

THE GUYANA LEGAL & POLICY FRAMEWORK FOR PUBLIC PROCUREMENT

GUIDE TO THE PUBLIC PROCUREMENT PROCEDURES

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PREFACE

Purpose

This Manual fulfils two very important functions to help the functioning of the public procurement process, that is:

- As a reference tool to help the everyday workings of those Officials responsible for public procurement; and
- Providing a technical teaching aid for those Officials who will act as coaches and mentors to their peers.

It serves as a comprehensive set of procurement procedures for all Procuring Entities within Guyana.

These provisions cover all goods, services and works in accordance with the countrywide Procurement Act 2003 and subsequent Procurement Regulations.

As such, the Manual provides continuity and standardization of the Public Procurement process, while maintaining accountability, responsibility and transparency of the procurement process.

Applicability

These Procedures apply to all Procuring Entities within Guyana and are defined in Section 3 of the Procurement Act, except as otherwise provided in subsection (2), which states that the Act does not apply to procurement involving national defence or national security.

Implementation

The responsibility for implementing and administering the provisions of this Guide remains with the Procuring Entities, which are subject to the monitoring procedures of the Public Procurement Commission as well as the National Procurement and Tender Administration (NPTA).

Reference

The Procurement Act for Guyana, together with the Implementing Regulations and Procurement Manual, set out the legal and administrative framework for public procurement procedures provided in this document.

Contracts to which the Law Applies

The procedures apply to:

- All public procurement for the provision of supplies, works and services including those subsidised directly or indirectly by Procuring Entities.

They apply to all contracts above stipulated thresholds, except for the General Exclusions set out in the following paragraph.

Contracts Exempted from the Law

The procedures do not apply to:

- Procurement involving national defence or national security;
- Where and to the extent that the Procuring Entity, subject to the approval of the National Board, expressly so declares to suppliers or contractors when first soliciting their participation in the procurement proceedings;
- Procurement funded by Multilateral Development Banks and similar external agencies such as the IDA, IADB, CDB, EU, the Millennium Fund, etc., which are governed by the procurement rules of the funding agency agreed to by the GoG.

Amendments to this Manual

From time to time the provisions of this manual will require additions, deletions or changes. Any amendments or changes will only be made by the Public Procurement Commission or, until it is established, the National Board, which shall be responsible for the process and procedures.

GLOSSARY OF ABBREVIATIONS & ACRONYMS

BPC	Bid Protest Committee
CDB	Caribbean Development Bank
CIF	Cost Insurance Freight
CIP	Cost Insurance Paid
CITES	Convention on International Trade in Endangered Species
DRB	Dispute Review Board
EC	Evaluation Commission
EU	European Union
EOI	Expression of Interest
EXW	Ex Works
FIDIC	International Federation of Consulting Engineers
GCC	General Conditions of Contract
GoG	Government of Guyana
IADB	Inter-American Development Bank
ICB	International Competitive Bidding
ICC	International Chamber of Commerce
ICT	International Competitive Tendering
IDA	International Development Association
LOI	Letter of Invitation
MDB	Multinational Development Banks
MTB	Ministerial Tender Board
NB	National Board
NCB	National Competitive Bidding
NTPA	National Procurement and Tender Administration
PE	Procuring Entity
PPC	Public Procurement Commission
PPL	Public Procurement Law
PPOs	Public Procurement Officers
PR	Procurement Regulations
PQ	Prequalification
RFQ	Request for Quotation
RTB	Regional Tender Board
SBDs	Standard Bidding Documents
SBDSW	Standard Bidding Documents for Small Works
SCC	Special Conditions of Contract
SQS	Selected Qualified Suppliers
TB	Tender Board
ToR	Terms of Reference
UNCITRAL	United Nations Commission on International Trade Law
WTO	World Trade Organization

SECTION 1 GUYANA PUBLIC PROCUREMENT LEGISLATIVE FRAMEWORK

Part 1

OVERVIEW OF THE PUBLIC PROCUREMENT LAW

The Procurement Act of 2003 is the legislative framework that establishes the rights, obligations and responsibilities of all parties in the procurement procedures. It sets out procedures for the control of the public procurement to ensure that public funds are used in the most cost-effective manner.

The legal framework:

- Is valid for the whole country;
- Is harmonised with the WTO, bringing the Guyana regulatory framework in line with international standards;
- Stimulates competition;
- Is implemented and maintained through the support of the Public Procurement Commission and the National Procurement and Tender Administration (NPTA).

The legal framework is composed of:

- Procurement Act
- Implementing Regulations
- Procurement Manual

The main principles of the Act are outlined in the following paragraphs.

The Act

PART I & II COVERS THE PRELIMINARY AND GENERAL PROVISIONS OF THE ACT, including:

- Principles and Definitions
- Scope of Application
- Common Provisions

The **principles** of cost-effective use of public funds and equal treatment of suppliers are stated in the Procurement Act.

Part I, section (3), defines which are the **Procuring Entities** that are subject to apply the provisions of this Act, i.e. any administrative authority (at State, Entity or Local level), public entities and public enterprises (for example, providers of public services and utilities).

The **Law does not apply to** procurement contracts related to national defence or financed by international donors (Part I, section (2)).

The **Procuring Entities** shall use the provisions of this Act and Implementing Regulations to award their **public works, supplies and services** (Part II).

Every supplier or contractor wanting to participate in procurement proceedings are eligible to participate equally provided that a participant:

- (a) has legal capacity and is not insolvent;
- (b) In the case of Guyana firms, has paid its taxes and social security contributions;
- (c) has not been convicted of a criminal offence relating to professional conduct;
- (d) Has not misrepresented its qualifications in the previous 10 years;
- (e) has not been disqualified or debarred by GoG in the previous 3 years;
- (f) has satisfactory past performance; and
- (g) meets the prescribed qualifications as to its ability to perform the eventual contract.

At the beginning of the procurement procedure the Procuring Entity estimates the **contract value**. That value determines the procurement procedure. The **thresholds values** are the contract values above or below which a specific procurement procedure is applicable (Procurement Regulation, Schedule 1). As a general rule, **open competition** is to be pursued by the Procuring Entity. The relations between threshold values and procurement procedures will be further explained in the following sections of this guide.

PART III - ADMINISTRATIVE STRUCTURE FOR PUBLIC PROCUREMENT

Implementation and enforcement of the Act is effected through the Public Procurement Commission (Section 17, subsection (2) and Implementing Regulations) and the National Procurement and Tender Administration (NPTA) (Section 16, subsection (1) and Implementing Regulations). The Administration shall be managed by the National Board (Section 16, subsection (2)).

The National Board (NB) exercises jurisdiction over the country tender process, reporting to the Ministry of Finance, with policy-making, advisory, oversight, monitoring and information functions .

The NB has its seat in Georgetown, Guyana, and its function is to ensure the proper implementation of the Act by:

- Proposing amendments to the Act, in order to keep it up-to-date with Guyana's needs and international standards;
- Providing advice to both Procuring Entities and bidders on the interpretation and application of the Act;
- Providing access to information on public tenders and conducting bid openings;
- Monitoring the activities of public procurement throughout the country and collecting relevant information.

PART IV - METHODS AND PROCEDURES

Part IV describes the procurement methods a Procuring Entity appropriately shall decide to award a public contract by open, restricted, request for quotations or single-source according to respectively Section 25, 26, 27 or 28 of the Act, or to launch a two-stage tender according to Section 31 of the Act. Contract Notices for contracts of a value above the high financial threshold shall be published on the NTPA website.

The Act, while encouraging competition, also ensures the protection of the Guyana economy, by insuring fair and open **competition for all suppliers and contractors**.

PART V - PROCEDURE FOR OPEN TENDERING

Part V describes the open tender system, invitation to tender, submission of tenders, use of bid security, their purpose and the form in which they are to be submitted, as well as the examination and evaluation of tenders.

PART VI - METHOD FOR PROCUREMENT OF CONSULTING SERVICES

Part VI describes the steps involved in the procurement of consultant services and the different choices for the selection of the successful firm.

PART VII - ADMINISTRATIVE REVIEW

Part VII describes administrative review procedures such as rights of interested persons, and responsibilities of the Procuring Entity, Bid Protest Committee, Public Procurement Commission and Cabinet.

PART VIII - MISCELLANEOUS

Part VIII describes the responsibilities of Tender Board, Evaluation Committee members or any person concerned with the administration of the Act, to consider all information confidential.

The Implementing Regulations

The Procurement Regulations (PR) were adopted 25, November 2004 to clarify and further develop some of the rules stated in the Act.

Part I - General Provisions

This section details the rules relevant to:

- Application of PR;
- Interpretation;
- Objective.

Part II - Publicity

This section details rules relevant to:

- Publication of contract awards and other data.

Part III - Threshold Values

This section establishes the:

- Review by Tender Boards, and
- Exceptions to Open Tender.

Part IV - Procurement Procedures

This section details rules relevant to:

- Forms of documents for procurement, and
- Tender security.

Part V - Administrative Review

This section details rules relevant to:

- Right to complain;
- Complaints to Procuring Entities;
- Bid Protest Committee;
- Procedure for review by the Bid Protest Committee;
- Suspension of procurement proceedings;
- Support provided by the administration to the Bid Protest Committee.

Schedules

Schedule 1: Threshold for Review by Tender Boards

Schedule 2: Exceptions to Open Tendering

Part 2

DEFINITIONS

The following terms, defined within Part 1 of the Procurement Act, are set out for the purposes of this manual:

(a) “Administration” means the National Procurement and Tender Administration established under section 16;

(b) “Appropriate board” means, as the context requires, the National Board, the Ministerial Board, a Regional Board, a District Board, a Departmental Board or an Agency Board;

(c) “Construction” means all works associated with the construction, reconstruction, demolition, repair or renovation of a building, structure or works, such as site preparation, excavation, erection, building, installation of equipment or materials, decoration and finishing;

(d) “Consulting services” means services of an intellectual nature which do not lead to a physically measurable result;

(e) “Currency” means monetary unit of account;

(f) “Domestic supplier” means a supplier having his principal place of business in Guyana.

(g) “Goods” includes raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form, and electricity;

(h) “Minister” means the Minister of Finance;

(i) “National Board” means the National Procurement and Tender Board established under section 16.

(j) “Procurement” means the acquisition of goods by any means including purchase, rental, lease or hire-purchase, and the acquisition of construction, consulting, and other services;

(k) “Procurement contract” means a contract between the procuring entity and a supplier or contractor resulting from the procurement process;

(l) “Procuring entity” means the procuring entity of any ministry, department, agency or other unit, or any subdivision thereof, of the Government, that engages in procurement;

(m) “Public Procurement Commission” means the Public Procurement Commission referred to in article 212W of the Constitution.

SECTION 2 INTRODUCTION TO PUBLIC PROCUREMENT PRINCIPLES AND POLICY

Part 3

PRINCIPLES OF PUBLIC PROCUREMENT

Three fundamental principles underline the Guyana Procurement Act: equal treatment or non-discrimination; transparency and confidentiality of tenders.

Equal Treatment

The principle of “equal treatment” or “non-discrimination” requires that similar situations are treated in the same way. This principle prohibits discrimination based on nationality, and covers other forms of discrimination, which, by applying other criteria of differentiation, lead *de facto* to the same result. The following are indications of where discrimination might occur and how to avoid it:

- Tenderers should receive an equal amount of information *at the same time*;
- Specifications should not be designed using specific brands and products;
- All offers to be considered should conform to the tender specifications in order to guarantee an objective comparison between them;
- All criteria intended to apply to the award should be set out in the tender documents, if possible in descending order, so that all tenderers are aware of the criteria and their relevant importance.

Transparency

The aim of transparency is to ensure undistorted competitive conditions between the suppliers or contractors in the market, and to allow them to monitor compliance with the procurement rules.

Elements of transparency include:

- Solicit tenders either in newspapers of wide circulation or on NTPA website;
- Clear and objective rules;
- Published information on the conduct of the procedure;
- Complaints or appeals process.

Individual procurement proceedings should be publicised as early as possible in the newspapers of wide circulation and on the NPTA website. These notices should contain all the necessary information to enable potential tenderers to decide whether or not they are interested in participating in the procurement.

All participants should know and be clear of the “rules of the game” meaning that procurement procedures should be formalised and transparent by employing objective selection and award criteria.

Participant suppliers or contractors must be provided throughout the process with precise information concerning the conduct of the entire procedure.

Bidders should be provided with the opportunity to challenge any decision by means of an effective review procedure.

Confidentiality of Tenders

All tenders should be kept in a safe and secure environment to ensure that the confidentiality of tenders and requests to participate are preserved. Confidential information may include technical or trade secrets.

The principle of confidentiality obligates the Procuring Entity/Evaluation Committee not to examine the content of requests to participate, and of tenders, before the deadline for their submission has expired.

Infringement of the prohibition should be reported, and may carry serious penalties for the offending party.

Part 4

THE GUYANA PUBLIC PROCUREMENT ORGANISATIONAL FRAMEWORK

General Provisions

All officials and other employees connected in any way with the procurement of goods, services or works, are required to meet the highest standards of professionalism when carrying out their duties.

Whatever their role in the public procurement process, directly or indirectly, whether it be planning, requisitioning, ordering, producing documents, making approvals, maintaining documents and records, ensuring payments are made on time, they are responsible for carrying out their duties with due diligence and in the proper manner.

A quality system for approved public procurement is dependent upon all the activities in the Supply Chain (fig 1) being carried out in a timely and accurate

manner, and in accordance with the Statutory Instruments and Procedures of Guyana.

Where possible, each of these activities should be carried out by different staff. But if this level of separation cannot be achieved, for instance in smaller Procuring Entities, the minimum requirement must be to separate responsibility for issuing contracts from that for the receipt of goods.

The organisational framework for public procurement in Guyana is described in the next pages. A summary of the role of each key body is given in the following paragraphs.

Public Procurement Commission (PPC)

Article 212 w of the Constitution requires formation of a Public Procurement Commission with members to be appointed by the President and approved by the National Assembly. Its role will be to monitor public procurement and the procedures in order to ensure that the procurement of goods, services and execution of works are conducted in a fair, equitable, transparent, competitive and cost effective manner, according to law and such policy guidelines as may be determined by the National Assembly. The PPC has not yet been appointed.

National Procurement and Tender Administration (NPTA)

The National Procurement and Tender Administration (NPTA) reports to the Minister of Finance (Section 16, Par (1)). The Administration shall be managed by a National Board (NB). The National Board exercises jurisdiction over the country tender process and reports to the Ministry of Finance, with policy-making, advisory, oversight, monitoring and information functions.

For actual tendering and contracting, the NB shall have jurisdiction over all contracts above the threshold published in the Regulations (Section 17). In respect of these contracts, the concerned region, ministry, project unit shall carry out the planning, pre-qualification, preparation of tender documents and advertisement. The tender shall be submitted to the NB, which shall carry out the opening, evaluation and selection of the successful bid. Procurements which are in excess of G\$ 15 million shall be submitted to the NB to be placed before the Cabinet for approval of the NB recommendation. In the case of other smaller value contracts the recommendation shall be approved by the NB. The approval of the successful bid will then be communicated to the ministry, region, etc., which shall issue the notice of award, sign the contract and supervise its implementation. In order to assist in the evaluation of bids and proposals the NB may appoint a pool of evaluators drawn from the regions, ministries, etc., or selected from outside the public service (Section 17, par. (1)).

For each procurement process, the NB shall appoint an Evaluation Committee comprising of three members (Section 17, par. (4)).

The Act also states that pending the establishment of a Public Procurement Commission¹, the NB shall be responsible for (Section 17, subsection (2) (a) (b) (c) (d) (e) (f)):

- a) Making regulations governing procurement to carry out the provisions of this Act;
- b) Determining the forms of documents for procurement including, but not limited to:
 - (i) standard bidding documents;
 - (ii) prequalification documents;
 - (iii) contracts;
 - (iv) evaluation forms; and
 - (v) procurement manuals, guidelines and procedures.
- c) Organizing training seminars regarding procurement;
- d) Reporting annually to the Minister on the effectiveness of the procurement process and recommending therein any amendment to this Act that may be necessary to improve the effectiveness of the procurement process;
- e) As provided in section 53, upon request, reviewing decisions by the Procuring Entities;
- f) Adjudicating debarment proceedings.

Regional Tender Board (RTB)

The NB shall create in each region, a Regional Tender Board of 5 people out of which 3 shall be appointed by the NB and 2 by the Regional Tender Board (Section 19, par (1)). One of the members appointed by the NB shall be the Chairman. For each procurement process under its jurisdiction, the RTB shall appoint an evaluation committee of 3 drawn from the pool of evaluators created by the NB (Section 20, par. (1)).

