

**SAINT VINCENT AND THE GRENADINES  
PUBLIC PROCUREMENT REGULATIONS, 2019  
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**SAINT VINCENT AND THE GRENADINES**

**STATUTORY RULES AND ORDERS**

2019 NO. 23

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(Gazetted 22nd November, 2019)

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**IN EXERCISE** of the powers conferred by section 73 of the Public Procurement Act, No. 34 of 2018 the Minister, after consultation with the Board, makes the following Regulations:

**PUBLIC PROCUREMENT REGULATIONS, 2019**

**PART I**

**PRELIMINARY PROVISIONS**

- |  |                       |
|--|-----------------------|
| 1. (1) These Regulations may be cited as the Public Procurement Regulations 2019.  | <b>Citation</b>       |
| 2. These Regulations shall come into operation on the date of commencement of the Act.   | <b>Commencement</b>   |
| 3. In these Regulations, unless the context requires otherwise-  | <b>Interpretation</b> |
| <p>“EXW” means ex works as defined in the International Chamber of Commerce’s Incoterms® rules 2020, as amended from time to time;</p> <p>“CIF” means cost, insurance freight as defined in the International Chamber of Commerce’s Incoterms® rules 2020, as amended from time to time</p> <p>“joint venture” means a business arrangement in which two or more parties agree to pool their resources for the purpose of submitting a specific bid or for cooperating in the longer term independently of any specific bid and may include consortia, associations and other forms of formal cooperation.</p> |                       |

“material deviation” in relation to the substantial responsiveness of a bid, means a substantive deviation from, omission from or reservation to the terms, conditions, or specifications in the contract, that would, if accepted, affect in any substantial way the scope, quality, or performance of the goods works or services specified in the contract; or limit in any substantial way, inconsistent with the bidding documents, the procuring entity’s rights or the bidder’s obligations under the contract; or if rectified, would unfairly affect the competitive position of other bidders submitting substantially responsive bids;

“performance security” means a financial instrument issued by a reputable bank or financial institution, such as an insurance, or bonding or surety company, to secure the contractor’s obligation to fulfil the contract;

“proposal” means an offer, in response to a request for proposals, by one party to provide consulting services to another party;

“quotation” means a price offer, in response to a request for quotations, by one party to provide readily available goods, works or services to another party.

## PART II

### GENERAL PROVISIONS

#### Defence and Security Procurement

4. (1) Subject to any exemption provided under section 17(1) of the Act, any contract for the procurement of national defence or security which has been certified as confidential and necessary for the protection of the security of the State under section 17(5) of the Act, shall be made and executed in accordance with the limited competitive bidding procedure set out in section 45(1)(a)(i) of the Act.

(2) The procuring entities shall identify as many bidders as possible capable of providing the goods, works or services required and shall send an invitation to prequalify or to bid, as appropriate, directly to those bidders.

(3) In all other respects, the provisions of the Act shall apply.

#### Thresholds

5. (1) For the purposes of section 9(1)(c) of the Act, the threshold above which approval of the Board is required before invitations to bid are sent to pre-qualified bidders shall be \$45,000.

(2) For the purposes of section 9(1)(d) of the Act, the threshold above which approval of the Board is required before contracts are awarded shall be \$45,000.

(3) For the purposes of section 49(1) of the Act, the request for quotation procedure may be used where the contract value does not exceed \$20,000. For contracts with a value above \$20,000, the competitive bidding procedure shall be the default procedure.

(4) For the purposes of section 44(3) of the Act, the selected media shall be chosen carefully to include newspapers, specialised journals and websites available internationally and which are likely to attract foreign bidders where the value of the proposed procurement contract exceeds –

- (a) \$10 million for works; or
- (b) \$500,000 for goods and services.

(5) For the purposes of section 47(1)(e)(v) of the Act, “small value” procurement shall mean procurement of contracts with a value of \$500 or less.

(6) For the purposes of section 43(5)(a) of these Regulations, “small value” procurement shall mean procurement of consultancy services with a value of \$15,000 or less.

6. Any fee or charge applied by the procuring entity for any document identified in the Act shall be limited to the costs of duplication and postage, where appropriate.

