding

3.58 Bidding documents shall provide that the Ministry or Corporation (with prior approval of the Tenders Board) may reject all bids. Such rejection is justified when the bids submitted are not substantially responsive; there is evidence of lack of competition; all bid prices substantially exceed the cost estimates; or the Government's needs have changed substantially from those described in the bidding documents. A determination of lack of competition should be based on a comprehensive review of the circumstances; there is no rigid minimum number of bids that must be received.

3.59 When all bids have been rejected, a rebidding may be called, and the Ministry or Corporation shall request new bids from all who were supplied with bidding documents in the first instance. However, if there has been a sufficient number of bids in the initial bidding, the Ministry may consider inviting bids only from those who have previously submitted bids. If all bids have been rejected because of lack of competition or failure to meet the specifications, the Ministry shall examine the causes for rejection and consider, before calling for new bids, revision of the specifications or bidding conditions. When all bid prices substantially exceed the cost estimates, the Ministry or Corporation may, instead of calling for new bids, and after consultation with the Tenders Board, negotiate with the lowest evaluated bidder for a reduction of the scope of the contract or risks that may facilitate an adjustment in the bid price. If no satisfactory contract can be concluded and a rebidding is called, further modification of the

scope of the contract and additional domestic or international advertisement shall be considered.

Award of Contract

3.60 The full Bid Evaluation Report with recommendation for award of contract shall be submitted to the Tenders Board for its approval or recommendation to Cabinet where appropriate, in accordance with the provisions of the B4 Schedule of Authorities. The Report should include an account of each main stage in the procurement process as described in these Guidelines. Each member of the Bid Evaluation Committee shall sign the Report, attesting to the accuracy of its contents (if there are dissenting views, these should be indicated in the Report).

3.61 The award of contract shall be made to the eligible bidder whose bid has been determined to be the lowest evaluated substantially responsive bid and who meets the minimum requirements of capability and financial responsibility specified in the bidding documents. Such bidder shall not be required, as a condition of award, to undertake responsibilities not stipulated in the specifications or to modify its bid. The Ministry or Corporation will notify unsuccessful bidders promptly in writing. Written notification of the award (subject to successful completion of any remaining negotiations permitted by these Guidelines) will be sent to the winning bidder, and notice will be published in the media specified in para. 3.02 above. Information to be provided in the notification of award (e.g. name of each bidder who submitted a bid; bid prices as read out at bid opening; name and evaluated prices of each bid that was evaluated; name of bidders whose bids were rejected and the reasons for their rejection; and name of the winning bidder, and the price it offered, as well as the duration and summary scope of the contract awarded).

3.62 Post-award negotiations with the winning bidder shall be strictly limited to minor issues not of sufficient importance to prevent a bid from being deemed substantially responsive and compliant, except as provided in para. 3.59 above. No other post-award negotiations are permitted. Permissible negotiations shall not result in significant changes to the bidding documents or the contract, nor shall they modify the bidder's bid in any material way. A memorandum of negotiation shall be prepared for signature by the parties describing the matters discussed and agreed.

3.63 Once award has been made and notified, and any required performance security has been received, the Ministry or Corporation should finalize and sign the contract. The signed contract should then be sent to the successful bidder for counter-signature.

3.64 The notification to unsuccessful bidders shall state that a bidder who wishes to ascertain the grounds on which its bid was not selected should address its request in writing to the Ministry or Corporation. If the Ministry or Corporation does not respond within the specified period or if the bidder is not satisfied with the explanation given and wishes to seek a meeting with the Tenders Board, it may do so by submitting such a request in writing to the Secretary of the Tenders Board, who will arrange a meeting. In this discussion, only the bidder's bid can be addressed and not the bids of competitors; however, information regarding the winning bidder's

bid may also be disclosed when appropriate and necessary to provide an adequate explanation of the reasons of the award decision taking into consideration the confidentiality considerations as stated in para 3.52.

IV. OTHER METHODS OF PROCUREMENT

A. Introduction

4.01 Except as provided in para. 4.10 below, the Tenders Board must approve the method of procurement to be applied in each case. Open competitive bidding (public tendering) is the preferred method of procurement, and shall be used whenever practicable. Nevertheless, the Tenders Board reserves the right to determine the procurement method used and the particular requirements of each tender having regard to all relevant factors including, but not limited to, the following:

- (a) the complexity or potential cost of the contract;
- (b) any specific requirements of donor funded goods or works;
- (c) the unique or highly specialised nature of the goods or works; and
- (d) the urgency of the need for the goods or works.

4.02 As in open competitive bidding, the principles and objectives set forth in para. 1.02 above shall be taken into account. Other methods of procurement which are generally considered and the circumstances under which they may be adopted, may include the ones described below.

B. Local and International Shopping

4.03 Shopping may be appropriate when the particular items needed are available only from a limited number of suppliers, or where early delivery is of paramount importance in carrying out certain works.