Ministerial Tender Board (MTB)

Every ministry, agency, etc., shall establish a Ministerial Tender Board (Section 22, par 1) comprising 5 members out of which 3 shall be appointed by the minister and 2 by the NB. These boards shall oversee the administration of procurements under its jurisdiction. Each Ministerial Tender Board shall nominate for consideration by the NB qualified evaluators to serve on Evaluation Committees (Section 23, par (1)).

Public Corporations

Public Corporations and other such bodies may conduct procurement according to their own rules, which shall be compatible with the Act and Regulations (Section 24, par (1)). In case of conflict the Act and Regulations

¹ Article 212 of the Constitution of Guyana provides for the creation of an independent Public Procurement Commission to ensure that public procurement takes place in a fair, equitable, transparent, competitive, and cost-effective manner.

shall prevail. However for procurements funded by the Treasury, the procedures outlined in the Act and Regulations shall apply.

Procurement Unit

Procurement units are responsible for conducting all procurement activity, in consultation with end users and subject to the Permanent Secretary's approval of key stages in the process. Each Procuring Entity will normally have its own procurement unit, although Procuring Entities with low levels of procurement may share a procurement unit.

Procurement units will be staffed by procurement professionals, who are members of the procurement cadre. NPTA will set the qualification requirements to be met by procurement staff.

Procurement units will manage all aspects of procurement activity, using specialist advice where required, including:

- procurement planning;
- drafting pre-qualification, bidding, request for proposals and request for quotations documents, along with invitation notices and shortlists;
- issuing invitation documents, receiving tenders and closing bidding at the time of the bidding deadline;
- assisting the Ministerial Tender Board with public bid openings;
- evaluating tenders, proposals and quotations and preparing evaluation reports;
- conducting post-qualifications and negotiations, where required;
- package and forward all tenders above the threshold to the National Tender Board;
- making contract awards;
- issuing contract award notices;
- preparing and issuing contract documents and purchase orders;
- administering contracts, and preparing and issuing contract amendments.

End User

End users are responsible for initiating procurement requirements and preparing technical descriptions of their requirements. They will often be

called on by the procurement unit to provide technical inputs, particularly to evaluations. The end user may also be assigned responsibility for the day-to-day administration of contracts. Although the procurement process is managed by the procurement unit, this will always be done in consultation with the end user, to ensure that it meets the user's needs.

Audit

All aspects of procurement activities are subject to examination by Internal Audit against the standards and procedures set out in these Guidelines, and the relevant Acts of Guyana.

All purchasing decisions must be supported by a properly documented audit trail detailing the purchasing process and the reasons for selecting the successful supplier (fig 1).

Part 5

ETHICS IN PUBLIC PROCUREMENT

All business should be conducted in an atmosphere of mutual confidence and trust. It is essential that all National Board, Ministerial Board, Regional Board, District Board, Departmental Board, Agency Board, Evaluation Committee or person concerned with the administration (Part VIII, Section 55 (1)) of the procurement process maintain the highest standards of professional conduct in their business relationships.

The basic goals for the ethics in public procurement are:

- Confidence in the public procurement process;
- Professionalism;
- Quality of Services;
- Confidence of employees in carrying out their duties under the Code.

To accomplish these goals, the fundamental basic principles of impartiality, independence and integrity apply, and should be followed at all times. This means that:

- There should be no suspicion of conflict between official duties and private interests;
- Suspicion of corrupt practice should be immediately reported;
- No impression should be given that actions will be influenced by a gift or favour;
- Dealings with suppliers must be honest, fair and even-handed.

All procurement staff involved directly or indirectly in the procurement process (Part VIII, subsection (3)) are subject to the following:

- (a) They shall not engage in personal, business or professional activity, nor hold a financial interest that conflicts with the duties and responsibilities of their position;
- (b) They shall not solicit, accept, or agree to accept, any gratuity for themselves, their families or others which results in personal gain, and which may affect their impartiality in making decisions on the job;
- (c) They shall not directly or indirectly use, take, dispose of, nor allow the use, taking or disposing of any property or resources belonging to any Procuring Entity.

Every member of the staff involved in public procurement should be issued in writing with the Procurement Act. It should also be re-circulated annually to all staff with procurement responsibilities, who should acknowledge having read it to the Procuring Entity.

Conflict of Interest

Employment in public procurement is a position of public trust, and requires all staff to maintain a special awareness of that trust. All staff must avoid a conflict or appearance of conflict between their public employment and private lives. They must avoid any action, whether or not specifically prohibited by the Act, which results in or may create the appearance of:

- (a) Using public office for private gain;
- (b) Giving preferential treatment to any person or entity;
- (c) Impeding the efficiency or economy of the Procuring Entity which fails to give full value for public money;
- (d) Losing independence or impartiality;
- (e) Adversely affecting the confidence of the public in the integrity of the public procurement process.

Staff are expressly forbidden to accept gifts, bribes or kickbacks from tenderers, suppliers, service providers, contractors of equipment, materials, goods, services or work (Part VIII, subsection (4)).

Conflicts of Interest, actual or potential, must be reported to line managers. A "Hospitality Register" should be maintained for staff to record offers of hospitality, whether accepted or not. This record should be periodically reviewed by the Auditor and be available for inspection by the review Bodies, if so required.

Staff violating ethics and public trust are subject to the provisions (Part VIII, subsection (4)) of a fine of 3,000 dollars and to imprisonment for six months.

Part 6

ENVIRONMENTAL ISSUES AND VALUE FOR MONEY

General Policy

When procuring goods and services, including works, the emphasis on whole life costs means that procuring entity are required to take account of all aspects of costs, as well as the initial purchase price. In setting out their requirements so far as quality is concerned, procuring entity can contribute to environmental matters, while meeting their own operational and policy objectives.

The key aims of model environmental procurements are as follows:

- Conserving energy, water, wood, paper and other resources, particularly those which are scarce or non-renewable - while providing a safe and comfortable working environment;
- Reducing waste through re-use and recycling, and by using refurbished and recycled products and materials where such alternatives are available;
- Monitoring discharges and emissions to air, land and water to assess what action is necessary to reduce pollution or the risk of pollution;
- Phasing out ozone-depleting substances and minimising the release of greenhouse gases, volatile organic compounds, vehicle emissions and other substances damaging to health and the environment;
- Encouraging manufacturers, suppliers and contractors through specifications to develop environmentally preferable goods and services at competitive prices;
- Ensuring that any products derived from wildlife such as timber, plants and leather goods are from sustainable sources and comply with EC and international trading rules such as CITES (the Convention in International Trade in Endangered Species);
- Working with contractors to improve environmental performance where this is relevant to the contract and to the achievement of value for money;

- Meeting relevant statutory regulations and official codes of practice and specifying contractors to do the same when working on official premises.

Drawing up specifications based on these criteria can contribute significantly to the achievement of targets for reducing environmental impacts. Although the aim must be to achieve value for money, not to further other policy, it should not be overlooked that legitimate requirements laid down by Procuring Entities can have an influence in assisting the development of goods and services which are less harmful to the environment.

Value for Money

Examples of the environmental factors that need to be considered in assessing whole life costs include:

- Running costs such as the energy or water consumed by the product over its lifetime;
- Indirect costs, e.g. less energy efficient IT equipment will produce more heat causing air conditioning in buildings to work harder to remove it so adding to the electricity bill;
- “Spend to save” measures, e.g. specifying higher levels of insulation where the extra expenditure can be recouped by lower energy costs;
- Not generally insisting on new items when refurbished parts or products could be used;
- Recyclability, e.g. purchasers can create markets for their own waste such as paper, toner cartridges, etc., by buying products containing recycled materials; furthermore, a recycled product, e.g. a refurbished toner cartridge, may cost less than a new one;
- Costs of disposal arrangements, e.g. it may be worth paying a premium to a supplier giving an undertaking to remove the product or hazardous substance at the end of its useful life.

Procuring Entities should not use their purchasing power as a means of pursuing wider environmental ends (i.e. those outside the scope of the contract). For example, while they are free to specify paper made out of recycled materials, they should not limit its field of selection to providers who only supply recycled paper. The unwarranted rejection of suppliers capable of meeting the specification could lead to both a loss of value for money and a breach of competition rules.

The award of contracts should not be made subject to criteria or conditions of an environmental nature, which are not directly relevant to the product or service being procured.

Value for Money and Whole Life Costs

The whole Life Costs of a purchase can be affected by the factors listed below:

1 Status of Firms Involved

- Financial viability
- Design capability
- Production capacity
- Quality Assurance status and track record
- Cost Management arrangements and track record
- Delivery Record

2 Equipment Offered

- Extent to which it meets minimum requirement
- Design/artistic qualities (where appropriate)
- Compatibility with equipment already in use
- “Extras” above minimum requirement which offer cost-effective advantage
- Scope for improvement or “stretch” by later modifications or “add-ons”
- Conformity to standards
- Maintainability
- Defect reporting and rectification arrangements
- Repair/servicing arrangements

3 Immediate Cost of Acquisition

- Initial price
- Firmness of price
- Basis for agreeing prices on associated or follow-on orders
- Differences in cost escalation formula
- Foreign exchange risks and costs
- Payment terms
- Cost of financing interim payments
- Financial guarantee requirements
- Duties and taxes
- Credit terms
- Transport costs
- Installation costs
- Cost of working capital for stocks
- Discounting factors
- Warranties and technical guarantees
- Product liability arrangements
- Scope for, and cost of, accelerating or delaying procurement

4 Delivery

- Conformity with requirement
- Reliability of offer
- Operational and financial effects of earlier/later delivery
- Cost and trade offs with stockholding costs at various locations
- Liquidation of damages

5 Operating Costs

- Running costs
- Costs of spares
- Servicing and maintenance costs
- Storage and other support costs

6 Product Support

- Availability and quality of after-sales service
- Ease of legal recourse to supplier

7 Replacement Arrangements

- Receipts from or costs of eventual disposal
- Commitment to particular replacement equipment
- Replacement timeframe

8 Strategic and Structural

- Safeguarding of vital sources of supply
- Length of the supply chain and its vulnerability to disruption
- Offset considerations
- Effect of procurement on price, availability and competition for future supplies, including supplies for other public purchasers.

SECTION 3

PUBLIC PROCUREMENT METHODS AND STRATEGIES

Part 7

COMPETITIVE TENDERING AND AWARD PROCEDURES

Competition

Good procurement of goods and services is sometimes described as the five rights of:

- Quality
- Quantity
- Time
- Source
- Price

Competition is an essential ingredient in achieving this and promotes effectiveness in procurement, discourages monopoly situations and avoids favouritism.

A balance needs to be achieved when deciding on how many suppliers should be asked to participate in the tendering process. If there are too many the process becomes time-consuming for both the Procuring Entity and the suppliers; if there are too few then competition suffers.

Suppliers incur costs in preparing and submitting their bids: an unnecessarily large tender list will result in much wasted effort by suppliers, which could be criticised. Generally the higher the value and importance of the requirement, the more suppliers you should invite to bid.

Advertising and Pre-Qualification

Under the Procurement Act, Section 30:

(1) A Procuring Entity shall solicit tenders by causing an invitation to tender to be published in newspapers of wide circulation and posted in public places. The invitation to tender or to pre-qualify, as applicable, shall contain a brief description of the goods or construction to be procured and shall state the deadline for submission and where the solicitation documents and additional information regarding the tender may be obtained.

(2) The invitation to tender or invitation to pre-qualify shall be published in at least a newspaper of wide circulation or at least one journal of wide international circulation dedicated to publishing international tendering wherever foreign tenderers are expected to be interested in the contract. Contracts in which only national tenderers are expected to be interested may be advertised only nationally, pursuant to subsection (1).

Advertisements and invitations for pre-qualification should conform to the provisions of the Procurement Act and have the following information:

- a) a brief description of the goods and works to be procured;
- b) the contract conditions (requirement of the Procurement Act Section 6 (1));
- c) source of funds for the procurement;
- d) eligibility requirements for potential applicants; and
- e) time and place where prequalification documents can be obtained.

In public procurement the contract should be awarded only to a bidder who has the necessary 'qualifications' to perform the contract satisfactorily in respect of quality, quantity and time.

The Procurement Act, Section 5, outlines the mandatory principles in establishing the qualifications of suppliers and contractors. Those that are considered appropriate include:

- a) technical competence, financial resources, facilities, reliability, experience and reputation of product and personnel to perform the contract;
- b) legal capacity;
- c) solvency;
- d) fulfillment of tax and social security obligations;
- e) absence of criminal record;
- f) satisfactory past performance.

The objective of prequalifications is to ensure that bidders for a contract will be only those contractors or suppliers who have the experience and technical/financial resources necessary to fulfill the contract requirements

Pre-Qualification Documents

Prequalification documents should enlarge on the information provided in the notification advertisement and contain a description of:

- a) the scope and description of the proposed procurement;
- b) the estimated value of the contract and major quantities of work;
- c) the location of the work;
- d) eligibility requirements, including eligibility requirements for domestic preference (if applicable);
- e) procurement scheduling of goods or works to be procured;
- f) abbreviated specifications and conditions of contract;
- g) main quantities to be procured;
- h) delivery or implementation schedules;
- i) requirements for bid and performance securities;
- j) the source of financing of the procurement;
- k) the contract conditions, or at least the following if full contract conditions are not yet developed:
 - l)
 - i). payment terms;
 - ii). price adjustment provisions;
 - iii). language and governing law of the contract;
 - iv). other information in sufficient detail to enable bidders, suppliers or contractors to assess their interest and respond appropriately; and
 - v). name and address of the PE and of the PE's Official in charge of the procurement with a statement of their roles.

Criteria for Pre-Qualification

The Procurement Act (Sections 5 and 6, Clause 5 and 6) states that prequalification should be based entirely upon the technical, managerial and financial capabilities of prospective bidders to perform the particular contract satisfactorily. Where the prime contractor proposes to use the services of major specialist subcontractors, their names and experience should also be solicited.

Evaluation of PQ Applications

The evaluation of prequalification applications should be based on compliance with quantifiable clearly identified minimum thresholds, which establish the capability of an applicant to carry out the contract satisfactorily. Applicants are prequalified if they meet all the required criteria on a pass/ fail basis.

Notification to Applicants

Section 6 (6) of the Procurement Act specifies that PE shall promptly notify each supplier or contractor who participated, whether or not it has been prequalified, and shall make available to any member of the general public, upon request, the names of all who have been prequalified. Promptly after the notification of the results of the prequalification the PE shall invite bids from all the Applicants that have been prequalified.

Bid documents should be issued only to prequalified Applicants. Verification of the information provided in the prequalification Application shall be confirmed at the time of award of contract, and award may be denied to a bidder that is judged to no longer have the capability or resources to successfully perform the contract.

Defining the Contract

The first important step of the procurement procedure is for the Procuring Entity to determine:

- i) the subject;
- ii) the total value; and
- iii) the duration of the contract.

These characteristics will determine the type of procedure to be used, and the various legal obligations in terms of publicity.

Subject of the Contract

The Procuring Entity should provide a full and accurate description of the goods, services or works required.

The technical specifications should be clear and easily understood, and should be based on the function of the requirements. Brand names should be avoided.

Threshold Values

The Procedures apply to all contracts with the threshold values described in Part III of the Implementing Regulations (Schedules 1 & 2): Thresholds for Review by Tender Boards and Exceptions to Open Tendering, shown in *Fig 2*.

Estimating the Value of the Contract

The estimated value of a contract should not be calculated in such a way as to circumvent the rules on the procedures to be used.

A contract may not be split for the purpose of avoiding competitive tendering or circumventing threshold limits.

The value of a contract must not be increased to exceed the threshold value of the specific procedure followed.

The suppliers or contractors' total price should include all applicable taxes, duties and other charges.

Long Term Contracts

- The contract values must cover the total estimated cost for the intended duration of the contract.
- In contracts for goods for 1 year (twelve months) the total value should include the residual value.
- Where contracts are to be awarded regularly, or are to be renewed within a specified period of time, the contract value is established on the basis of the actual aggregate cost of similar contracts or services awarded over the previous twelve months or financial year, adjusted where possible for anticipated changes in value or quantity.
- In the case of fixed-term service contracts which do not specify a total price or supply contracts for leasing, rental or hire purchase of products, less in the case of services of twelve months or less in the case of supplies, the basis for calculating the estimated value is the total contract value for their duration.
- In the case of works contracts, the estimated contract value should include:
 - i) the value of the works;
 - ii) the estimated total value of any supplies needed to carry out the works;

- iii) any associated services, if made available to the contractor by the Procuring Entity.

Lots and Options

- Where a contract provides for options, the basis of the calculation must be the amount authorised, including options.
- In the case of contracts made up of a set of products or services serving a similar purpose, and where the combined value is such that few suppliers or contractors would be able to provide them all, the contract should be divided into LOTS.
- Any competent supplier or contractor can tender for one or more lots.
- The value of certain contracts must include:
 - Insurance premiums;
 - Financial Services or Banking; fees, interest and other types of remuneration.