**Fees**

7. Where the Secretary has notice of any circumstance that may lead to the suspension or debarment of a person under Part 8 of the Act, such information shall be forwarded to the Board forthwith and the Board may take such information into account in determining whether or not to initiate proceedings under the Fourth Schedule of the Act.

**Powers of  
Secretary**

8. (1) The Annual Report referred to in section 11 of the Act shall provide a procurement system performance assessment in respect of that year’s activities consisting of

**Annual Report**

- (a) a record and an assessment of the operations of the Central Procurement Office including plans for the coming year;
- (b) procurement statistics based on the summaries of procurement activity submitted by all procuring entities covered by the Act;

- (c) an evaluation of the operations of procuring entities in respect to compliance;
- (d) any relevant audit findings, complaints investigated and corrective actions taken;
- (e) system performance evaluation based on identified key indicators;
- (f) proposed actions to improve the procurement system or to mitigate identified risks;
- (g) an evaluation of the operations ; and
- (h) any other information the Minister may direct.

(2) The Board may, where circumstances require, prepare a special report on any matter relating to procurement to be submitted to the Minister.

#### **Confidentiality**

9. Notwithstanding any law to the contrary, information relating to the content of pre-qualification applications, bids or to the examination, clarification, evaluation and comparison of bids shall not, before the announcement of the award of contract, be disclosed by any public officer, including members of the Office and Board, to suppliers, contractors, service providers or consultants or to any other person not involved officially in the examination, evaluation or comparison of bids or in the decision on which bid should be accepted.

### **PART III**

#### **SECURITIES**

#### **Bid Securities**

10. (1) In order to deter irresponsible bids and encourage bidders to fulfil the conditions of their bids, a procuring entity may require bidders to provide either

- (a) a bid security, or
- (b) a bid-securing declaration.

(2) The bidding documents shall state any requirement for a bid security or a bid-securing declaration.

(3) The value of any required bid security shall be expressed as a fixed amount, which may be up to two percent of the estimated value of the contract.



(4) In determining the amount of bid security required, the procuring entity shall take into account the cost to bidders of obtaining a bid security, the estimated value of the contract and the risk of bidders failing to fulfil the conditions of their bids, and which shall be high enough to deter irresponsible bids, but not so high as to discourage competition.

(5) Where the bidding documents stipulate that a bid security is required, the bid security shall be:

- (a) in accordance with the format and wording provided in the bidding document;
- (b) in a form acceptable to the procuring entity, which may be:
  - (i) a certified Bank cheque;
  - (ii) a bank guarantee; or
  - (iii) any alternative form acceptable to the procuring entity, including any forms permitted under schemes issued by the Procurement Office to facilitate access to securities by small enterprises; and
- (c) valid for the period prescribed in the bidding document, which shall normally be 28 days beyond the expiry of the bid validity period.

(6) A bid security shall be forfeited by the bidder only in the event of:

- (a) a modification or withdrawal of a bid after the deadline for submission of bids and during its period of validity;
- (b) refusal by a bidder to accept a correction of an arithmetical error appearing on the face of the bid;
- (c) failure by the successful bidder to sign a contract in accordance with the terms set forth in the bidding documents; or
- (d) failure by the successful bidder to provide a security for the performance of the contract if required to do so by the bidding documents.

(7) The procuring entity shall release bid securities promptly to unsuccessful bidders upon expiry of the term of the security or formation of a contract with the successful bidder and submission of any required performance security, whichever is earlier.

(8) The bid security of the successful bidder shall not be released, until any required performance security has been received.

(9) In the event of a bid-securing declaration, if the successful bidder withdraws or modifies its bid during the period of validity or fails to sign the contract or to submit the performance security within the prescribed deadline, the bidder shall pay to the project owner or procuring entity within 7 days a penalty of 2% of the bid price, failing which the bidder shall be debarred by the Board from participating in any public contract for a period of up to one year.

**Performance  
securities**

11. (1) A procuring entity may request a performance security, where applicable, to secure the contractor's obligation to fulfil the contract and any requirement for a performance security shall be set out in the bidding documents and contract, such security to be provided prior to contract signature.