4.04 Local and international shopping is subject to the following procedures:

- (a) **Reasonable Competition.** The invitation to quote or bid shall be issued to a reasonable number of contractors or suppliers, as the case may be, which shall not be less than three, and shall, whenever practicable, be advertised in accordance with paras. 3.02 and 3.03 above. The bids or quotations received shall be opened publicly and compared and evaluated as in open competitive bidding.
- (b) **Award of Contract.** Promptly after each award recommendation is formulated by the Ministry or Corporation involved, the Board shall be furnished with a copy of a summary and evaluation of the bids or quotations received; a justification for the award

recommendation; and the draft contract. After the Board's approval, the Ministry or Corporation shall provide the Board a copy of the contract as executed.

C. Direct Purchase/Negotiation or Single Tender

4.05 Direct purchasing/negotiation or single tender involves dealing with a particular supplier or contractor, or a limited number of suppliers or contractors, and is allowed by the Tenders Board in any one of the following situations:

- (a) buying small or off-the-shelf items generally valued at less than \$10,000;
- (b) standardization is important and equipment and spare parts required for expansion or repair of existing equipment must be procured from the original supplier or from a supplier of identical goods;
- (c) equipment is proprietary in character and is obtainable only from one supplier;
- (d) critical items are to be procured from specialist suppliers; or
- (e) works to be undertaken are a natural extension of an earlier or ongoing job and it can be shown that the engagement of the same contractor will be more economical and will ensure compatibility of results in terms of quality of work.

4.06 Direct purchase/negotiation with a limited number of suppliers is preferred over single tendering when both methods are feasible.

4.07 When appropriate, inquiry should be made into the prices paid by other recent purchasers of the goods, in similar quantities and on similar terms, to verify the fairness and reasonableness of the quoted price. Suppliers must be qualified to supply the goods in question, and contractors must be registered to implement the category of works involved at the appropriate level. Requirements such as performance securities and warranties should normally be the same as in open competitive bidding.

D. Limited Tendering or Repeat Order

4.08 Where, after the items originally envisaged for a project have been procured through open competitive bidding, an additional quantity of the same items (in excess of any quantity available through issuance of a variation order) is urgently needed to meet the requirements of the project and funds are available under the budget for this purpose, the additional items may be procured through limited tendering where it can be shown clearly that no advantage could be gained by adopting open and competitive bidding. Under this procedure, bids may be invited only from those who had submitted responsive bids for the earlier order or, if there was a large number of responsive bidders, only from the three lowest responsive bidders. In exceptional cases when there was a small number of responsive bidders or the earlier order and the winning bid was clearly superior to the other bids not only in terms of price but also as regards to reliability of equipment, availability of spare parts and after sales service, and delivery period,

the additional items required under the above mentioned circumstances may be procured instead by placing a repeat order with the supplier who provided the same items previously, provided that no better offer is likely to be received, and that the price to be paid for the repeat order is not more than the original price. Usually, the repeat order shall follow the earlier order within eighteen months while the additional quantities shall not exceed thirty percent of the original quantities.

E. Minor Works and Emergency Situations

4.09 Procurement of works may be conducted through direct invitation in the case of (1) minor works with an estimated value of \$100,000 or less, or (2) situations involving a declared state of emergency. Under this procedure, the use of which should be limited due to its relative lack of transparency and potential for abuse, selected registered contractors may be invited to bid without open advertisement. In other respects, the procedures for open competitive bidding shall be followed to the extent practicable. Invitation of bids shall be from the maximum number of contractors possible under the circumstances. Resulting contracts shall be on a fixed (lump sum or unit) price basis whenever practicable, but may provide for reimbursement of a contractor's actual reasonable costs when deemed necessary and appropriate in emergency situations.

F. Small Purchases

4.10 Small purchases as described in this paragraph do not require prior approval of the Tenders Board and may utilize the indicated special procedures, provided that, open competitive bidding may always be used when deemed appropriate, and that procurement transactions shall in no case be artificially fragmented in order to fall under a specific threshold. Transactions up to \$2,000 in value may be awarded based on at least one oral or written quote. Transactions above \$2,000 but not more than \$5,000 in value may be awarded based on at least three oral or written quotes. Transactions above \$5,000 but not more than \$50,000 must be awarded based on at least three written quotes obtained pursuant to a formal Request for Quotations or similar solicitation with open and fair competition. All transactions shall be conducted with due regard to the principles set forth in para. 1.02 above and any applicable Government standard procedures.

G. Other

4.11 Any other method of procurement used must follow any guidelines and instructions issued by the Treasury under its Operating Manuals and/or Instructions and approved by the Board.

V. AWARD INQUIRIES AND CHALLENGES

5.01 Unsuccessful bidders with inquiries concerning the procurement process or award decision in a specific instance should first request a debriefing pursuant to para. 3.64 above.