Duration of the Contract

All contracts must be for a limited period; this also applies to contracts covering operations of a repetitive nature or for which the tendering procedure must be repeated at regular intervals.

In the case of one-off operations, the contract should be self-evident from the full, clear and detailed technical subject of the contract.

The duration of framework contracts may not exceed (left blank) years, unless in exceptional cases this is justified by the particular subject of the contract, and authorised by the NPTA.

Types of Contract

The three types of contract defined within the Act are:

- i) Contracts for Goods
- ii) Contracts for Services
- iii) Contracts for Works (construction)

A Contract for Goods is defined as:

“... a written contract for pecuniary interest involving the purchase, raw materials, products, equipment and other physical objects of every kind and description, whether in solid, liquid, or gaseous form, and electricity.”

A Contract for Services is defined as:

“... a written contract for pecuniary interest relating to the provision of non-exempted² services, and which is not a supplies or works contract.”

A Contract for Works is defined as:

“... A written contract for pecuniary interest having as its object either the execution, or both the execution and design, or works, which is an integral part of the Act, or the realisation, by whatever means, of a work corresponding to the requirements specified by the Procuring Entity. A “work” means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.”

Tendering Methods

The Procurement Act 2003 prescribes a set of methods of procurement that are basically the same for goods, services and works, whether International Competitive Tendering (ICT) or National Competitive Bidding (NCB) is used. The Procuring Entity is required to keep a strict record of all procurements below the threshold. All the relating documents must be archived in the proper manner, according to the Procurement Act.

The Procuring Entity can choose between Open and Restricted procedures, whereas Request for Quotation procedures can only be used in clearly defined circumstances.

The main types of procedure established in the law are:

- Open;
- Restricted (The current threshold is G\$ 1 million for goods and G\$ 5 million for works);
- Request for Quotation (The current threshold is G\$ 800,000).

In addition, there are provisions for:

- *Single-source Procurement* for goods or construction when available only from a particular supplier or contractor, or involving national defence or national security;
 - *Carrying out Procurement through Community Participation* in poor remote communities (The current threshold is G\$ 1,500,000).
-

Important Reminder with Regard to the Type of Procedure to be Applied

The Open Procedure with publication of a notice in newspapers of wide national circulation and simultaneously published on the NTB website should always be regarded as the first choice. The other procedures constitute the minimum to be followed in each case. *Part IV, section 25, of the Procurement Act.*

Open Method

The open method should always be used for any procurement proceedings, unless the conditions for the use of the exceptional procedures apply.

All suppliers or contractors who are interested must meet the minimum technical and financial criteria set out by the Procuring Entity.

The open method allow for the maximum of competition, therefore is regarded as offering the most economic results and most advantageous contracts to the Procuring Entity.

A Procuring Entity may choose to adopt 'two-stage' tendering for complex equipment, etc., in which it would be difficult to prepare detailed specifications. In the first stage following open advertising, bidders will be requested to submit only the technical proposals in response to a conceptual design, without price. These will be then studied, discussed with each tenderer, and the tender documents and specifications revised appropriately along with precise evaluation methodology. At the second stage, the revised tender documents will be issued to those who have demonstrated qualification, inviting final technical and price bids which will be publicly opened and evaluated. Two-stage tendering may be preceded by pre-qualification.

The process, with the time limits, is described in *Fig 3*.

Restricted Tendering

In a restricted tendering procedure (two-stage), only those respondents who have been selected to participate following a pre-qualification procedure may submit tenders.

A procurement notice is published in newspapers of wide national circulation describing the characteristics of the contract and clearly indicating the criteria to be used for selecting the candidates. Any interested supplier or contractor will be invited to request the pre-qualification documents.

Only the selected candidates will receive the tender documents and be allowed to tender. It is recommended that a limited number of candidates be selected to satisfy the selection criteria, otherwise the Procuring Entity may decide to cancel the procedure.

This procedure may be used for large or complex procurements, which require a pre-qualification procedure.

When the restricted tendering procedure is used, only suppliers or contractors invited by the Procuring Entity due to their qualifications can submit tenders. All other steps and requirements applicable to open tendering, as set forth in Part V of the Act, shall be complied with.

When making the decision to apply the Restricted Tendering Procedure, the Procuring Entity takes account of:

- aspects related to the nature of the contract;
- the time frame involved;
- the estimated cost of the contract (below the threshold set forth in the regulations);
- the costs involved with running the two-step procedure;
- the market situation;
- the prospective/expected number of tenderers.

Consideration of these factors will help the Procuring Entity decide whether or not the use of this procedure is justified.

Principles involved with appraising Supplier or Contractor under the pre-qualification procedure.

The only considerations to be taken account in appraisal are:

- Financial and Economic Standing;
- Technical Capacity;
- Ability.

In general, the principles in appraising Supplier or Contractor under the pre-qualification procedure are:

- a) All must be appraised technically and financially on the same basis.

The criteria to be used must be put down in writing, in advance of drafting the notice.

Information requested in the *contract notice* must only be that required to carry out the appraisal.

- b) The number of candidates selected to receive the tender documents must fall within the range specified in the contract notice, unless there are fewer candidates.

The process, with time limits, is described in the diagram *Fig 4*.

Request for Quotation

Under the Request for Quotation (RFQ) procurement method, the Procuring Entity is responsible to request not less than 3 firms to submit a written quotation and the lowest is selected for award. The supplier or contractor can be called by telephone or contacted by fax and invited to submit a price quotation.

There is no specific requirement imposed by the rules on how to choose the companies to be invited. However, compliance with the principles common to all public contracts, namely transparency, proportionality, equal treatment and non-discrimination is required.

Under this procedure only the award criteria of lowest price can be used. The various stages are not laid down in detail in the rules. In practice, the procedure may be conducted as in an open procedure.

This is much less formal than the open or restricted tender method, and does not require a tender document or public opening, etc. The method is mainly used for small value procurements. Currently, the Regulations fix this threshold as G\$ 800,000.

Single-Source Procurement

Single-source procurement is the least preferred procurement method, but can be appropriate for proprietary items, when there is only one source; for technical compatibility; for national security reasons or for catastrophic events.

According to the Procurement Act, section 25(2) the procuring entity shall include in the record required under section 10 a statement of the grounds and circumstances on which it relied to justify the use of that particular method of procurement.

Unless there is genuine justification for it, single-source procurement should be avoided. Lack of competition reduces the prospect of achieving value for money and increases the risks of impropriety and favouritism.

Procurement through Community Participation

In the case of procurement in poor remote communities where the competitive procedures described in the Procurement Act are not feasible, goods, works and services below threshold amount prescribed by regulations (currently set at \$1,500,000) may be procured:

- (a) in accordance with procedures that promote efficiency through

participation of community organizations; or

- (b) through single source procurement from direct contracting of suppliers or contractors located near the community.

Procurement of Consulting Services

“Consulting services” can be defined as services of an intellectual and advisory nature provided by consultants using their professional skills to study, design and organize specific projects, advise Procuring Entity, conduct training, and transfer knowledge.

It is important for the Procuring Entity to distinguish between consulting services and other types of services in which the physical component of the activity is crucial. These other types of services often involve equipment-

intensive assignments using established technologies and methodologies that have measurable physical outputs - for example, field investigations and surveys such as cartography, aerial surveys, satellite mapping, drilling, computer services and installation of information systems, and plant operation and maintenance. These services are procured following procedures for procurement of goods and works.

Depending on the objectives and characteristics of the assignment, the Procuring Entity should determine the consultant selection methods and procedures.

The Procuring Entity is responsible for selecting, evaluating, awarding, and supervising the performance of the consultant under the assignment. Except where the estimated cost is beyond delegated threshold amount, the opening of proposal, evaluation and selection of winner is carried out by the NPTA.

Consultant Conflicts of Interest

It is the responsibility of the Procuring Entity to insure there is no conflict of interests. Therefore Consultants shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of being unable to carry out the assignment in the best interest of the PE.

Without limitation on the generality of the forgoing, consultants shall not be hired under the circumstances set forth below:

- a) *Conflict between consulting activities and procurement of goods, works or services (other than consulting services):* A firm that has been engaged by the PE to provide goods, works, or services (other than consulting services) for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services.

- (b) *Conflict among consulting assignments:* Neither consultants (including their personnel and sub-consultants) nor any of their affiliates, shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the consultants.
- (c) *Relationship with PE's staff:* Consultants (including their personnel and sub-consultants) that have a business or family relationship with a member of the PE's staff (or of the project implementing agency's staff) who are directly or indirectly involved in any part of: (i) the preparation of the TOR of the contract, (ii) the selection process for such contract.

Methods of Selection

The Procurement Act describes five methods of selection in the following Sections:

- *Section 46 (a)*
A combination of quality and price, according to the relative weights stated in the Request for Proposals.
- *Section 46 (b)*
The quality of the technical proposal within a predetermined fixed budget specified in the Request for Proposals.
- *Section 46 (c)*
The best financial proposal submitted by a bidder that has obtained the minimum qualifying score.
- *Section 47*
Where the consulting services are of an exceptionally complex nature, will have a considerable impact on future projects, or may lead to the submission of proposals, which are difficult to compare, the Procuring Entity may select the consultant based exclusively on the technical quality of the submitted proposal.
- *Section 49*
The Procuring Entity may engage in single source procurement where the services to be procured require that a particular consultant be selected due to the consultant's unique qualifications or where it is necessary to continue a project with the same consultant.

The choice of the appropriate method of selection is related to the nature, size, complexity, and likely impact of the assignment, technical and financial considerations. It is therefore necessary to carefully define the assignment, particularly the objective and the scope of the services, before deciding on the selection method.

Developing the Terms of Reference

The Procuring Entity shall create a Request for Proposal (RFP). The Terms of Reference (TOR) are the key document in the RFP. They explain the objectives, scope of work, activities and tasks to be performed; respective responsibilities of the Procuring Entity and consultant, as well as expected results and deliverables of the assignment. An adequate and clear TOR is important for the understanding of the assignment and its correct execution. Drafting the TOR requires expertise with the type of assignment and needed resources as well as familiarity with the project background and knowledge of the Procuring Entity organisation. If the needed qualifications to produce the TOR are not available in-house, the Procuring Entity should hire a specialised independent consultant.

Drafting the Terms of Reference

The following considerations must guide the preparation of the TOR:

- a) The TOR should contain sufficient background information on the project to enable consultants to present responsive proposals;
- b) The scope of work in particular should be consistent with the available budget;
- c) The TOR should take into account the organisation of the entity, and its level of technical expertise and institutional strength.

Outline of the Terms of Reference

The TOR normally consists of:

1. Background of the project;
2. Objectives of the consulting assignment;
3. Scope of work;
4. Transfer of knowledge;
5. List of reports, schedule of deliveries, and period of performance;
6. Data, local services, personnel and facilities to be provided by the Procuring Entity.

1. BACKGROUND OF THE PROJECT

The background summarises the main features of the project and describes the assignment objectives and general purpose. In particular, it should include:

- a) Name of the Procuring Entity;
- b) Rationale of the project;
- c) Need for consultants in the project and issues to be resolved;
- d) Activities to be carried out;
- e) Supervision arrangements.

2. OBJECTIVES OF THE CONSULTING ASSIGNMENT

The TOR should precisely describe the objectives and expected results, and should include:

- a) Design of project;
- b) Preparation of bidding documents;
- c) Supervision of works;
- d) Provision of training;
- e) Collection and analysis of data.

3. SCOPE OF WORK

The TOR should describe only the activities, not the approach or methodology.

The scope of work is defined by addressing the following:

- a) Definition, scope, limits and criteria of acceptance of the assignment;
- b) Level of detail;
- c) Main issues to be addressed;
- d) Special equipment requirements;
- e) Legal framework;
- f) Transfer of knowledge;
- g) Need for continuity;
- h) Quality management requirements (if needed).

4. TRANSFER OF KNOWLEDGE

The TOR should provide specific details on the characteristics of the required services.

5. REPORTS AND SCHEDULE OF DELIVERIES

The TOR should indicate the estimated duration of the assignment, from the date of commencement to the date the Procuring Entity receives and accepts the consultant's final report. The TOR should indicate the format, frequency and content of reports.

6. DATA, LOCAL SERVICES, PERSONNEL AND FACILITIES

The TOR may provide all the needed facilities (office space, vehicles, survey equipment, office and computer equipment, and telecommunication systems).

Publication of Expressions of Interest

The Procuring Entity shall publish an Expressions of Interest (Eoi) to develop a long list of suppliers or contractors, in national newspapers of wide circulation and on the NTB website. Where foreign firms are expected to be interested the notice shall also be published in appropriate trade or professional internet websites.

The notice shall include the name and address of the Procuring Entity, and a brief description of the services to be procured. It shall also be published in a newspaper of wide circulation or in an appropriate trade or professional publication of wide international circulation.

The Procuring Entity shall examine the qualifications of candidates or firms expressing interest according to the selection criteria set out in the procurement notice. The candidates who do not fulfill the qualification criteria shall be disqualified and promptly notified.

A shortlist of at least 3 candidates or firms will be established. In cases where the number of candidates who have expressed their interest is lower than the fixed minimum, the Procuring Entity can proceed with the procedure provided that there are at least 2 candidates.

Based on this short list the Procuring Entity will provide to the short-listed candidates or firms, the following:

- a) The Letter of Invitation (LOI) stating the intention of the Procuring Entity to enter into a contract for the provision of consulting services, the source of funds, the details of the client; and the date, time and address for submission of proposals;
- b) The instructions to the tenderers containing all necessary information that would help tenderers to prepare responsive proposals, including information on the evaluation process and evaluation criteria/factors as well as their respective weighting and the minimum quality score;
- c) The proposal validity period;
- d) The terms of the draft contract to be awarded;
- e) The time-limit to submit proposals;
- f) A statement informing the consultants that they may be excluded from future participation in procurement of goods, works, services or consulting services resulting from the assignment;
- g) Tender security (if required).

The Procuring Entity shall set a time-limit for submitting proposals which allows enough time for the tenderers to prepare their proposals. The period of time allowed shall depend on the object of the contract to be awarded and shall not be less than XX days. During this time, the tenderers may request clarifications about the information provided in the request for proposals. The Procuring Entity shall provide these clarifications by written communication and copy them to all short-listed candidates and if necessary shall extend the time-limit for submission.

Technical and financial proposals shall be submitted at the same time in separate sealed envelopes. No amendments to technical or financial proposals shall be accepted after the time-limit for submission has expired. The envelopes containing the technical proposals shall be opened immediately after the closing time for submission of proposals while the financial proposals shall remain sealed. Any proposal received after the closing time for submission of proposals shall be returned unopened.

The Procuring Entity may engage in single source procurement where the services to be procured require that a particular consultant be selected due to the consultant's unique qualifications or where it is necessary to continue a project with the same consultant.

Receipt of Proposals

The Evaluation Committee shall evaluate the proposals based on the technical quality of the proposal, including such considerations as the consultant's relevant experience and the expertise of its staff, the proposal work methodology and the price of the proposal.

Each criterion shall be marked on a scale of 1 to 100, and then the marks shall be rated to become scores. The **rating system** shall be disclosed in the request for proposals. The Procuring Entity shall inform the tenderers who have submitted proposals on the technical score assigned to each consultant, and shall notify those consultants whose proposals did not meet the minimum qualifying score or were considered non responsive to the request for proposals. The Procuring Entity shall simultaneously notify the consultants who have reached the minimum qualifying score, on the date, time and place set for the opening of the financial proposals.

The financial proposals shall be opened publicly in the presence of representatives of the consultants who choose to attend, in person or by way of teleconference or other adequate electronic means, if possible. The name of each tenderer, its technical score and the proposed prices shall be read aloud and recorded when the financial proposals are opened. For the purpose of evaluation, the price shall include all consultants' remuneration and other expenses such as travel, translation, report printing or secretarial expenses. The proposal with the lowest price may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their offered prices. The methodology to be used shall be described in the request for proposals. The tenderers who do not fulfill the technical and/or the financial requirements shall be disqualified. The Procuring Entity must promptly inform the disqualified tenderers.

Final Evaluation of Quality & Cost and Contract Award

The total score shall be obtained by rating the quality and cost scores, and adding them. The marks for the "cost" shall be chosen taking into account the complexity of the object of the contract to be awarded and the relative importance of quality.

After the identification of the best tender, the Procuring Entity shall inform the tenderers about the final classification and shall initiate negotiations to clarify and eventually improve the terms of the contract, the methodology, staffing and special conditions. Negotiations must not substantially alter the original terms of the contract or the selected proposal. The financial offer must not be altered in any case.

If the successful tenderer fails to sign the written contract or fails to provide any security for the performance of the contract, where so required, the Procuring Entity shall invite the next best tenderer for negotiations.

When the contract is awarded to an association in the form of a joint venture, the association should appoint one of the firms' members to represent the association. All members of the joint venture shall sign the contract and shall be jointly liable for the entire assignment.