(2) The value of any required performance security may be expressed either as a fixed amount or as a percentage of the contract value and shall be no more than ten percent of the contract value.

(3) In determining the amount of performance security required, the procuring entity shall take into account the cost to the contractor of obtaining a performance security, the value of the contract, the risk of a contractor failing to fulfil his contractual obligations and the extent of protection offered to the procuring entity through alternative means, such as payment retentions.

(4) Where appropriate, the value of the performance security may be progressively reduced, in line with the contractor's progress in delivering or completing the goods, works or services to which the security relates.

(5) The bidding documents and contract shall state that the performance security shall be:

- (a) in accordance with the format and wording provided in the bidding document;
- (b) in a form acceptable to the procuring entity;
- (c) from an institution acceptable to the procuring entity, where the security is issued by a financial institution; and
- (d) valid for the period prescribed in the contract.

(6) The conditions for forfeiture of the performance security shall be specified in the contract.

(7) The procuring entity shall release the performance security promptly to the contractor upon completion of all the contractor's contractual obligations which are subject to the security or termination of the contract for a reason that is not attributable to any fault of the contractor.

## PART IV

### PROCUREMENT PLANNING

12. (1) A procuring entity shall start preparing its annual procurement plan as part of the budget process taking into account the requirements of section 23 of the Act.

**O v e r a l l  
p r o c u r e m e n t  
p l a n n i n g**

(2) A procuring entity shall forecast its requirements for goods, services and works as accurately as is practicable with particular reference to services or activities already programmed in the annual work plan and included in the annual estimates.

(3) Planning shall involve preparation of a project work plan and identification of the resources necessary to carry out the various project activities.

(4) The estimate of procurement requirements shall be compared with the likely availability of voted or donor funds so that priorities for procurement may be determined in accordance with available funds.

(5) The procuring entity shall prepare its cost estimates based on available historical data or on the basis of identified prevailing market prices, using external assistance as required.

13. (1) Within thirty days after the approval of the budget, a procuring entity shall finalise an annual procurement plan for those requirements for which sufficient funds have been included in the approved budget in the current financial year or subsequent financial year where budget for such payment has been foreseen.

**P l a n n i n g   f o r  
i m p l e m e n t a t i o n**

(2) Procuring entities shall prepare their annual procurement plan using the template approved by the Minister.

(3) In compiling such plan, a procuring entity shall

(a) establish the appropriate method of procurement to be employed for each requirement;

- (b) calculate the timescale for each procurement, allowing any necessary margin for delays in transmission of documents or clarification of bids; and
- (c) set out the proposed commencing dates and critical points in the procurement process; and
- (d) include an estimate of the optimum time to the nearest month of performance and completion of services.

(4) Approval of the accounting officer shall be obtained either by inclusion of that procurement in a procurement plan or by request as an individual item of procurement when not included in the procurement plan.

(5) A procuring entity shall take a strategic decision whether or not the most economic and technically efficient procurement can best be achieved by aggregating or separating contracts for each component.

(6) For purposes of maximizing economy and efficiency in its procurement, a procuring entity

- (a) may group goods, works or services of a broadly similar or related nature, into a single bid of a size and type that may be likely to attract a reasonable number of bidders and may not cause unreasonable delay in the procurement, such procurement being carried out by way of framework agreement in accordance with regulation 42, as appropriate; or
- (b) may divide contracts into several lots or packages in accordance with section 24 of the Act following the procedures set out in regulation 14.

#### **C o n t r a c t P a c k a g i n g**

14. (1) Without prejudice to the prohibition of section 24 of the Act, procuring entities may divide a procurement requirement, which could be procured as a single contract, into a package consisting of several lots which are to be bid together, where it is anticipated that the award of several separate contracts may result in the best overall value for the procuring entity.