5.02 An unsuccessful bidder who is not satisfied with the explanation and information obtained in a debriefing may submit a challenge within seven days. Challenges will not be accepted if

received by the Ministry or Corporation after such date. The challenge must be in writing and set forth with specificity the basis of the challenge and the material facts relating thereto. It shall be addressed to the procuring Ministry or Corporation, with a copy to the Secretary of the Tenders Board. Challenges may not be filed directly with the Tenders Board in the first instance.

5.03 The procuring Ministry or Corporation should issue a written decision on challenges received within fourteen days of receipt. On an exceptional basis, if more time is needed, the Ministry or Corporation shall so notify the bidder concerned. If a negative decision is issued, within the seven days of receipt of such decision, a dissatisfied bidder may submit a written request (with supporting reasons) for Tenders Board review. If, on the hand, no decision is issued within twenty-one days of receipt of an award challenge, the bidder may also request Tenders Board review before the end of the twenty-eighth day. In either case, the bidder shall send a copy of the request to the Ministry or Corporation.

5.04 The Tenders Board will review the matter and issue a decision within thirty days of receipt of a bidder's request. On an exceptional basis, if more time is needed, the Tenders Board shall so inform the bidder. The decision of the Board will be final, provided that if the bidder believes that such decision is not consistent with these Guidelines or is otherwise contrary to law, it may appeal to court within six months of its receipt of the Tenders Board's decision

5.05 Whenever it is determined to be appropriate, after consideration of the principles and objectives of procurement as set forth in these Guidelines, an award or contract may be temporarily suspended pending decision on the award challenge. Such suspension may be implemented by the Ministry or Corporation or directed by the Tenders Board. The Cabinet may also direct such action with regard to an award subject to its approval.

5.06 The Tenders Board may issue and from time to time amend detailed procedures, forms and guidelines regarding award inquiries and challenges.

V. EXCLUSION OF SUPPLIERS AND CONTRACTORS

6.01 A contractor or supplier may be excluded from participating in procurement in the event of (1) debarment or suspension (see para. 6.02 below); (2) declaration of ineligibility due to misconduct (see para. 6.03 below); or (3) a conflict of interest (see para. 6.04 below).

6.02 A firm or individual may be debarred for a period of one to three years in the event of indictment or conviction of any offense involving a lack of business integrity, or for any other cause that seriously and directly affects its suitability as a Government contractor, subcontractor or supplier. When necessary to protect the Government, firms or individuals being considered for possible debarment may be suspended for a temporary period not to exceed six months. Proposals to suspend or debar may be made at any time by a Ministry or Corporation, and must be approved by the Tenders Board prior to implementation. Prior to debarment for any reason other than indictment or conviction, and when practicable prior to suspension, the firm or individual concerned shall be given written notice of the proposed action and the basis

therefore, as well as an opportunity to request a hearing or submit written evidence in mitigation or opposition.

6.03 Bidders shall be declared ineligible for an individual award if they are determined to have provided false information on eligibility, qualifications or other important matters; bid in the name of others; offered or given improper inducements to persons involved in the evaluation and award process; colluded with other bidders; engaged in unfair competition; or otherwise acted in such a manner as to undermine the integrity of the procurement process.

6.04 A firm that has provided consulting services for the preparation or implementation of a project, and any of its affiliates, shall not also provide goods or works for such preparation or implementation.

VI. INTEGRITY IN PROCUREMENT

7.01 It is the Government's policy that all persons involved in procurement must observe the highest standards of ethics during procurement, contracting and contract performance. Corrupt, fraudulent, collusive and coercive practices are strictly prohibited and will be subject to punishment to the fullest extent provided by law or these Guidelines. Government personnel shall observe all applicable civil service standards of conduct and ethics, and shall act fairly and objectively, without fear or favor, in the public interest. All participants in procurement transactions shall act in a manner that is beyond reproach, avoids malpractices, combats corruption, and promotes public confidence in the integrity of the process.

7.02 Audits and inspections are an important safeguard for the integrity of procurement as with all other types of public expenditure. Accordingly, Government personnel shall cooperate fully with auditors and inspectors in the performance of their duties. Contractors, subcontractors and suppliers shall also cooperate and provide access to pertinent books and records in accordance with the terms of the relevant contracts.

VII. CONTRACT ADMINISTRATION

8.01 Government personnel are responsible to exercise sound contract administration so as to ensure that the public interest is protected after award. Contractors and suppliers shall be treated fairly and in accordance with the law, but still be held strictly to the proper performance of their obligations. The Government's rights should not be waived or relinquished except upon receipt of valid consideration therefore.

8.02 Contracts shall be closed out as soon as possible after physical completion and audit. Standard Government practices and procedures will be followed when applicable.