Part 8

BID OPENING, EVALUATION AND AWARD

Public Bid Opening

In accordance with Section III, Part V of the Procurement Act all tenders are to be publicly opened by the appropriate tender board depending upon the value of the procurement. The respective tender boards shall open tenders for procurement whose estimated value is below the threshold published in schedule 1 of the Regulations. All other tenders shall be opened by the NTB.

Where the Procuring Entity will use the NTB it must coordinate the tender opening with their master tender opening schedule. This must take place early during the tender development phase. The following rules shall be observed in all tender openings:

- a) The opening shall take place immediately after the time set for closing of tenders. Representatives of bidders who have submitted tenders shall be permitted to attend;
- b) The assistant to the tender board will arrange the tenders in the order of withdrawals (with the corresponding tenders), modifications (with the corresponding tenders) and other tender envelopes. These will be opened in that order so that, where a tender has been withdrawn, the corresponding tender envelope can be set aside for return and the modification and its corresponding tender, are opened together and read out;
- c) The names, addresses, bid number, tender price, discounts, if any, availability of bid security, if one was requested, and any other condition or exception taken and spelled out in the covering letter shall be read aloud and recorded;

- d) No decision whatsoever of the completeness, acceptability or otherwise of any tender shall be taken or announced in the bid opening session;
- e) Minutes of the opening session shall be prepared and mailed to all tenderers, or placed on the website of the NTB for those who have submitted the tenders irrespective of whether they attended the session.

The Appointment of Evaluation Committee

Pursuant the Procurement Act, all tender boards shall appoint an Evaluation Committee for each procurement subject to its jurisdiction. The National Board shall select and appoint pool of evaluators with appropriate expertise and experience, to serve as members. Further, each Regional Board shall nominate for consideration by the National Board qualified individuals to serve as an Evaluation Committee's members within its jurisdiction. The purpose of Bid evaluation is to determine the cost to the purchaser/employer of each bid in a manner that permits a comparison on the basis of their evaluated cost and for the preparation of the Bid Evaluation Report, after the process is complete.

Preliminary Examination

The preliminary examination of bids determines whether the bids meet the general administrative requirements of the bidding documents. In particular, the Committee should examine bids for compliance with the requirements, using the bidding documents as the reference point.

The Bid should be signed properly, by a person authorized:

- a) If a power of attorney was required, whether it has been attached and is it generally in order?
- b) If a bid security was required, has it been submitted? And is it in an acceptable format, for right amount, currency and duration?

Clause 37 of Procurement Act specifies that:

“When the Procuring Entity requires suppliers or contractors submitting tenders to provide a tender security,

- a) the requirements shall apply equally to all such suppliers or contractors;
- b) the solicitation documents may require that the issuer of the tender security and the confirmer, if any, of the tender security, as well as the form and terms of the tender security, must be acceptable to the Procuring Entity;

- c) notwithstanding paragraph (ii) a tender shall not be rejected by the Procuring Entity on the grounds that the tender security was not issued by an issuer in Guyana if the tender security and the issuer otherwise conform to the requirements set forth in the solicitation documents.”

Bid package should contain all required documents including supporting evidence of bidder eligibility and qualifications.

Bids should be complete and prices should be entered for all items in the lot or package if so stipulated in the bidding document (Goods) and for all bills of quantities items (Works).

The purpose of this examination is to eliminate any bids from further consideration if they do not meet the minimum standards of legal validity and responsiveness. However, the PE/Evaluation Committee should exercise reasonable judgment in applying these checks and should avoid rejecting bids on trivial procedural grounds. For example, if the bidding documents stipulate that each page of the bid should be signed or initialled and a bidder failed to initial one or more pages of supporting information, this should not be a ground for bid disqualification. Furnishing one more or one less than the required number of bid copies, or not using the form supplied in the bid document, but providing bid prices on a similar form on the bidder's own letterhead, would also be minor discrepancies. These can be rectified through the clarification process without giving any benefit to the bidder and without prejudice to the interests of other bidders, and need not be causes for rejection. Such discrepancies should be noted, however, and decisions about their acceptance or rejection should be recorded in the bid evaluation report.

Correction of Arithmetic Errors

Bids should be checked carefully for arithmetic errors. The procedure for applying correction is usually set out in the bidding documents. The Procuring Entity should correct all arithmetic errors accordingly and notify each bidder of the detailed changes, and ask the bidder to confirm the corrections. If a bidder refuses to accept such a correction, his bid should be rejected and excluded from further consideration.

Determination of Substantial Responsiveness

After the above steps and elimination of bids which are unsigned, incomplete, or not accompanied by the requisite bid security, each bid should be examined for its responsiveness to the commercial and technical requirements.

Often, bidders submit bids that deviate from these requirements. Deviations include exceptions, exclusions, qualifications, conditions, stated assumptions, alternative proposals and changes to stated requirements. Material deviations are those which:

- a) Affect the scope and quality or performance of the equipment offered; OR
- b) Limits the purchaser's/employer's rights or bidders obligations; OR
- c) Affects unfairly the competitive position of other bidders.

A bid which has complied with all the mandatory requirements of the bidding documents, but has minor or insubstantial deviations in respect of terms or conditions or the technical specifications, should be retained for more detailed evaluation and should not be rejected. On the other hand, one which is not substantially responsive, because it contains material deviations or reservations to the terms, conditions and specifications in the bidding documents, should not be considered further.

The following deviation/s in a bid would be treated as a 'material deviation' and the bid excluded from further considerations:

- a) A bid which is valid only for a shorter period than that specified in the bidding documents;
- b) A bid subject to price adjustment in response to an invitation for fixed prices;
- c) A bid offering delivery of goods or time period of completion longer than the range specified in the bidding document;
- d) A bid with unacceptable alternative payment schedule;
- e) A bid with unacceptable technical requirements;
- f) Bids expressing deviations, objections or reservations to critical provisions such as Applicable Law, Taxes and Duties, Performance Security, Warranty, Force Majeure, Limitation of Liability (that is those which cannot be quantified monetarily).

The following examples are considered to be non-material deviations and would be permissible in a "substantially-responsive" bid:

- a) Commercial Aspects:
 - (i) A bid offering delivery at a date slightly different from that indicated in the bid invitation, unless it is later than an absolute cut-off date that is clearly stated as such in the bidding documents;
 - (ii) A bid with a fixed price in response to bidding documents calling for bidders to submit prices subject to price adjustment;
 - (iii) A bid requesting changes in the coefficient of the price adjustment formula specified in the bidding documents or seeking a ceiling for the price adjustment;
 - (iv) A bid having minor deviations in payment terms.
- b) Technical Aspects:

- (i) A bid offering alternative goods that are equal or superior in specifications and performance;
- (ii) A bid which meets all performance criteria of a plant, but not dimensional provisions that do not affect performance or the utility for the purpose intended;
- (iii) A bid which offers goods with minor deviations from the technical specifications, which do not affect the suitability of the goods for the intended use (deviations which affect the efficiency or performance should be evaluated for purposes of comparison);
- (iv) A bid which offers the equipment specified but has omitted minor attachments and components, e.g. a tool kit in motor vehicle. However, the PE/Evaluation Committee must quantify this deviation in monetary terms during the detailed evaluation process prior to comparing such bid with the other bids.

Quantification of Omissions and Deviations

In many cases, bidders will present bids that deviate from bidding document requirements, either accidentally or deliberately, because they believe they gain a competitive edge as a result. Regardless of the reason, such omissions and deviations should be quantified in money terms whenever possible, to permit fair comparison with other bids.

In the case of **omission** of one or a few essential items from a bid, rather than rejecting the bid in its entirety, a surrogate price for these items may be obtained from printed parts and price lists, if available, or from the quoted prices of other bidders. In the latter case, a price representing the average of several (excluding very high or very low bids) other bidders for the corresponding item should be used rather than the lowest or highest figure.

The most common **deviations** in bids are proposals for different commercial terms; i.e., amounts of advance payments, changes in payment schedules, etc., and changes in the schedule of delivery of goods or completion of works. These can usually be adjusted by applying an appropriate discount rate and converting them to their equivalent present worth to equalize them with non-deviating bids.

The bid document is the authoritative source for determining whether various kinds of deviations are acceptable in a particular case. If it does not specifically rule out or set limits on commercial deviations, these can be evaluated on present value calculations.

Section 55 of the Procurement Act specifies that during evaluation all information to be kept confidential and any violation of this, is punishable with fine/disqualification/imprisonment, etc., as detailed therein.

Evaluation of Bids on the Basis of Price Only

In the procurement of simple goods, where all offers are of similar and comparable quality or performance, and where delivery is the same for all bidders, price alone is an appropriate deciding factor.

Procuring Entity can consider in addition to the price of the bids, the cost of transportation, handling and insurance costs from the factory to the project site.

Delivery Schedules

For purposes of bid evaluation, the estimated time of arrival of goods should be calculated for each bid after allowing for reasonable international and inland transportation time. The Evaluation Committee will then treat the Bid resulting in such arrival time as the base, and a delivery “adjustment” will be calculated for other bids by applying a percentage, specified in the bidding documents of the EXW/CIF/CIP price for each week of delay beyond the base, and the Committee will add this to the bid price for evaluation.

Evaluation on the Basis of Life Cycle Cost

Life cycle cost is the assessment of the initial acquisition cost plus the follow-on ownership cost to determine the total cost during the life of a plant or equipment. In the procurement of plant or equipment in which the follow-on cost of operation and maintenance are substantial, a minor difference in the initial purchase price between two competing bids can easily be overcome by the difference in follow-on cost. In these cases, it is most appropriate for the Purchaser/PE to evaluate bids on the basis of life cycle cost.

Evaluation of Bids for Works Contracts

As in the case of evaluation of bids for procurement of goods, evaluation of works contracts begins with the Bid Evaluation Committee examining bids for compliance with the requirements, using the bidding documents as the reference point. The Bid Evaluation Committee proceeds to evaluate the prices offered for the contract once the bids are determined as substantially responsive. Depending on the kind of works contract being procured, the lowest evaluated bidder is determined and contract is awarded.

Evaluation of Deviations in Bids for Works Contracts

Bidders for works contracts often qualify or condition their bids in some way, creating problems for PE/Evaluation Committee staff who must decide whether a bid is substantially responsive to the bidding documents and, if so, how deviations from the bidding conditions should be handled in the evaluation of bids. Clear unambiguous bidding documents prepared by experienced staff of the PE result in fewer qualifications by bidders.

Pre-bid conferences during the bidding period should also be used to clarify any serious ambiguities and discrepancies in the documents. **Deviations** may include exceptions, exclusions, qualifications, conditions, stated assumptions, alternative proposals (when not specifically solicited) and other changes to the requirements of bidding documents.

The first stage in evaluation is to decide whether the deviations in a bid are so material as to be unacceptable, and therefore are grounds for rejecting the bid. Fairness to the other bidders is a prime consideration. A bidder's deviation which, in itself or by its withdrawal or rectification, would seriously affect the competitive position of other bidders unless they were given the same opportunity would normally constitute grounds for rejection of the entire bid.

The details and implications of any deviations which are not explicit should be clarified by the PE/Evaluation Committee in writing with respective bidders without change in the substance or price of the bids. After clarification the implication of a deviation may be such as to justify rejection of the bid as non-responsive. Each deviation having financial or economic implications should be quantified independently by the Evaluation Committee and expressed in its expected monetary cost to the Employer.

Deviations or offers which are better than the requirements of the bid specifications (e.g. higher quality materials and workmanship, modified designs, shorter construction periods, etc.) should only be regarded as benefits to the Employer and included in the evaluation if specifically solicited (and procedure for their quantification specified in the bidding documents).

Deviations which are minor or non-quantifiable (e.g. changes in access to site, land acquisition, sources of materials, etc.) should be assessed in terms of their reasonableness for acceptance or rejection taking into account fairness to other bidders and their impact on the implementation of the contract.

Once the bid has been determined to be legally valid and substantially responsive, the Committee should proceed to detailed evaluation.

Mathematical Corrections

In the case of works contracts the procedure for correction of mathematical errors is clearly given in the bidding document. In the priced bill of quantities the quantities should be the same as stated in the bidding document. The total bid price for each item should be the product of that quantity and the quoted unit price. If there is a discrepancy, the quoted unit price shall govern in the recalculation. Prices spelled out in words shall take precedence over those expressed in numbers, in case of differences.

Application of Domestic Preferences in the Evaluation of Bid

The Procurement Act permits a preference of 10 % for locally manufactured goods over goods which are imported from outside the country (Section 39.6 (b)) provided the preference and the method of application is specified in the

bidding documents. No preference is specified in the Procurement Act for domestic works contractors.

Extension of Bid Validity

Where there is a delay in bid evaluation, the PE may request bidders to extend the period of validity of their bids. Bidders may refuse to grant an extension of validity without forfeiting their bid security. In case they agree to extend the validity as requested, the bid security shall also be extended by a corresponding number of days.

Recommendation for Award and Evaluation Report

After the completion of the evaluation process and qualification check, the Evaluation Committee should prepare a bid evaluation report in the prescribed format setting out the process by which the Committee evaluated the bids.

This report covers among other things:

- a) Key dates and steps in the bidding process;
- b) Bid prices, corrections, discounts and currency conversions;
- c) Additions, adjustments and price deviations;
- d) Domestic preference if any;
- e) Technical evaluations if any;
- f) Post-qualification results;
- g) Names of bidders rejected and reasons for rejection of bids; and
- h) The proposed contract award.

Award and Signing of the Contract

Once the Evaluation Committee has evaluated the bids and made a determination on the lowest evaluated responsive bid, and a decision has been made about the award, the PE should:

- a) Request and obtain the competent authority's approval prior to awarding the contract;
- b) Not negotiate the award with the successful bidder;
- c) Not require the selected bidder to provide performance in excess of that specified in the Bidding Documents;
- d) After approval is received, send notification of the award, a contract form, and a performance security form (indicating the amount of security) to the successful Bidder within the time specified in the Bidding Documents;
- e) Request the supplier to return the signed contract together with the required performance;
- f) Notify unsuccessful Bidders as soon as possible after receiving the signed contract and the performance security;
- g) Send a copy of the award in the prescribed format to the NPTA within 2 days for publication on the NPTA website.

If the successful Bidder fails to return the signed contract or provide the required Performance security, the PE may require forfeiture of the Bidder's Bid Security and proceed to offer the contract to the second lowest evaluated Bidder, provided that he is capable of performing satisfactorily.

SECTION 4 STANDARD BIDDING DOCUMENTS & IMPORTANT CLAUSES

***Part 9* STANDARD TERMS AND CONDITIONS**

General

The objective of the bidding/tender documents is to furnish all information necessary for a prospective bidder to prepare a bid for the goods and works to be provided. While the detail and complexity of these documents may vary with the size and nature of the proposed bid package and contract, they generally include: invitation to bid; instructions to bidders; form of bid; conditions of contract, specifications and drawings; list of goods or bill of quantities; delivery time or schedule of completion; and necessary appendices, such as formats for various securities. The basis for bid evaluation and selection of the lowest evaluated bid is also clearly outlined in the instructions to bidders and/or the specifications.

The following are common to both ICB and NCB in Guyana. They have been combined to make easier for the Procuring Entities to understand the significance of the contract documents and the clauses to incorporate for good, works and services.

Section 32 (2) of the Procurement Act states that: "The tender documents shall include such information as may be determined by the National Board." Accordingly, the National Board has compiled Standard Bidding Documents for use by all concerned.

Section 32 (1) of the Procurement Act states that: "The Procuring Entity shall provide tender documents to suppliers or contractors subject to the payment of the cost of printing and providing them. If prequalification proceedings have been engaged in, the Procuring Entity shall provide a set of bid documents to each pre-qualified supplier or contractor."

Contents of Bidding Documents

Bid documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of the Employer/Purchaser and of suppliers and contractors, and the conditions to be met in order for a bid to be declared valid and responsive. They should also set out fair and non-discriminatory criteria for selecting the winning bid. Bidding documents should thus:

- a) Encourage eligible potentially qualified firms to bid, by making reasonable demands for information and form-filling;
- b) Not discriminate against any potential bidder; and
- c) Provide clear, objective criteria for evaluating the bidders and the bids.