(2) A procurement requirement shall not be divided into lots:

- (a) for the sole purpose of avoiding thresholds;
- (b) where the award of several separate contracts would create problems of compatibility or inter-changeability between items procured as separate lots, or would unduly strain contract administration resources;



- (c) where the award of several separate contracts would invalidate or otherwise restrict any provider's warranty or liability; or
  - (d) where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements.
- (3) Where a requirement which could be procured as a single contract is divided into lots, the procuring entity shall:
- (a) ensure that the size of the package is designed to foster maximum competition and obtaining the most economic contract;
  - (b) state in the instructions to bidders -
    - (i) the number of lots or packages;
    - (ii) the nature, location and size of each lot; and
    - (i) where appropriate, the minimum and maximum number of lots or packages for which a bidder may bid;
  - (c) permit bidders to bid for a single lot, any combination of lots or all lots; and
  - (d) demonstrate, prior to contract award, that the recommended contract award or combination of contract awards offers the best overall value for the procuring entity.

## **PART V**

### **BIDDER QUALIFICATIONS**

15. (1) The procuring entity may require the bidders to furnish evidence of their financial capacity to fulfil the requirements of the contract. The procuring entity shall set out the level of financial capacity required from the bidders in the bidding documents. Such evidence may be furnished by

Evidence of  
financial  
capacity

- (a) certified statements from bankers including, if necessary, details of available line of credits;
- (b) presentation of the bidder's annual audited financial statements, including income statement, and cashflow statement or balance sheet or extracts from the balance sheets for the last three years; and

- (c) overall turnover and the turnover in respect of works, supply of goods or services similar to those required in the contract for the last three years.

(2) The procuring entity shall indicate the references it requires in the bidding documents.

**Evidence of  
technical  
capacity**

16. Depending on the nature, quantity and purposes of the goods, services or works, evidence of technical ability may be furnished by means of:

- (a) the professional and educational qualifications of the bidder or its managerial and supervisory staff and, in particular, of persons responsible for carrying out the particular works or services for the proposed contract;
- (b) in the case of works: a list of works carried out over the last 3 years, together with certificates of satisfactory execution for similar works, issued by previous clients. Such certificates will indicate the value, date and site of the works and shall specify whether they were properly executed;
- (c) in the case of goods and services: a list of supplied goods and services in the past 3 years with the sums, dates and purchasers (public and private). Such list is to be evidenced by certificates issued or signed by the purchaser;
- (d) a list of the bidder's machinery, namely tools, plants and technical equipment, including quality control system directly carried out or by sub-contracting;
- (e) in the case of goods: detailed descriptions or types of goods to be supplied, which, if the procuring entity so requires, authenticity must be certified;
- (f) in the case of goods incorporated into works: Certificates drawn up by official quality control institutes or agencies of recognised competence attesting conformity to specifications or standards for products. The procuring entity shall state in the bidding documents the references required.

**Joint ventures**

17. Where a bidder is constituted in the form of a joint venture:

- (a) all parties to the joint venture shall be jointly and severally liable for the contract; and
- (b) the joint venture shall nominate a representative who shall have the authority to conduct all businesses for and

on behalf of any and all parties of joint venture during the bidding process and, in the event the joint venture is awarded the contract, during the contract execution.

18. (1) When using pre-qualification,

P r e -  
Qualification

- (a) the prequalification documents shall establish the minimum requirements and criteria against which bidders will be assessed on a pass or fail basis; and
- (b) the procuring entity shall make a decision with respect to each application to prequalify and all bidders that meet the qualification requirements shall be invited to participate in the bid submission phase.

(2) Where a procuring entity engages in pre-qualification proceedings, it shall cause an invitation to be published in accordance with section 44(3) of the Act advising potential suppliers, or contractors or service providers of the proceedings.

(3) The invitation shall include the following information:

- (a) the name and address of the procuring entity;
- (b) a summary of the required principal terms and conditions of the procurement contract to be entered into as a result of the procurement proceedings, including the nature, quantity and place of delivery of the goods to be supplied, the nature and location of the works to be effected or the nature of the services and the location where they are to be provided, as well as the desired or required time for the supply of the goods, the completion of the works or the provision of the services;
- (c) the criteria and procedures to be used for ascertaining the qualifications of suppliers or contractors, and of any documentary evidence or other information that must be submitted by suppliers or contractors to demonstrate their qualifications, in conformity with section 28 of the Act;
- (d) the means of obtaining the application documents and the place where they may be obtained;
- (e) the price, if any, to be charged by the procuring entity for the application documents and the means of currency of payment;

- (f) the manner, at the place and by the deadline for presenting applications.

(4) In assessing the requirements of section 28(1), the procuring entity shall require the bidders to furnish evidence of their financial and technical capacity to fulfil the requirements of the contract by setting out the evidence required in the pre-qualification documents or in the bidding documents.

(5) The procuring entity shall set out the level of financial capacity required from the bidders to mitigate the risk of supply in the pre-qualification documents and may require evidence of financial capacity to be furnished by one or more of the following:

- (a) certified letter from recognised financial institutions, including where necessary, details of available lines of credit;
- (b) presentation of the bidder's Audited Financial Statements for the past three most recent years. In the absence of Audited Financial Statements, and dependent of the level of financial risk to the supply of the goods, works or services, the respondent may be required to submit an Accountant's Report/ Management Accounts for the past three most recent years, signed and attested to by the firm's Directors or Proprietors; and
- (c) overall turnover and the turnover in respect with works, supply of goods or services similar to those required in the contract for the three previous years.

(6) Depending on the nature, quantity and purposes of the goods, services or works, evidence of technical ability may be furnished by, among other things, means of:

- (a) the professional and educational qualifications of the bidder or its managerial and supervisory staff and, in particular, of persons responsible for carrying out the particular works or services for the proposed contract;
- (b) in the case of works: a list of works carried out over the last five years, together with certificates of satisfactory execution for similar works, issued by previous clients; such certificates will indicate the value, date and site of the works and shall specify whether they were properly executed;



- (c) in the case of goods and services: a list of supplied goods and services in the past five years with the sums, dates and purchasers (public and private); such list is to be evidenced by acceptance certificates issued or signed by the purchaser;
- (d) a list of the bidder's machinery, namely tools, plants and technical equipment, including quality control system directly carried out or by sub-contracting;
- (e) in the case of goods: detailed descriptions or types of goods to be supplied, which, if the procuring entity so requires, authenticity must be certified;
- (f) in the case of goods incorporated into works: certificates drawn up by official quality control institutes or agencies of recognised competence attesting conformity to specifications or standards for products.

(7) The manner, place and deadline for presenting applications shall be set out in the invitation for pre-qualification and in the pre-qualification documents.

(8) The invitation shall specify the deadlines for presenting applications by indicating a specific date and time which enables suppliers or contractors to prepare and present their applications, taking into account the reasonable needs of the procuring entity.

(9) Requests for clarification of the invitation or pre-qualification documents shall be dealt with in accordance with section 34 of the Act.

(10) The pre-qualification documents shall include the following information –

- (a) instructions for preparing and presenting pre-qualification applications;
- (b) any documentary evidence or other information that are to be presented by suppliers or contractors to demonstrate their qualifications;
- (c) the name, functional title and address of one or more officers or employees of the procuring entity who are authorized to communicate directly with and to receive communications directly from suppliers or contractors in connection with the pre-qualification proceedings without the intervention of an intermediary;

- (d) any other requirements that may be established by the procuring entity in conformity with the Act relating to the preparation and presentation of applications to pre-qualify and to the pre-qualification proceedings.

(11) The procuring entity shall take a decision with respect to the qualifications of each supplier or contractor presenting an application to pre-qualify by applying only the criteria and procedures as specified in pre-qualification documents and all applicants that substantially meet the qualification requirements shall be invited to participate in the bid submission phase.

(12) The procuring entity shall promptly notify each supplier, contractor or service provider presenting an application of its decision including where relevant a statement of reasons for failure to be pre-qualified.

(13) The procuring entity shall make available to any person, upon written request, the names of all suppliers or contractors who have been pre-qualified.

#### **Registration**

19. (1) Registration on the panel of bidders in accordance with section 30 of the Act constitutes a presumption of general compliance with the criteria adopted for the registration process and qualifies registered bidders to participate in a subsequent procurement procedure without further investigation.