The detail and complexity of bidding documents vary according to the nature and size of the contract, but they generally include the following:

- a) **Invitation for Bid (IFB)**: is normally used by the PE to invite potential bidders to submit their bids for the project at hand. It describes the PEs and source of financing, and indicates the goods, works or services to be procured. An IFB is issued after the bidding document is compiled and approval of competent authority is obtained. Sometimes this is done simultaneously in parallel to save time.
- b) **Instructions to Bidders**: provide guidance for the preparation and submission of the bid including details, such as language of the bids, pricing and currencies, bid validity period, bid submission procedures, closing date, procedures for modification and withdrawal of bids, opening, evaluation and award of contract procedures, etc.
- c) **The Bid Data Sheet**, which specifies the parameters of the Instructions to Bidders for the particular procurement including source of funds, eligibility requirements, currency and pricing, etc.
- d) **Evaluation and Qualification Criteria**. This section specifies the criteria and the methodology that the PE will use to evaluate the Bids and select the successful bidder.
- e) **The General Conditions of Contract** set out the general provisions of the contract between the Employer/Purchaser and the bidder if awarded the contract.
- f) **Special Conditions of Contract**, which modify the General Conditions of Contract for the particular procurement.
- g) **Schedule of Supply**, which specifies the quantities, delivery locations and dates for the items required by the purchaser.
- h) **The Technical Specifications and Drawings**, which detail the characteristics of the technologies and technical services required (as well as specify the common format which bidders must present their information, including a technical responsiveness cross-reference form).
- i) **Bidding Forms**, which include the Bid Submission Sheet and Price Schedules, the Bid Security Forms, the Contract Form, the

Performance Security Form, the Bank Guarantee Form for Advanced Payment and the Manufacturer's Authorization Form.

- j) **Eligibility for Provision of Goods, Works and Services** in MDB financed procurement, which lists countries which are not eligible to participate in that procurement.

The NPTA has compiled Standard Bidding Documents for use in Guyana in accordance with Section 32 (2) of the Procurement Act, as given below:

- a) Goods - Standard Bidding Document - IDB funded projects
- b) Goods - Standard Bidding Document - NCB (IDB simplified)
- c) Works - Prequalification - IDB funded projects
- d) Works - Standard Bidding Document - IDA funded projects
- e) Works - Standard Bidding Document - NCB (IDA Small Works simplified)
- f) Consultants' Services - Prequalification - IDB funded projects
- g) Consultants' Services - Standard Request for Proposals - IDB funded projects
- h) Goods - Shopping
- i) Bid Evaluation Report for Procurement of Goods
- j) Bid Evaluation Report for Procurement of Works
- k) Evaluation Report for Selection of Consultants
- l) Evaluation of Prequalification for Procurement of Works

The above documents can be used for ICB and NCB for both Government of Guyana Multilateral Development Banks (MDBs) and International financial Institutions funded projects.

The bidding documents shall furnish all information necessary for a prospective bidder to prepare a bid for the goods and works to be provided.

The basis for bid evaluation and selection of the lowest evaluated bid shall be clearly outlined in the instructions to bidders and/or the specifications. The PE may use an electronic system to distribute bidding documents, provided that the MDB is satisfied with the adequacy of such system. If bidding documents are distributed electronically, the electronic system shall be secure to avoid modifications to the bidding documents and shall not restrict the access of Bidders to the bidding documents..

PEs shall use the appropriate Standard Bidding Documents (SBDs) issued by NTB for externally funded as well as local funded procurement with minimum changes, as necessary to address project specific conditions.

The following section provides the most important clauses in the bidding documents to assist the PE in choosing the appropriate parameters, in each procurement, for insertion in the Bid Data, sheet, special conditions of contract etc.

Instructions to Tenders

Section 7 of the Procurement Act provides that all bidders regardless of nationality shall be permitted to participate in procurement proceedings. Further, Section 5 (1) (v) states that in fixing qualification criteria it shall be ensured that “the bidder, and its directors or officers, have not been convicted of any criminal offence related to its professional conduct or the making of false statements or mis-representations as to its qualifications to enter into a procurement contract within a period of ten years preceding the commencement of procurement proceedings, or has not been otherwise disqualified pursuant to administrative suspension or debarment proceedings in this or other jurisdiction over the last three years.”

Clarity of Bidding Documents

Bidding documents shall be so worded as to permit and encourage wide competition and shall set forth clearly and precisely the work to be carried out, the location of the work, the goods to be supplied, the place of delivery or installation, the schedule for delivery or completion, minimum performance requirements, and the warranty and maintenance requirements, as well as any other pertinent terms and conditions. In addition, the bidding documents, where appropriate, shall define the tests, standards, and methods that will be employed to judge the conformity of equipment as delivered, or works as performed, with the specifications. Drawings shall be consistent with the text of the specifications and an order of precedence between the two shall be specified.

The bidding documents shall specify any factors, in addition to price, which will be taken into account in evaluating bids, and how such factors will be quantified or otherwise evaluated. If bids based on alternative designs, materials, completion schedules, payment terms, etc., are permitted, conditions for their acceptability and the method of their evaluation shall be expressly stated.

All prospective bidders shall be provided the same information, and shall be assured of equal opportunities to obtain additional information in a timely basis. PEs shall provide reasonable access to project sites for visits by prospective bidders.

Standards/ Use of Brand Names

Section 13 of the Procurement Act specifies that:

- a) Specifications should be drafted in such a way to avoid any obstacles to wide participation;
- b) Specifications should be based on objective technical/quality characteristics.

Standardised features/requirements, etc., should be as far as possible used. The principles are explained below.

Standards and technical specifications quoted in bidding documents shall promote the broadest possible competition, while assuring the critical performance or other requirements for the goods and/or works under procurement. As far as possible, the PE shall specify internationally accepted standards such as those issued by the International Standards Organization with which the equipment or materials or workmanship shall comply. Where such international standards are unavailable or inappropriate, national standards may be specified. In all cases, the bidding documents shall state that equipment, material or workmanship meeting other standards, which promise at least substantial equivalence, will also be accepted.

Specifications shall be based on relevant characteristics and/or performance requirements. References to brand names, catalog numbers, or similar classifications shall be avoided. If it is necessary to quote a brand name or catalog number of a particular manufacturer to clarify an otherwise incomplete specification, the words "or equivalent" shall be added after such reference. The specification shall permit the acceptance of offers for goods which have similar characteristics and which provide performance at least substantially equivalent to those specifications.

Samples

Bidding documents should generally avoid submission of samples along with bid by bidders, as this requirement discourages competition and increases the bid prices. Alternatively bidders should be requested to confirm that their product meets with the required specifications and in support attach appropriate test certificates from recognized testing laboratories.

Validity of Bids

Bidders submitting bids for goods and works shall be required to submit bids valid for a period specified in the bidding documents. Normally this varies between 60-150 days depending upon the time required by the PE to complete the comparison and evaluation of bids, review the recommendation of award, and obtain all the necessary approvals so that the contract can be awarded within that period. If the validity period is too long bidders will pad their prices for possible price increases; hence this should be fixed reasonably. Usually this period is 90 days for international competition (ICB) and 30 days for national competition (NCB).

Bid Security

Bid security is an instrument to provide compensation to the PE for the time and money lost if the successful bidder fails to honour his bid and sign the contract after issue of notification of award. It assures serious bidders and eliminates speculative bids. However, for contracts of very small value it adds a burden to the bidder and the PE in verifying the acceptability, as the risk in a

bidder withdrawing his bid and the consequent additional cost to the PE is minor.

Article 37 of the Procurement Act, supplemented by Clause 9 of the Regulations, lay down that tender security shall be required whenever the estimated value of the contract exceeds, in the case of contracts for goods and services (other than consulting services), G\$3 million, and in the case of contracts for construction, G\$15 million.

The bid security protects the PE against the risk of the bidder withdrawing the bid during its period of validity, refusing to sign the contract when the contract award has been notified within the validity of the bid, and the bidder failing to furnish a performance security within the prescribed time, in the form and amount required in the bidding documents.

Bid security shall be required to be valid for 4 weeks beyond the validity period of the bids in order to provide sufficient time for the PE to en-cash the security if the need arises. The bid security should be released at the end of the bid validity period, unless extended; or upon issue of advice to the successful bidder of contract award; and receipt of the successful bidder's signed contract and performance security. The following guidelines are also provided in the Act and Regulations.

Bid Security shall be denominated in the currency of the bid or another freely convertible currency (US Dollars) or G\$.

- a) Bid Security should be normally about 2% of the cost of works put to tender, but could range between 1% for large contracts and 3% for small contracts. In case of goods, it should normally be in the range of 2 to 5% of the estimated cost of item put to tender. The amount of bid security should be computed based on estimated cost and specified to the nearest thousand or hundreds. For small value purchases - less than G\$ 3 million for goods, and less than G\$ 15 million for works - it is to be dispensed with. In Clause 9 (2) of the Regulations it is stipulated that "Whenever tender security is required, the PE shall determine and specify in the invitation to tender, the amount in Guyana dollars in which the security shall be expressed, which amount shall correspond to not less than one and not more than two percent of the estimated value of the contract." This is repeated in Section 37 (4) of the Procurement Act. This should be followed in all cases.
- b) Bid Security has to be in one of the acceptable forms (including Bank guarantees), which format should be given in the bidding documents, and should be valid for 4 weeks beyond the bid validity period. Clause 9 (3) of Regulations specify that "Unless the National Board otherwise decides in response to a request from the PE, the tender security shall be in the form of an on-demand guarantee by a bank or other reputable financial institution, which institution shall be independent of the tendered."

- c) Bid security of a joint venture must be in the name of all the partners in the joint venture submitting the bid.
- d) No exemption of Bid Security should be permitted to any bidder or class of bidders after the bid is opened.
- e) Any bid not secured in accordance with the requirements specified in the bidding documents will be rejected as non responsive.

As per Section 37 (2) of the Procurement Act, the tender security can be forfeited for:

- a) Withdrawal or modification of the tender after the deadline for submission of tenders, or before the deadline if so stipulated in the documents;
- b) Failure to sign the contract if required by the PE to do so; and
- c) Failure to provide a required performance bond for the performance of the contract after the tender has been accepted, or to comply with any other condition precedent to signing the contract specified in the bidding documents.

Section 37 (3) further specify that no claim shall be made on tender security and the instrument should be returned to the tenderer after:

- a) The expiry of the validity of tender security;
- b) The entry into force of a contract and the provision of a security for performance of the contract where required; and
- c) Termination of tender proceedings without entering into contract

Pricing Of Bids

Bids for goods shall be invited on the basis of CIP (first port of entry at customs barrier) for all goods offered from abroad, and EXW (ex works, ex factory, or off-the-shelf) for goods already located within the country, or those to be assembled or manufactured within the country, plus cost of inland transportation and insurance to the place of destination.

Bidders shall be allowed to arrange for ocean and other transportation, and related insurance from any eligible source. Where installation, commissioning, or other similar services are required to be performed by the bidder, as in the case of "supply and installation" contracts, the bidder shall be required to quote for these services, in addition.

In the case of **turnkey contracts**, the bidder shall be required to quote the price of the installed plant at site, including all costs for supply of equipment, marine and local transportation and insurance, installation and commissioning, as well as associated works and all other services included in the scope of contract such as design, maintenance, operation, etc. Unless otherwise specified in the bidding documents, the turnkey price shall include all customs and other duties, taxes and other levies.

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, taxes and other levies. Bidders shall be allowed to obtain all inputs (except for unskilled labour) from any eligible source so that they may offer their most competitive bids.

The delivery terms CIP, CIF, EXW, etc., are as defined in INCOTERMS 2000 - Published by the International Chamber of Commerce (38 Cours Albert 1er, 75008 Paris, France). **CIP** is carriage and insurance paid to named place of destination. This term may be used irrespective of the mode of transport, including multimode transport. CIP term is for custom duties and other import taxes unpaid, payment for which is the responsibility of the Purchaser, either for goods previously imported or that will be imported. For previously imported goods, the quoted CIP price shall be distinguishable from the original import value of these goods declared to customs and shall include any rebate or mark-up of the local agent or representative and all local costs except import duties and taxes, which will be paid by the purchaser. The **EXW** price shall include all duties, sales, and other taxes already paid or payable for the components and raw materials used in the manufacture or assembly of the equipment, offered in the bid.

Transportation

The most widely used term which is applicable to Guyana is Cost Insurance Freight (CIF) where the consignment comes by sea to a domestic seaport. Where a combination of road, rail or air transport is used, or where the consignment is containerized and shipped, the PE can use Cost Insurance Paid (CIP) terms to the first customs clearance point in the country, if one is available, rather than CIF terms.

Commonly used terms which are relevant to Guyana are listed in the table below:

Term	Meaning
<p>Cost Insurance Freight (CIF) (...named port of destination)</p>	<p>The seller delivers when the goods pass the ship's rail in the port of shipment. The seller obtains transport insurance against the risk of loss or damage to goods to the destination port. The seller must contract with the insurer and pay the insurance premium. The risk of loss or damage to the goods, as well as any additional costs due to events occurring after time of delivery, is transferred from the seller to the buyer. The purchaser is obligated to pay the contract price of goods as provided in the sales contract, and arrange and pay for all import licenses and formalities, and take delivery at the port of entry. Used for sea or inland waterway transportation.</p>

Carriage and Insurance Paid to (CIP) (...named place of destination)	<p>The seller must deliver the goods to the carrier nominated by the purchaser, but the seller must in addition pay the cost of carriage needed to bring the goods to the named destination. The buyer bears all the risk and any additional costs occurring after the goods have been delivered to the first carrier. However, the seller must also procure insurance against the buyer's risk of loss or damage to the goods during the carriage. The seller must clear the goods for export in his country. The purchaser is obligated to pay the contract price of goods as provided in the sales contract, and arrange and pay for all import licenses and formalities, pay import taxes, if any, and take delivery at the destination (which should be the first customs clearing point in his country). May be used for any mode of transportation.</p>
Ex -Works (EXW) (...named place)	<p>The seller delivers when he places the goods at the disposal of the buyer at the seller's premises or another named place (i.e. factory warehouse, etc.), not cleared for export and not loaded on any collection vehicle. This term represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller's premises. Used for any mode of transportation.</p>

Insurance

Guyana Procurement Act and Regulations do not specifically deal with this issue. But it is common in public procurement to insist that Suppliers/Contractors are required to take the following insurances:

a) Goods

The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery from warehouse (supplier's) to warehouse (final destination), for an amount equal to 110% of the value of goods on "All Risks" basis, including war risks and strikes.

b) Works

The contractors shall provide in the joint names of the Employer and the Contractor, insurance cover from the start date to the end of the defects liability period in the amounts and deductibles to be

specified for each contract, for the following events, which are due to the contractors' risks:

- i) Loss of or damage to the works, plant and materials;
- ii) Loss of or damage to equipment;
- iii) Loss of or damage to property (except the works, plant, materials and equipment) in connection with the contract; and
- iv) Personal injury or death.

c) Consultancy

- i) Third party motor vehicle liability insurance;
- ii) Third party liability insurance;
- iii) Professional liability insurance;
- iv) Employer's liability and worker's compensation insurance.
- v) Insurance against loss of or damage to:
 - equipment purchased with the funds provided by the client;
 - the consultants' property used;
 - any documents prepared by the consultant in the performance of services.

Price Adjustment

Bidding documents shall state either that (a) bid prices will be fixed, or (b) that price adjustments will be made to reflect any changes (upwards or downwards) in major cost components of the contract, such as labour, equipment, materials and fuel. Price adjustment provisions are usually not necessary in simple contracts involving delivery of goods or completion of works within eighteen months, but shall be included in contracts which extend beyond eighteen months. However, it is normal commercial practice to obtain firm prices for some types of equipment regardless of the delivery time and, in such cases, price adjustment provisions are not needed (for example, in the case of computers and information systems where prices fall because of improved technology and are unrelated to input costs).

Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the supplier or contractor. The use of the formula method of price adjustment is preferable and should be used instead of documentary evidence and this has been provided in all Standard Bidding Documents. The method to be used, the formula (if applicable), and the base date for application, shall be clearly defined in the bidding documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment.

Currency Provisions

Bidding documents shall state the currency or currencies in which bidders are to state their prices, the procedure for conversion of prices expressed in different currencies into a single currency for the purpose of comparing bids, and the currencies in which the contract price will be paid. Bidding documents shall state that the bidder may express the bid price in any currency.

The PE may require bidders to state the portion of the bid price representing local costs incurred only in G\$. In bidding documents for works, the PE may require bidders to state the bid price entirely in the local currency, i.e. G\$, along with the requirements for payments in up to three foreign currencies of their choice for expected inputs from outside Guyana, expressed as a percentage of the bid price, together with the exchange rates used in such calculations.

Currency Conversion for Bid Comparison

The bid price is the sum of all payments in various currencies required by the bidder. For the purpose of comparison, bid prices shall be converted to a single currency selected by the PE (usually G\$) and stated in the bidding documents. The PE shall make this conversion by using the selling (exchange) rates for those currencies quoted by an official source (such as the Guyana Central Bank) for similar transactions on a date selected in advance, such source and date to be specified in the bidding documents, provided that the date shall not be earlier than four weeks prior to the deadline for the receipt of bids, nor later than the original date for the expiry of the period of bid validity (In the SBDs the date of bid opening has been chosen for this conversion).

Currency of Payment

Payment of the contract price shall be made in the currency or currencies in which the bid price is expressed in the bid of the successful bidder.