(2) Bidders who are not registered do not benefit from such a presumption of general compliance and will be required to demonstrate their qualifications to participate in the procurement procedure. These bidders may only be excluded from the procurement procedure on the basis of the criteria listed in section 28 of the Act.

(3) Notwithstanding the general compliance of registered bidders, procuring entities shall establish contract specific criteria in accordance with section 28 of the Act for each procurement requirement and shall assess the suitability of all bidders for the specific contract in question. Such criteria shall be set out in the pre-qualification document or bidding document, as appropriate.

## PART V

### BIDDING PROCEDURES

20. (1) A bid shall be submitted in written form, duly signed and in a single sealed envelope at the place and time indicated in the bidding documents. **B i d d i n g  
requirements**

(2) Only one bid per bidder shall be accepted and no bidder may participate in more than one bid.

(3) Bids received after the deadline for submission of bids shall be returned unopened.

(4) Bidding documents shall permit the submission of bids by hand or mail or by courier at the option of the bidder.

(5) Except for bids received through a bid box, a procuring entity shall, on request, issue to a bidder a receipt setting out the date and time the bid was received.

(6) Notwithstanding sub-regulation (3) and subject to any e-procurement policy issued by the Minister, the bidding documents may authorise other methods of submission of bids, such as by electronic mail, as long as the confidentiality and security of bids are assured, including the prevention of the opening and reading of bids by anyone until the time set for the opening of bids.

(7) Where a bid security is required, a bidder shall, before the deadline for submitting bids, deliver to the procuring entity such security in the prescribed amount, form and manner.

(8) Bids shall remain valid for the period of time indicated in the bidding documents and withdrawal of a bid during the bid validity period will result in forfeiture of any bid security provided.

(9) The period fixed by a procuring entity shall be sufficient to permit evaluation and comparison of bids, for obtaining all necessary clearances and approvals, and for the notification of the award of contracts and finalise a contract but the period shall not exceed one hundred and twenty days from the final date fixed for submission of bids.

(10) The validity period of a bid may be extended only on the basis of the agreement in writing of the bidder concerned and where the bidder obtains a corresponding extension of the bid security, where a security was required. A bidder may refuse the request for extension without forfeiting any bid security provided and the validity of its bid shall be terminated upon the expiry of the un-extended period of validity.

(11) All bids submitted before the deadline for submission shall be opened in public, in the presence of the bidders or their representatives and other parties with a legitimate interest in the bid procedures and the names of all those present at the bid opening and the organisations they represent shall be recorded.

(12) At bid opening, following verification that each bid is sealed and that the seal remains intact, the names of the bidders, the total amount of each bid, any modifications made, any discounts or alternatives offered, and the presence or absence of any bid security or bid securing declaration, if required, and essential supporting documents shall be read out aloud and recorded. In the case that the two envelope system is used, the announcement shall include the fact that no price envelope has been opened.

(13) A copy of the record shall be made available to any bidder on request.

(14) No decision regarding the disqualification or rejection of any bid shall be taken or announced in the bid opening session.

(15) Following opening of the bids and until the preliminary decision on award has been notified to the successful bidder, a bidder shall not make any unsolicited communication to the procuring entity or try in any way to influence the procuring entity's examination and evaluation of the bids.

(16) All bids that are accepted and opened shall be passed promptly, with a copy of the record of the bids received and those persons attending the meeting, to the respective evaluation committee for evaluation.

**Use of two  
envelope  
system**

21. (1) When calling for bids in two envelopes in accordance with section 32(1)(a) of the Act, the procuring entity shall, before opening the envelopes containing the financial aspects of the proposals, examine and evaluate the technical, quality and performance characteristics of bids contained in the technical envelope in accordance with the criteria and procedures specified in the request for proposals.

(2) The results of the examination and evaluation of the technical, quality and performance characteristics of the bids shall immediately be included in the record of the procurement procedures.

(3) Proposals whose technical, quality and performance characteristics fail to meet the relevant minimum requirements shall be considered to be non-responsive and shall be rejected on that ground.



(4) A notice of rejection and the reasons for the rejection, together with the unopened envelope containing the financial aspects of the proposal, shall promptly be dispatched to each respective tenderer whose bid was rejected.

(5) The proposals whose technical, quality and performance characteristics meet or exceed the relevant minimum requirements shall be considered to be responsive and the procuring entity shall promptly communicate to each tenderer presenting the proposal the score of the technical, quality and performance characteristics of its respective bid and shall invite all such tenderers to the opening of the envelopes containing the financial aspects of their proposals.

(6) The score of the technical, quality and performance characteristics of each responsive bid and the corresponding financial aspect of that bid shall be read out in the presence of the tenderers invited to the opening of the envelopes containing the financial aspects of the proposals.

(7) The procuring entity shall compare the financial aspects of the responsive bids and, on that basis, identify the successful bid in accordance with the criteria and the procedure set out in the invitation to bid.

(8) The successful bid shall be the one with the best combined evaluation in terms of the price and the criteria specified in the invitation to bid.

22. (1) A procuring entity that wishes to commence competitive bidding procedures shall prepare a bid notice inviting bidders to submit priced offers for the supply of goods, undertaking of works or provision of services required.

**Procedure for  
competitive  
bidding**

(2) All invitations to bid shall be in writing.

(3) The procuring entity shall

(a) in the case of open competitive bidding, advertise the invitation to bid in accordance with section 44(3) of the Act;

(b) in the case of limited competitive bidding, send invitations to bid directly to the bidders in accordance with section 45(2) of the Act.

23. (1) The invitation to bid shall contain the following information:

**Invitation to bid**

(a) the name and address of the procuring entity;

- (b) the nature, quantity and place of delivery of the goods to be supplied or the nature, quantity and location of the works to be effected or the nature of the services and the location where they are to be provided;
- (c) the desired or required time for the supply of the goods or for the completion of the works or for the provision of the services;
- (d) the means or conditions of obtaining the bidding documents and the place from which they may be obtained;
- (e) price if any, to be charged by the procuring entity for the bid document, such price being limited to the costs of reproduction and distribution;
- (f) the address for the submission of bids;
- (g) the deadline for the submission of bids;
- (h) the place, hour and date for opening of bids; and
- (i) if relevant, the source of financing.

(2) The procuring entity shall, immediately after the first publication of the bid notice, issue the bidding documents to all bidders who have responded to the bid notice in accordance with the procedures and requirements specified in the invitation to bid.

(3) Where prequalification procedures have been used, the procuring entity shall issue a set of the bidding documents to each bidder who is pre-qualified and has paid the prescribed price, if any, for the documents.

(4) The procuring entity shall submit the invitation to bid for review by the Office prior to publication.

**Content of  
bidding  
documents**

24. (1) The bidding documents shall contain the following information:

- (a) the criteria and procedures relating to evaluation of the qualifications of bidders;
- (b) the requirements as to documentary evidence or other information that has to be submitted by a prospective bidder to demonstrate his qualifications;
- (c) the nature and required technical and quality characteristics, of the goods, works or services to be

procured, including, but not limited to, technical specifications, plans, drawings and designs as appropriate;

- (d) the criteria to be used by a procuring entity in determining a successful bid, including any margin of preference and any criteria other than price to be used pursuant to section 37(1) of the Act and the relative weight of such criteria;
- (e) the terms and conditions of the procurement contract and the contract form to be signed by the parties;
- (f) in the case that alternatives to the characteristics of the goods, works, services, contractual terms and conditions or other requirements set out in the bidding documents are permitted, a statement to that effect, and a description of the manner in which alternative bids are to be evaluated and compared;
- (g) in the case where the bidders are permitted to submit bids for only a portion of the goods, works or services to be procured, a description of the portion or portions for which such bids may be submitted;
- (h) the manner in which the bid price is to be formulated and expressed, including a statement as to whether the price is to cover elements other than the cost of the goods, works or services such as an applicable transportation and insurance charges, customs duties and taxes;
- (i) the currency or currencies in which the bid price is to be formulated and expressed;
- (j) any requirements of the procuring entity with respect to the issuer and the nature, form, amount and other principal terms and conditions of any bid security to be provided by bidders, and any such requirements for any security for the performance of the procurement contract to be provided by the bidders who enters into the procurement contract;
- (k) the manner, place and deadline for the submission of bids;
- (l) the means by which bidders may seek clarification of the bidding documents, and a statement as to whether

or not the procuring entity intends to convene a meeting of bidders;