When the bid price is required to be stated in the local currency, i.e. G\$, but the bidder has requested payment in foreign currencies expressed as a percentage of the bid price, the exchange rates to be used for purposes of payments shall be those specified by the bidder in the bid, so as to ensure that the value of the foreign currency portions of the bid is maintained without any loss or gain.

Terms and Methods of Payments

Payment terms shall be in accordance with the international commercial practices applicable to the specific goods and works for ICB, and Guyana commercial practices for NCB.

- a) **Contracts for supply of goods** shall provide for full payment on the delivery and inspection, if so required, of the contracted goods, except for contracts involving installation and commissioning, in

which case a portion of the payment may be made after the Supplier has complied with all its obligations under the contract. The use of letters of credit is encouraged so as to assure prompt payment to the supplier. In major contracts for equipment and plant, provision shall be made for suitable advances and, in contracts of long duration, for progress payments during the period of manufacture or assembly.

- b) **Contracts for works** shall provide in appropriate cases for mobilization advances, advances on contractor's equipment and materials, regular progress payments, and reasonable retention amounts to be released upon compliance with the Contractor's obligations under contract.
- c) Any advance payment for mobilization and similar expenses, made upon signature of a contract for goods or works, shall be related to the estimated amount of these expenses and be specified in the bidding documents. Amounts and timing of other advances to be made, such as for materials delivered to the site for incorporation in the works, shall also be specified. The bidding documents shall specify the arrangements for any security required for advance payments.

Section 56 of the Procurement Act specifies that:

- a) Contracts for construction works shall be paid in installments as certified in accordance with the contract, except for contracts providing an execution period of less than three months, in which case payment of installments is optional.
- b) The amount of installment shall not exceed the value of the services for which the contract is awarded, once the sum required for the reimbursement of advance payments, if any, is deducted.
- c) Where installments are paid according to predetermined execution phases and not according to material execution, the contract may determine, in the form of a percentage of its initial price, the amount of each installment.

The specification of general administrative terms determine the periods of technical phases of execution according to which the installments shall be paid and the contractor may not use the supplies for which any advance payments or installments have been paid for any work other than those provided in the contract. Any breach of this provision may lead to the termination of the contract fully and entirely.

Bidding documents shall also specify the payment method and terms offered, keeping the above in view, whether alternative payment methods and terms will be allowed and, if so, how the terms will affect bid evaluation.

Clarification/Modification of Bidding Documents and Pre-bid Meeting

Section 33 of the Procurement Act specifies that:

- a) A supplier or contractor may request a clarification of the tender documents from the PE. The PE shall respond within a reasonable time to any query by a supplier or contractor so as to enable the supplier/contractor to make a timely submission of its tender. The PE shall communicate the clarification, without identifying source of the query, to all suppliers/contractors to which the PE has issued tender documents.
- b) At any time prior to the deadline for submission of tenders, the Procuring Entity may for any reason whether on its own initiative or as a result of a request for clarification by tenderers, modify the tender documents; where necessary, the PE may convene a pre-bid meeting.

In civil works and complex items of equipment, etc., it is usual to organize a pre-bid meeting before bidders prepare and submit bids. Pre-bid meetings should be convened early in the bidding process, but should allow sufficient time for bidders to study the bidding documents and prepare questions seeking clarifications. The meeting should be scheduled at about one third or midpoint of bidding time. The purpose of the meeting will be to clarify all doubts/issues raised by bidders on the bidding terms, specifications, evaluation/qualification criteria, etc., at this stage, to enable receipt of competitive and responsive bids.

Minimum post qualification criteria to be met (if a prequalification procedure was not used prior to bidding), as well as the important provisions of the bidding documents, schedule of requirements, special conditions of contract and special features of the specifications, should be explained clearly to the prospective bidders. Minutes of the meeting, indicating the responses given in the meeting (including an explanation of the query but without identifying the source of the inquiry) should be furnished expeditiously to all those attending the meeting (and subsequently to all purchasers of the bidding documents). Any modification of the bidding documents, which may become necessary as a result of the pre-bid meeting, shall be made exclusively through issuance of a corrigendum and not through the minutes of the pre-bid meeting.

Bid Submission and Opening Procedures

Time for Preparation/Submission/Opening of Bids

Section 35 of the Procurement Act stipulates that:

- a) The PE shall fix the place for and a specific date and time for the deadline for submission.

- b) If clarification/modifications to documents were issued, whether as a result of pre-bid meeting or not, the deadline for submission should be extended to provide reasonable time for the bidders to take the amendments/clarifications into account in their tenders.
- c) The PE has the discretion prior to the expiry of deadline for submission, to extend the deadline based on documentary evidence if the bidders were prevented from meeting the deadline by factors beyond their control.
- d) Notice of extension shall be given promptly to all tenderers who were issued the documents.

The time allowed for the preparation and submission of bids shall be determined keeping in view provisions of the Act, and with due consideration of the particular circumstances of the project and the magnitude and complexity of the contract. Generally, not less than six weeks from the date of the invitation to bid or the date of availability of bidding documents, whichever is later, shall be allowed for ICB. Where large works or complex items of equipment are involved, this period shall generally be not less than twelve weeks to enable prospective bidders to conduct investigations before submitting their bids. In such cases, the PE is encouraged to convene pre-bid conferences and arrange site visits. Bidders shall be permitted to submit bids by mail or by hand.

Section 35 (5, 6 &7) of the Procurement Act specifies that:

- a) Tenders shall be submit in writing, signed and in a sealed envelope clearly marked "Tender for...";
- b) The name of the tenderer must not be stated on the envelop;
- c) Tenders can be submitted in alternative forms -electronic form- if so indicated in the document provided authenticity, security and confidentiality are ensured;
- d) The PE shall record time and date when the tender was received and provide receipts if requested;
- e) A tender received after deadline for submission shall be so marked and shall not be opened, except for ascertaining the name of bidder for returning it;
- f) No bid shall be rejected at the public bid opening.

Section 38 of the Procurement Act specifies that:

- a) Tenders shall be opened in public at the time specified in the documents as amended in accordance with procedures stipulated therein;
- b) All suppliers/contractors that have submitted tenders or their representatives may attend the bid opening;
- c) The name and address, and bid number price of each bidder should be read out;
- d) Minutes of the bid opening should be made and sent to all who submitted the bid.

The principles & procedures to be followed with the provisions of the Procurement Act are given below:

- a) The time for the bid opening shall be the same as for the deadline for receipt of bids or promptly thereafter, and shall be announced, together with the place for bid opening, in the invitation to bid. The PE shall open all bids (unless the estimated value of procurement is within the jurisdiction of NTB, in which case this will be opened by NTB) at the stipulated time and place. Bids shall be opened in public. Bidders or their representatives shall be allowed to be present (in person or online, when electronic bidding is used). The name of the bidder and total amount of each bid, and of any alternative bids if they have been requested or permitted, shall be read aloud (and posted online when electronic bidding is used) and recorded when opened, and a copy of this record shall be promptly sent to all bidders who submitted bids in time. Bids received after the time stipulated, as well as those not opened and read out at bid opening, shall not be considered.
- b) Bidding documents should be made available for sale till a day prior to the last date of receipt of bids, to all those who intend to participate in the bidding, for a minimum period of 6 weeks. For work contracts, the period should range from 6 to 12 weeks depending on the magnitude and complexity of the work.
- c) Bidders should be permitted to deposit their bids on any day during the bidding period. Receipt of bids should not be restricted to few days or last day only. Bidders should submit their bids either by post or hand over in person on any day during the bidding period. Bids should be received only at one place and should be kept in safe custody till the stipulated time of bid opening. If electronic submission is permitted, detailed procedures for the same should be specified in the bidding documents.
- d) Last date of receipt of bids and opening of bids should be the next day, following the close of sale of bidding documents. If that day happens to be a holiday, the last date of receipt and opening of bids shall be the next working day. The time of bid opening should be the same as for the deadline for receipt of bids or promptly thereafter (15 to 30 minutes later to allow sufficient time to take the bids to the venue announced for public bid opening). All bids received should be opened in the presence of bidder's representatives who choose to attend and shall sign a register evidencing their attendance.
- e) Envelopes marked "WITHDRAWAL" shall be returned unopened to the bidders. Bids for which an acceptable notice of withdrawal (together with valid authorization) has been submitted shall not be opened either. All envelopes marked "MODIFICATION" shall be opened and the submissions therein (together with valid authorization) read out in appropriate detail. The bidder's names,

bid modifications or withdrawals, bid prices including any alternative Bid Price or deviation, discounts, bid modifications and withdrawals and the presence or absence of the requisite bid security, and such other details as considered appropriate by the Purchaser, shall be announced during opening of bids meeting. The officers of the Bid Opening Committee, by encircling and initialling the cuttings/overwriting should authenticate all cuttings and/or overwriting observed in the Bid Form and Price Schedule. The Minutes of the bid opening should be prepared in the specified format published by the NTB. No bid shall be rejected at the bid opening except for late bids which shall be returned unopened to the Bidder.

Extension of Bid Validity after Bid Opening

Section 36 of the Procurement act specifies that:

- a) Tenders should be valid for a period specified in the document;
- b) Prior to expiry of validity the PE may ask the tenderers extension of bid validity for a specified time;
- c) Bidders have the option to refuse the extension without forfeiture of tender security;
- d) Bidders who agree to the extension shall not modify their bid and shall extend the validity of bid security (or provide a new security) to cover the extended period. If this is not done, such cases will be treated as refusal of extension.

Clarification and Alteration of Bids

Bidders shall not be requested or permitted to alter their bids after the deadline for receipt of bids. However, to assist in the examination, evaluation, comparison and post-qualification of the bids, the Purchaser/Employer may, at its discretion, ask any Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the Purchaser/Employer, shall not be considered. The Purchaser/Employer's request for clarification and the response shall be in writing. No change in the prices or substance of the Bid shall be sought, offered or permitted, except to confirm the correction of arithmetic errors discovered by the Purchaser/Employer in the Evaluation of the bids. Requests for clarification and the bidders' responses shall be made in writing, in hard copy or by a satisfactory electronic system.

Confidentiality

After the public opening of bids, information relating to the examination, clarification and evaluation of bids, and recommendations concerning awards,

shall not be disclosed to bidders or other persons not officially concerned with this process until the publication of Contract Award.

From the time of bid opening to the time of Contract Award, if any Bidder wishes to contact the Purchaser on any matter related to the bidding process, it should do so in writing. Any effort by a Bidder to influence the Purchaser in the examination, evaluation, comparison and post-qualification of the bids or contract award decisions, may result in the rejection of its Bid.

Fraud and Corruption

Section 12 of the Procurement Act specifies that *“An appropriate board shall reject a tender, if the supplier or contractor that submitted it offers, gives or agrees to give to any current or former officer or employee of the PE or other governmental authority, directly or indirectly, including through a family member, a gratuity in any form, an offer of employment or any other thing or service or value, as an inducement with respect to an act or decision of or procedure followed by such appropriate board in connection with the procurement proceedings. Such rejection of the tender or proposal and the reasons therefore shall be recorded in the record of the procurement proceedings and promptly communicated to the supplier or contractor.”*

In the NCB Standard Bidding Document finalized by NTB, it is stated in ITB clause 3 that *“The Government of the Cooperative Republic of Guyana requires that purchasers, bidders, suppliers, contractors and consultants observe the highest standard of ethics during the procurement and execution of such contracts, and observe the laws against fraud and corruption in force in the Cooperative Republic of Guyana.”*

In the bid form the bidders are required to sign a declaration stating “We undertake that, in competing for (and if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in Guyana. We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in bribery.”

NTB may ban dealing with any firm who has contravened Section 12 of the Procurement Act in contracts funded locally. The list of all such firms will be published on the NTB web site. All such firms will be debarred from participation in bidding, and provision has been made in SBDs finalized by NTB accordingly.

Important Contract Provisions in Bidding Documents

The contract documents shall clearly define the scope of work to be performed, the goods to be supplied, the rights and obligations of the Procuring Entity and of the supplier or contractor, and the functions and authority of the engineer, architect or construction manager, in the supervision and administration of the contract. In addition to the General Conditions of Contract, any Special Conditions particular to the specific goods or works to

be procured and the location of the project shall be included. The conditions of contract shall provide a balanced allocation of risks between the parties.

General Conditions of Contract (GCC)

The GCC in the Bidding Documents establish an accepted basis for similar procurement contracts under the project. The GCC should not be changed by the PE in any contract. Item specific changes are to be included only in Special Conditions of Contract.

The GCC contain:

- a) Operational Clauses: These establish the relationship between the Purchaser/Employer and the suppliers/contractors they contain information regarding:
 - (i) Definitions;
 - (ii) Rights and obligations of both parties;
 - (iii) Procedures for shipment and documentation;
 - (iv) Delivery and transfer of risk;
 - (v) Terms and currencies of payment;
 - (vi) Mode and form dispute settlement;
 - (vii) Governing language; and
 - (viii) Applicable law.
- b) Protective Clauses: They establish protection against various risks and allocate them between the parties. They include instructions on:
 - (i) Performance security;
 - (ii) Retention of payments;
 - (iii) Insurance;
 - (iv) Inspection and tests;
 - (v) Warranty;
 - (vi) Protection against third party infringement suits; and
 - (vii) Force Majeure.
- c) Variations: Unforeseen or planned changes during the life of the contract are identified and provided for under these parts of the GCC. They cover the following:
 - (i) Quantity changes;
 - (ii) Adverse physical conditions;
 - (iii) Price adjustments; and
 - (iv) Changes in delivery requirements.
- d) Remedies: These provisions deal with the breach of contract by one of the parties. They include provisions on:
 - (i) Forfeiture of performance security;
 - (ii) Procedure for damages, penalties for delay;

- (iii) Procedure for suspension and termination; and
- (iv) Non-payment or failure to provide required approvals or information.

Special Conditions of Contract (SCC)

SBDs have a section on General Conditions of Contract that is standard for all bidding and one on Special Conditions of Contract which contains provisions that should be drafted specifically by the PE for each procurement. Unlike the other sections of SBDs, the Special Conditions of Contract are not mandatory and are meant to assist the Purchaser in providing contract-specific information relating to corresponding clauses in the General Conditions of Contract. The provisions of the Special Conditions of Contract complement the General Conditions of Contract, specifying contractual requirements linked to the special circumstances of the Purchaser, the Purchaser's country, the sector and the goods, works or services to be purchased. In preparing the Special Conditions of Contract, the PE should take into consideration the following aspects:

- a) Information that complements provisions of the General Conditions of Contract must be incorporated; and
- b) Amendments and/or supplements to the provisions of the General Conditions of Contract, as necessitated by the specific circumstances of the purchase, must also be incorporated.

Where there is a conflict between the provisions of the General Conditions of Contract and those of the Special Conditions of Contract, the provisions of the latter prevail.

Sub-Contracting and Assignment

Goods Contracts

Sub-contracting does not pose problem in supply contracts. Generally the Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

Similarly neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

Works Contracts

All bidders are expected to indicate clearly in the bid if they proposed sub-contracting elements of the works amounting to more than 10 percent of the Bid Price. For each such proposal the qualification and the experience of the identified sub-contractor in the relevant field should be furnished along with

the bid, to enable the employer to satisfy himself about their qualifications before agreeing for such sub-contracting and include it in the contract.

- a) In view of the above, normally no additional sub-contracting should arise during execution of the contract. Of course, the contractor shall not be required to obtain any consent from the employer for:
 - (i) the sub-contracting of any part of the works for which the Sub-contractor is named in the contract;
 - (ii) the provision of labour; and
 - (iii) the purchase of materials which are in accordance with the standards specified in the Contract.
- b) Beyond this, if the contractor proposes sub-contracting any part of the work during execution of works, because of some unforeseen circumstances to enable him to complete the work as per terms of the contract, the principles to be followed by the Engineer before agreeing to that proposal is given below:
 - (i) The contractor shall not sub-contract the whole of the works.
 - (ii) The contractor shall not sub-contract any part of the work without prior consent of the Engineer. Any such consent shall not relieve the contractor from any liability or obligations under the contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agents or workmen, as fully as if they were the acts, defaults or neglects of the contractor, his agents or workmen.
- c) The Engineer should satisfy (i) whether circumstances warrant such sub-contracting; and (ii) that the sub-contractor so proposed for the work posses the necessary experience, qualifications and equipment for the job proposed to be entrusted to him in accordance with the quantum of work to be sub-contracted. If payments are proposed to be made directly to that sub-contractor, this should be agreed only subject to specific authorization by the prime contractor so that this arrangement does not alter the contractor's obligation.

Note:

(i) - Sub-contracting for certain specialized elements of works is acceptable for carrying out the works more effectively; but vertical splitting of the works for sub-contracting is not acceptable.

(ii) - In any case, proposal for sub-contracting in addition to what was specified in the bid and stated in the contract agreement will not be generally acceptable if the value of such additional sub-contracting exceeds 25% of the value of work which was to be executed by the Contractor without sub-contracting.

Contract Securities

Section 42 (5) of the Procurement Act specifies that *“If the supplier/contractor, whose tender has been accepted fails to sign a written contract, if required to do so, or fails to provide any required security for the performance of the contract, the appropriate board shall refer the matter to the evaluation committee to determine whether next lowest evaluated responsive bid can be accepted or bids will have to be re-invited.”*

Section 43 of the Procurement Act specifies that *“Upon the entry into force of the contract and if required by the tender documents, the provision by the supplier or contractor of a security or performance bond for the performance of the contract.”*

Hence, Bidding Documents for works shall require performance security in an amount sufficient to protect the Employer in case of breach of contract by the Contractor. This security shall be provided in an appropriate form and amount, as specified by the Employer in the bidding document. The amount of the security may vary, depending on the type of security furnished and on the nature and magnitude of the works. A portion of this security shall extend sufficiently beyond the date of completion of the works to cover the defects liability or maintenance period up to final acceptance by the Employer. Alternatively, contracts may provide for a percentage of each periodic payment to be held as retention money until final acceptance. Contractors may be allowed to replace retention money with an equivalent security after provisional acceptance.

If advance payments are made they should be secured by advance payment security for an equal amount valid until the advance has been fully recovered from progress payments and or final payment. Advance payment may also be paid against material and plant brought to site for incorporation in the works.

In contracts for the supply of goods, the need for performance security depends on the market conditions and commercial practice for the particular kind of goods. Suppliers or manufacturers may be required to provide a guarantee to protect against non-performance of the contract. Such security in an appropriate amount may also cover warranty obligations or, alternatively, a percentage of the payments may be held as retention money to cover warranty obligations, and any installation or commissioning requirements. The security or retention money shall be reasonable in amount.

The format of the performance security shall be in accordance with the standard bidding documents and shall be issued by a reputable bank or financial institution selected by the bidder.

Advance payment security: Another form of security is the advance payment security, which guarantees advance payment made by the contracting entity against the contractor's default. They are in the form of a bank guarantee or irrevocable letter of credit for an amount equal to the advance payment and are normally callable on demand. Securities must be denominated in the currency of the bid or another freely convertible currency.

Liquidated Damages and Bonus Clauses

Provisions for liquidated damages or similar provisions in an appropriate amount shall be included in the conditions of contract when delays in the delivery of goods, completion of works or failure of the goods or works to meet performance requirements would result in extra cost or loss of revenue or loss of other benefits to the Procuring Entity. Provision may also be made for a bonus to be paid to suppliers or contractors for completion of works or delivery of goods ahead of the times specified in the contract, when such earlier completion or delivery would be of benefit to the Employer.

Liquidated damages not less than 0.1 % per day or 0.5% per week (for goods), and 0.05% per day (for civil works), of the value of the delayed goods, services, or works, subject to a maximum of 10% of the contract value are normally specified for delays in completion of works or supply of goods. This would mean for delays up to 20 weeks in the case of goods, and 200 days in the case of works, the supplier/contractor will pay compensation. Normally termination for default will be attracted only after this limit is reached. Hence, in cases where the PE does not desire to give this much leeway the quantum of liquidated damages is to be increased suitably.

Where it is desired to make provision for the payment of a bonus for early completion of the whole works or partial bonuses for completion of key sections of the works, an additional Sub-Clause may be added. The amount to be paid for bonus (s) should reflect a substantial portion of the true net profit derived by the Employer over the period by which completion was earlier than scheduled. The amount of daily bonus should normally be the same as the amount of daily-liquidated damages. A ceiling of total bonus (say, 10 percent of Contract Price) may be inserted to discourage unrealistically rapid contract implementation by the Contractor, which could adversely affect overall performance. Where bonuses for completion of sections will apply, a table needs to be attached to the Appendix to the Bid, showing the dates of completion and the amounts of liquidated damages and bonus for each section.

Partial earlier completion may not always produce net benefits to the Employer, for example where utilization of the completed works requires: (i) the fulfillment of all parts of the Contract (e.g., the training of personnel); or (ii) the completion of all sections (e.g., in a hydroelectric power station, where early completion of the penstocks would not be useful if the powerhouse is still under construction); or (iii) certain seasonal effects to take place (e.g., the onset of the rainy season, for impounding a reservoir); or (iv) other circumstances. Also, a more rapid draw down of budgeted funds may be required. All such factors should be fully considered prior to considering inclusion of a bonus clause in the Contract.

Force Majeure

The conditions of contract shall stipulate that failure on the part of the parties to perform their obligations under the contract will not be considered a default

if such failure is the result of an event of force majeure as defined in the conditions of contract .The Clause given in Goods is as under:

“The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that it’s delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.”

For purposes of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event”

Testing Procedures and Inspections

The conditions of Contract in Bidding Documents should clearly mention the inspection and testing procedures to be followed for the supplies/services contracts.

GCC in Bidding Documents for Goods stipulate the following:

- The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as specified in the SCC.
- Inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods final destination, or in another place in the Purchaser’s Country as specified in the SCC. Subject to GCC Sub-Clause 25.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 25.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- Whenever the Supplier is ready to carry out any such test and

inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

- The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impede the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.
- The Purchaser may reject any Goods, or any part thereof, that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods, or parts thereof, or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GCC Sub-Clause 25.4.
- The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GCC Sub-Clause 25.6, shall release the Supplier from any warranties or other obligations under the Contract.

The Special Conditions of Contract should detail the exact test procedure to be followed for the item. A general sample clause, in which the Purchaser has chosen to have pre shipment inspection at the vendor/manufacturer premises, is given below for guidance:

“The following inspection procedures and tests are required by the Purchaser:

After manufacture, the Supplier shall get each equipment/item of Goods inspected in manufacturer's works and forward to the Purchaser along with his letter seeking inspection, a test certificate along with guarantee/warranty certificate confirming that the equipment/Goods conform to contracted technical specifications.

Upon receipt of the test certificate, the Purchaser or its representative shall arrange for inspection and/or test of any or all the

equipments/Goods prior to issuance of dispatch clearance. In cases where the supplies are received from abroad, the Purchaser has the right to waive the above pre-dispatch inspection.

However, the inspection and dispatch clearance by the Purchaser or the waiver of pre-dispatch inspection thereof will not prejudice the right of the Purchaser or its consignee to test the equipment/goods on receipt at destination. Upon receipt of the goods at final destination, the Purchaser shall have the right to inspect and/or test the equipment/Goods to confirm their conformity to the contracted technical specifications.

If the equipment fails to meet the contracted technical specifications during inspection, whether pre-dispatch or upon receipt of at final destination, the Supplier shall take immediate steps to remedy the deficiency or replace the defective equipment to ensure that all supplies made meet with the technical specifications specified in the contract.”

Similarly in the case of Works inspection & test clause should clearly specify what, how and when these tests will be carried out to establish that the Works have been executed as per contracted specifications.

Settlement of Disputes

Settlement of disputes provisions is integral part of conditions of contract and are seen by bidders as a major risk mitigation factor depending upon how the provisions are specified. This is particularly apparent in bids received for large ICB contracts in which the bidders insert qualifications or deviations pertaining to mode of settlement of disputes or the place selected for settlement if they perceive major risk. These deviations can be considered as major and non-quantifiable in nature and may lead to rejection of such bids.

According to international best practice arbitration should be used in contracts for the procurement of goods and works. In the case of works contracts, supply and installation contracts, and turnkey contracts, the dispute settlement provision shall also include mechanisms such as dispute review boards or adjudicators which are designed to permit a speedier dispute settlement.

Accordingly, the standard bidding documents (except in the case of supply of goods) provide for two types of mechanisms: a dispute review board/expert or an adjudicator of disputes mechanism, and a final settlement of disputes mechanism- namely arbitration.

Domestic Disputes

In the case of international bidding, at the time tenders are invited, it is not possible to determine if disputes shall be settled through national forum (domestic contractors) or international commercial arbitration (foreign contractor).

Disputes between a client/purchaser/employer and a contractor/ supplier from the client's country (domestic) should be settled in accordance with the mechanisms (judicial or arbitral) as mandated by domestic law.

International Arbitration

There are two main possible approaches to international commercial arbitration: either the arbitration will be administered by an institute following its own rules of arbitration (International Chamber of Commerce (ICC) Institute of Stockholm Chamber of Commerce; or London Court of International Arbitration) or the arbitral procedure will be defined by reference to well recognized set of procedures such as UNCITRAL (United Nations Commission on International Trade Law) Arbitration Rules. When the UNCITRAL rules are selected it is critical that a credible appointing authority be also identified in the contract terms (it could be an institution such as the Chancellor of the Judiciary of Guyana, Institution of Engineers, ICC, country Institutes of Arbitration, etc.) for the arbitration provision to be perceived as fair and impartial by the contractor/supplier. Furthermore, the place of arbitration is important and should be specified clearly in the document. Many contractors/suppliers prefer that this should not be the country of the Employer/Purchaser or the Contracting entity.

In the case of Guyana, the UNCITRAL rules have been selected for all contracts with foreign contractors.

Adjudicator (Smaller works, Supply/Installation, etc.)

The SBDSW as well as NCB works conditions of contract include a provision for an Adjudicator whose role is to review the decision of the Project Manager/Engineer. If the Contractor believed that a decision taken by the Project Manager/Engineer was either outside his authority or that the decision was wrong, he can refer to the Adjudicator within 14 days of the notification of the Project Manager/Engineer's decision.

The dispute shall be examined or reviewed by the Adjudicator within 28 days from the request made by the Contractor, and a decision given. The decision of the Adjudicator becomes final if neither party refers the dispute to arbitration within 28 days after the adjudicator has communicated it.

The appointing mechanism for the Adjudicator is built into the bidding process:

The employer proposes an Adjudicator in the bidding documents data sheet, and the bidder accepts or counter-proposes another Adjudicator in his bid. In the contract letter of acceptance, the employer accepts the counter-proposal (if any) of the winning bidder or refers the appointment to "an appointing authority" which has also been pre-identified in the bidding document data sheet. In the latter case, the appointing authority should immediately proceed with the designation and appointment of the Adjudicator.

The Adjudicator is usually an expert in the subject matter of the contract. The appointing authority should be neutral (i.e. not a government official). Suggested appointing authorities would be professional organizations, centres of expertise, etc.

Dispute Review Boards

Dispute Review Boards (DRB-three members) and Dispute Review Experts (DRE-one Member) constitute more complex, accelerated dispute review mechanisms. These Boards/Experts have been assigned the role formerly played by the engineer under FIDIC IV Civil Works Conditions (Clause 67.1). Dispute Review Boards and Dispute Review Experts are expected to keep themselves informed of the progress of the works (periodical site visits) and their role is mainly to pre-empt disputes from occurring by detecting, early on, potential grounds for disagreement between the employer and the contractor. Dispute Review Board/Experts review disputes at the request of the contractor and the employer. Their fees are split in half between the two parties and pre-paid by the contractor who is reimbursed (for half of it) by the employer.

The Standard Bidding Documents for Larger Works provide details on how the Board operates. The General Conditions of Dispute Board Agreement and procedural rules to be followed by them are given in Appendix.

The essential elements of Dispute Review Board are given below:

- (i) All three members of the DRB are neutral and are selected as per agreed procedures;
- (ii) All members serve both parties equally and fairly;
- (iii) The parties share the fees and expenses of the DRB members equally;
- (iv) The DRB is organized when work begins, before there are any disputes;
- (v) The DRB keeps abreast of job developments by means of relevant documentation and regular site visits;
- (vi) Either party can refer a dispute to the DRB;
- (vii) An informal but comprehensive hearing is convened promptly. (Presentation by representatives of employer / contractor only. Normally, no legal presentation is permitted).
- (viii) The written decision of the DRB is binding on either party unless one party disagreed.

Termination of Contract

The Standard forms of contract all include provisions dealing with the termination of a contract before its term. Most (but not all) the forms also include detailed provisions stipulating how the contractor will be paid following termination of a contract.

Contracts can be terminated as a result of the employer/purchaser's default, convenience, force majeure, suspension of works/services, contractor's or supplier's default.

Contractor's default usually includes failure to commence or proceed with the work and to comply with the notice requesting to proceed; failure to complete the work or deliver the goods within the agreed period of time; insolvency; voluntary or involuntary bankruptcy (liquidation or dissolution amounts to the same as Contractors' default). In such cases, the Contractor is responsible for the additional costs incurred by the Employer to complete the works/supply (except for SBD small works and NCB works which stipulates that the Employer's compensation will be in the form of a percentage of the value of work not completed).

Employer's default includes failure to pay within a certain period of time (usually non-payment, but also in the smaller works fundamental breach of contract); termination for Employer/Purchaser's convenience, i.e. the Employer/Purchaser's discretionary decision to terminate the contract, amounts to the same as termination for Employer/Purchaser's default. The Contractor or Supplier is entitled to be compensated for all of the expenses incurred and for the reasonable cost associated with the early termination of the contract. Termination may also occur as a result of suspension of the works when not followed by resumption within a certain period of time, force majeure, out breaks of war, and release from performance.

SECTION 5 HANDLING OF COMPLAINTS AND PROTESTS

***Part 10* COMPLAINT/PROTEST PROCEDURES**

General

An efficient system to address complaints and protests from prospective and actual bidders and consultants, as well as from professional bodies and the public, is a fundamental requirement for a good public procurement system for achieving transparency. An efficient and fair system would contribute to perception of integrity and consequent trust in the public procurement system. For this reason, Section 53 of the Procurement Act has outlined a process and mandated creation of an independent authority to review complaints if a contract has already been awarded, or the review by the Procurement Entity is not completed within the prescribed time limit, or if completed, the complainant is not satisfied with the response of the Procuring Entity. Sections 12 to 15 of the Regulations have further elaborated these procedures in detail.

The current steps in the Guyana process are the following:

- 1) A complainant must submit his complaint within 5 days of learning about the grounds for the complaint or should have become aware of it.
- 2) The PE must review any complaint received by it expeditiously and respond within 5 working days of receipt of the complaint.
- 3) If response, according to 2) above, is not received timely or the complainant is not satisfied with the response, he may appeal to the Bid Protest Committee (BPC). In the case of a complaint after a contract is awarded, the complainant may skip step 2) and directly complain to the BPC.
- 4) NPTA may provide logistic and secretarial support to the BPC but shall not get involved in the review of the complaint.
- 5) Any complaint to the BPC shall be accompanied by a registration fee of 2% of the estimated value of the procurement.
- 6) BPC may request the PE to suspend the procurement proceedings, but the PE in special cases may not do so in public interest.
- 7) BPC must complete review within 20 working days.
- 8) BPC may:
 - (i) Reject the complaint;
 - (ii) Instruct both parties to act differently according the Act/Regulations;
 - (iii) Prohibit the PE from acting unlawfully;
 - (iv) Annul the whole proceedings unless a legally valid contract has come to being;
 - (v) Award compensation to the complainant to the extent of costs incurred by it;
 - (vi) Order procurement proceedings to be terminated.
- 9) The decision of the BPC shall not be subject to any further administrative review.
- 10) Once the complaint has been finally dealt with, record of the proceedings are open to public to view. Notwithstanding anything said above, a procurement award or decision approved by the Cabinet shall not be subject to review.

Administrative Review

The procedure for administrative review of complaints and protests and the reference to the Procurement Act and the Regulations is explained below

Any potential or actual bidder, supplier, contractor, or a consultant who claims to have suffered, or may suffer, loss or damage due to a breach of duty

imposed on a procurement Entity by the Procurement Act 2003 and the Procurement Regulations 2004, including any subsidiary legislation, may complain or protest in accordance with Sections 52, 53 & 54 of the Procurement Act and Clauses 10 to 15 of Procurement Regulations, as per procedures described below:

A complaint or protest shall not be entertained and shall be rejected in the following cases:

- a) The decision complained or protested against is taken by the Cabinet (Council of Ministers) - Clause 10 (2) of Regulations.
- b) The exclusion of a consulting firm in a short-list of consultants to be invited to submit proposals - Clause 10 (3-(a)) of Regulations.
- c) A decision by the Procuring Entity to reject all bids, or quotations, or proposals - Clause 10 (3 (b)) of Regulations.
- d) A complaint or protest submitted later than 7 working days from the date the complainant became aware, or should have become aware, of the circumstances leading to the complaint or protest - Clause 10 (6) of Regulations.
- e) If a contract has not yet been signed, the complaint or protest shall in the first instance be submitted to the concerned Procuring Entity within 7 working days of the complainant becoming aware of the circumstances leading to the complaint/ protest. - Clauses 10 (4) & 11 of Regulations.

Procuring Entity Responsibility

The Procuring Entity shall review the complaint on merits and give a decision within 5 working days of receiving the complaint - Clause 11 (1) of Regulations.

If the complainant is NOT satisfied with the decision of the Entity, or does NOT receive any response within the time specified, he/she may appeal the decision to the Bid Protest Committee within three working days of receiving or failing to receive within the prescribed period, the response from the Entity - Clauses 10 (4) & 12 of Regulations.

If a procurement contract has already been signed, the complaint/protest may be submitted directly to the Bid Protest Committee within 7 working days of the date on which the complainant became aware, or should have become aware, of the circumstances leading to the complaint or protest. Simultaneously, a copy of the complaint/ protest shall be sent to the Procuring Entity - Clause 10 (5) of Regulations.

Registration of Compliant

The appeal or complaints submitted to the Bid Protest Committee shall be accompanied by a registration fee equivalent to 2% of the actual or estimated value of the procurement, subject however to a maximum of G\$ 2 million - Clause 13 (2) of Regulations.

The complaint shall contain:

- a) Identification of the Procuring Entity and the relevant procurement proceedings;
- b) A description of the alleged breach by the Procuring Entity of the Procurement Act and the remedy sought; and
- c) Registration fee payment receipt - Clause 13 (4) of Regulations.

The complainant shall send a copy of this simultaneously to the Procuring Entity concerned. The Procuring Entity shall then furnish the complete procurement proceedings with their comment on the complaint to the Bid Protest Committee, advising the complainant of the action taken -Clauses 13 (3 &5) of Regulations.

Bid Protest Committee

The Bid Protest Committee shall consist of three members nominated in accordance with Section 53 (4) of the Act. The members will be nominated one each by: the (i) Minister; (ii) Association appearing to the Minister to represent Contractors; and (iii) Attorney General. The Administration may request the nomination of one or more deputies for each member. The member nominated by the Attorney General shall act as the Chairman of the Committee.

The Bid Protest Committee shall review the complaint or protest along with the procurement proceedings/comments of Procuring Entity, and may:

- a) Reject the complaint/protest giving reasons for its decision. If the complaint is also declared frivolous, the registration fee shall be forfeited.
- b) Instruct both parties, i.e. the complainant and Procuring Entity, on the rules and policies that apply to the issue raised and direct them to proceed accordingly.
- c) Prohibit the procurement Entity from proceeding or deciding the issue unlawfully, annulling any unlawful decision of the Procuring Entity unless a contract has been signed.
- d) Order the procurement Entity to pay compensation to the complainant for the costs incurred in the bid preparation and participation; and

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- e) Order the Entity to terminate the procurement proceedings - Clause 13 (7) of Regulations.

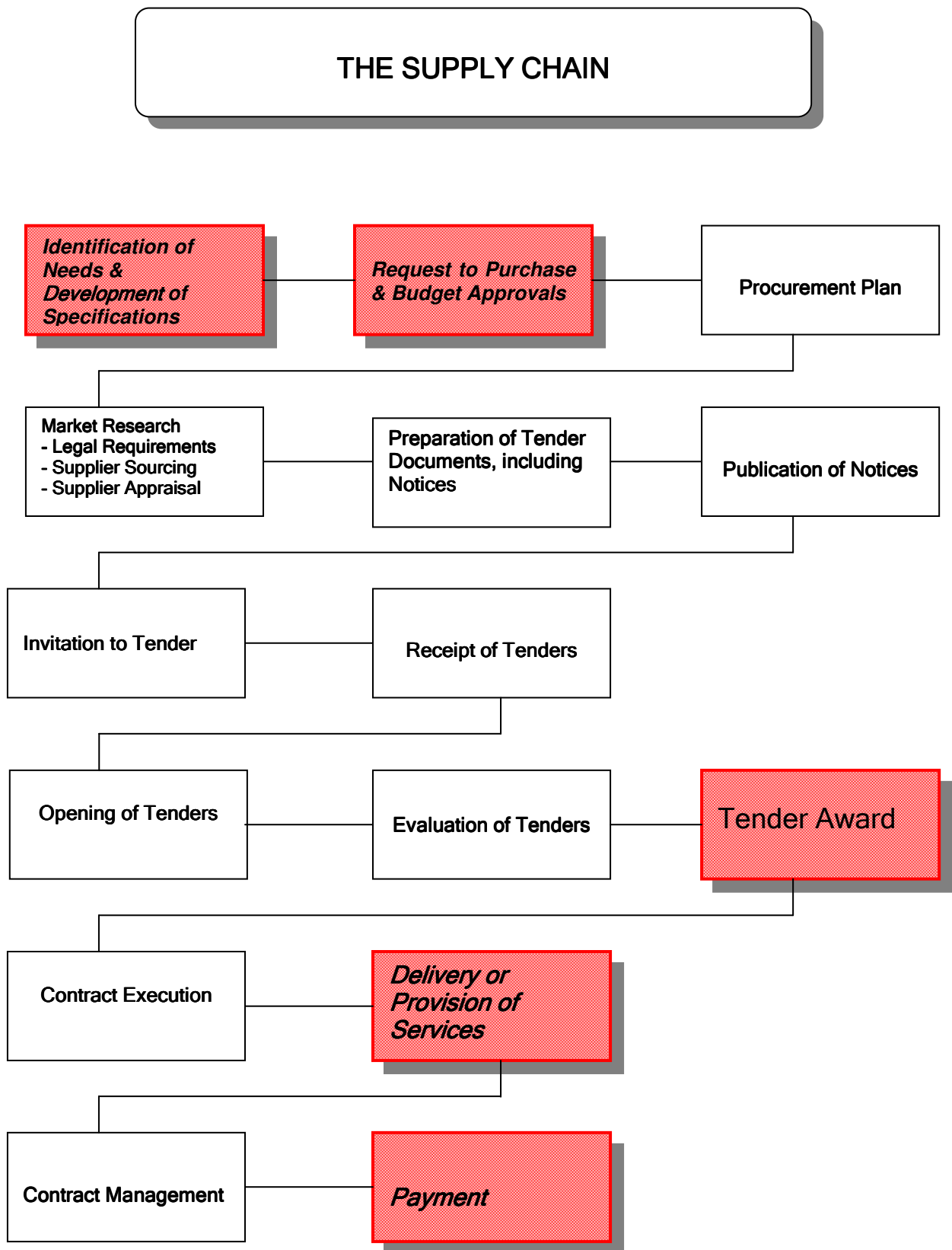
During the period of consideration of a complaint/protest, the procurement proceedings shall be suspended from the time the complaint is received to the time a final decision is issued by the Procuring Entity or the Bid Protest Committee. However, the Procuring Entity may decide not to suspend the procurement proceedings in the public interest, but record its reasons for such a decision. The Bid Protest Committee also may decide to remove the suspension if, in its opinion, the public interest warrants such action.

The Bid Protest Committee shall make every effort to reach its decision within 15 business days from the date of the complaint - Section 53 (5) of Act.

Every Procuring Entity shall maintain a register of complaints in which all information such as date of receipt of complaint, date of reply, date of submission of appeal to BPC, etc., shall be recorded. NTB shall forward any complaint received by it to the PE for further action. NTB shall itself keep all records related to the BPC for which it shall function as secretariat.

FIGURES AND ILLUSTRATIONS

Fig. 1



*Fig. 2***THRESHOLDS FOR REVIEW BY TENDER BOARDS**

Type of Board	Type Contract	Contract Value in (G.\$ m)
(a) National	All Types	All contracts exceeding the maxima for other boards
(b) Regional	Goods and Services (other than consulting)	0.25 – 6.0
	Construction	06. – 9.0
	Consulting services	0.4 – 0.5
(c) Ministerial/ Department/ Agency	Goods and Services (other than consulting)	0.25 – 0.6
	Construction	0.6 – 1.0
	Consulting services	0.4 – 0.5
(d) Ministry of Public Works and Communications	Goods and Services (other than consulting)	1.0 – 4.0
	Construction	1.0 – 8.0
	Consulting services	1.0 – 3.0
(e) Ministry of Agriculture	Goods and Services (other than consulting)	1.0 – 4.0
	Construction	1.0 – 8.0
	Consulting services	1.0 – 3.0

Contract awards below the stated values are the responsibility of the Procuring Entity.

EXCEPTIONS TO OPEN TENDERING

1. The threshold foreseen in section 26 (1) (b) of the Act for use of the restricted tendering method of procurement shall be \$1,000,000 in the case of goods and services (other than consulting services) and \$5,000,000 in the case of contracts for construction.
2. The threshold foreseen in section 27(1) of the Act for use of the request for quotation method of procurement shall be \$800,000.
3. The threshold foreseen in section 29 of the Act for use of the community based method of procurement shall be \$1,500,000.

Fig. 3

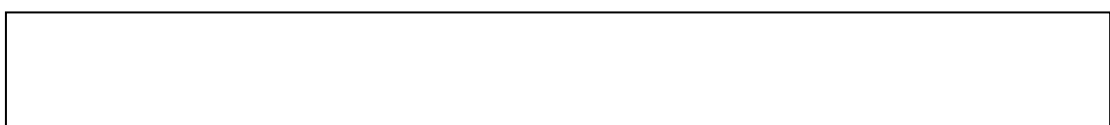
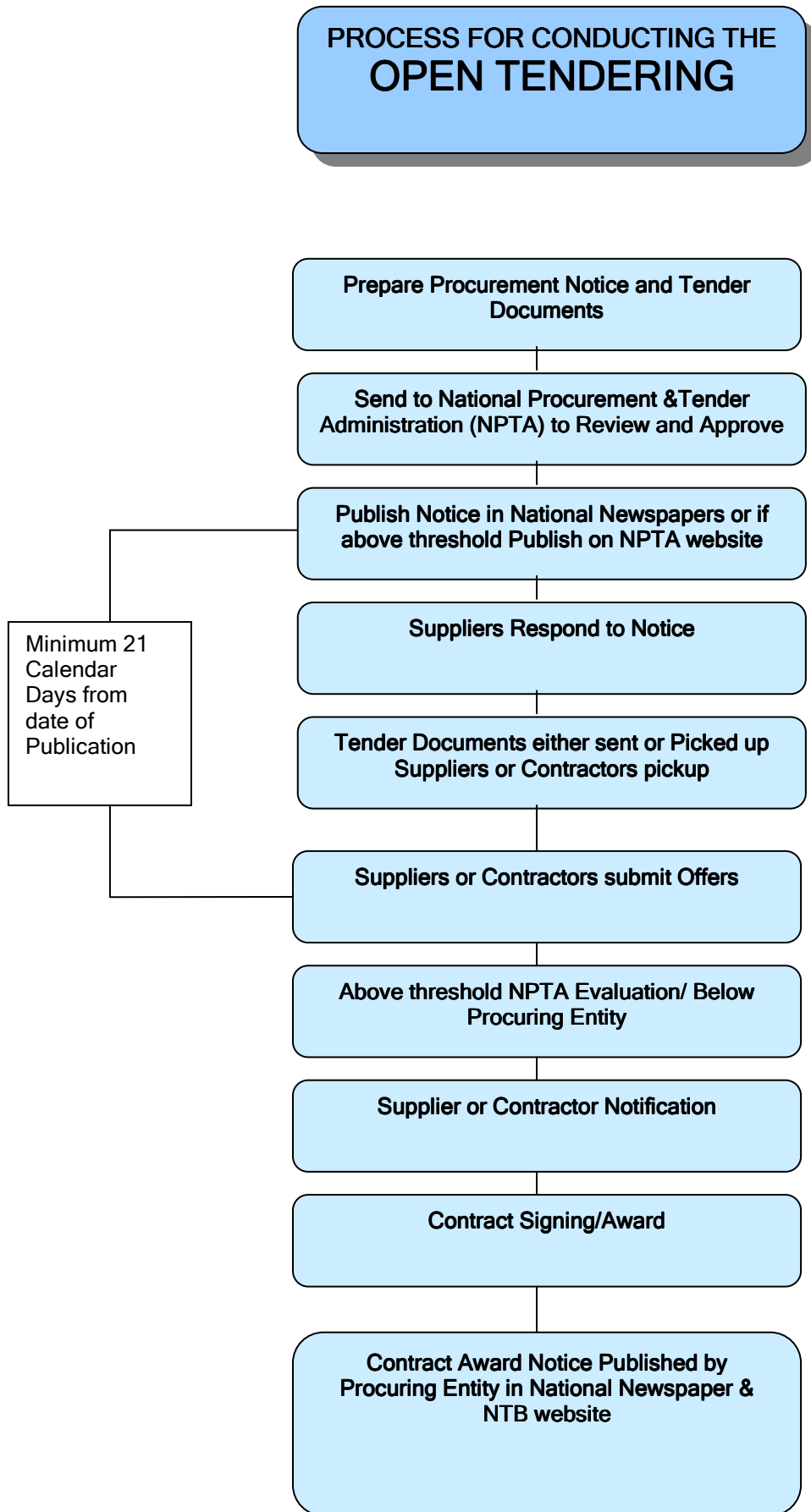
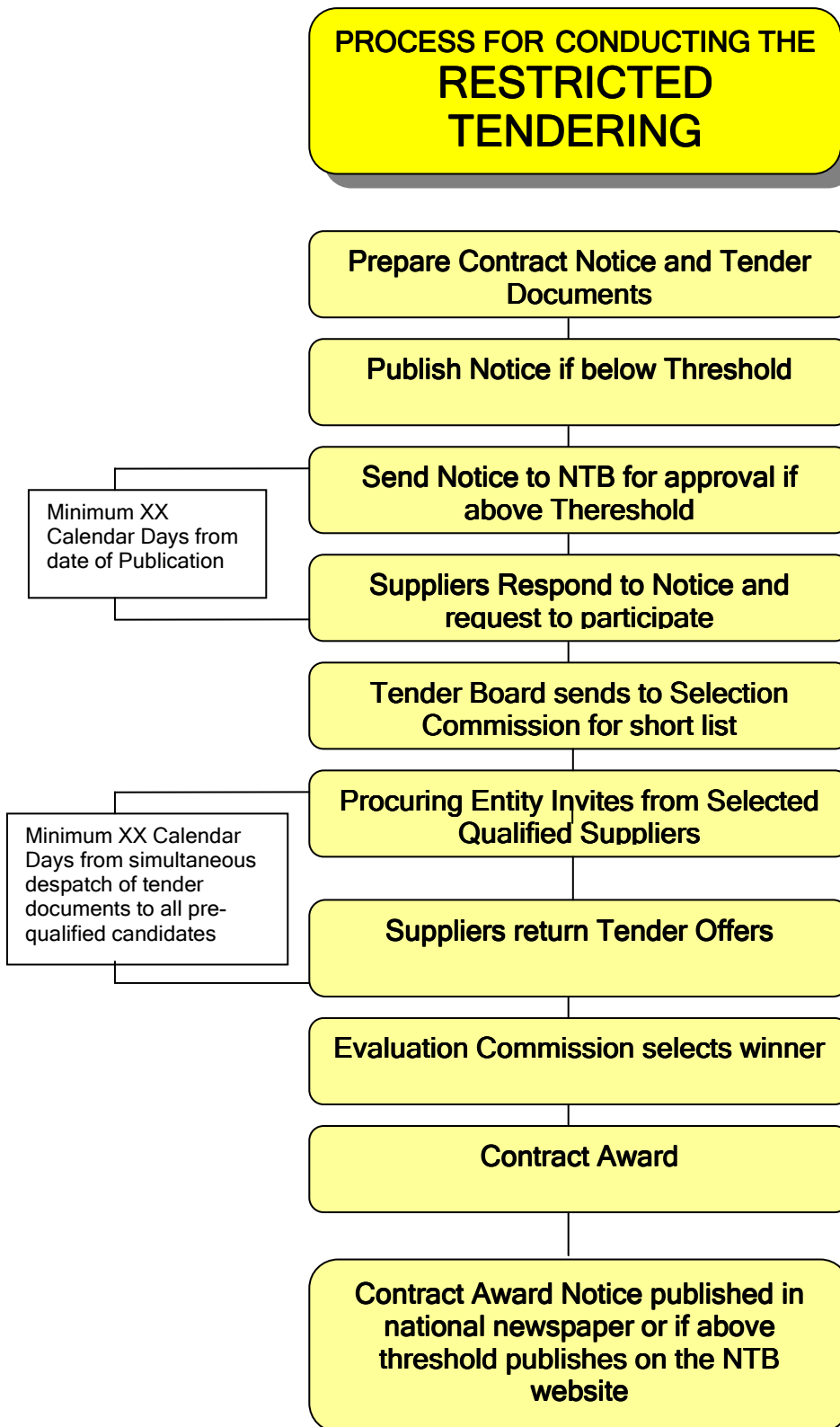


Fig. 4



Note: The time limits shown constitute a minimum. The actual time limits must be long enough to allow a reasonable and appropriate period for suppliers to prepare and submit their bids, taking particular account of the complexity of the contract. Longer time limits must be given where there is a requirement for a site visit or on-the-spot consultation of documents.