- (m) the period of time during which bids shall be valid;
- (n) the place, date and time for the opening of bids;
- (o) the procedures to be followed for opening and examining bids;
- (p) the currency that will be used for the purpose of evaluating and comparing bids and in the case of foreign currency an exchange rate that will be used for the conversion of bids into that currency or a statement that the rate published by a specified financial institution prevailing on a specified date will be used;
- (q) the name, functional title and address of an officer or employee of a procuring entity who is authorised to communicate directly with and to receive communications directly from bidders in connection with the procurement;
- (r) notice of the right for review of an unlawful act, decision of, or procedure followed by, the procuring entity in relation to the procurement procedures;
- (s) any formalities required where a bid is accepted for a procurement contract to enter into force, where applicable, the execution of a written contract, approval by the Central Procurement Board or the public authority and the estimated period of time following the dispatch of the notice of acceptance that requires approval; and
- (t) any other requirements established by a procuring entity in conformity with the Act and the regulations relating to the preparation and submission of bids and to other aspects of the procurement procedures.

(2) The bidding documents shall be prescribed to permit and encourage competition and such documents shall set out clearly and precisely all information necessary for a prospective bidder to prepare a bid.

(3) A procuring entity shall use the appropriate standard bid documents issued by the Office to address specific issues of a procurement in accordance with guidelines issued by the Office.



(4) Any changes to the standard bid documents shall be introduced only through bid data sheets, or through special conditions of contract.

(5) Where the relevant standard bid documents are not issued, the procuring entity shall use standard bid documents acceptable to the Office.

25. (1) Where a sample is required by a procuring entity and such requirement is specified in the bidding documents, the sample shall be:

**Bid sample or  
inspection of  
goods**

- (a) submitted as part of the bid, in the quantities, sizes and other details requested in the invitation to bid;
- (b) carriage paid;
- (c) received on, or before, the closing time and date for the submission of bids; and
- (d) evaluated to determine compliance with all the characteristics listed in the invitation.

(2) The procuring entity shall retain the sample of the successful bidder.

(3) A procuring entity shall reject the bid if the sample-

- (a) does not conform to all characteristics prescribed in the bidding documents and
- (b) are not submitted within the specified time.

(4) Where it is not possible to avoid using a propriety article as a sample, a bidder shall make it clear that the propriety article is displayed only as an example of the type or quality of the goods being bided for and that competition shall not thereby be limited to that article only.

(5) Samples made up from materials supplied by a procuring entity shall not be returned to a bidder nor shall a procuring entity be liable for the cost of making them.

(6) All samples produced from materials belonging to an unsuccessful bidder which are not claimed by the bidder within a period of thirty days from the date of award of contract shall be the property of the procuring entity and shall dispose them in such a manner as may be directed by the accounting officer.

(7) Arrangements for the inspection of the assets shall be included in the invitation notice or bidding documents where appropriate.

**Receipt of bids**

26. (1) The procuring entity shall receive and keep the bids in a locked bid box or in a secure office space.

(2) On receipt of bids where a bid box is not used, the envelopes shall be recorded in a special register in the order in which they arrive.

(3) The registration number, the date and time of arrival shall be recorded on the envelope and shall remain sealed and be kept in a safe place until they are opened.

(4) Bids received after the deadline for the submission of bids stipulated in the bid documents shall neither be opened nor be considered and shall be returned unopened to the bidder who submitted it.

**Evaluation committee**

27. (1) A procuring entity shall form a bid evaluation committee in accordance with section 16(1) of the Act comprising of not less than three and not more than five suitably qualified public officers who shall be members.

(2) A bid evaluation committee made up of three members shall include at least one suitably qualified public officer who is not an employee of the procuring entity, or at least two suitably qualified public officers when the committee is made up of more than three members;

(3) Except where the award criteria established by section 41(1)(c) of the Act have been selected, the bid evaluation committee shall evaluate on a common basis opened bids in order to determine the cost or price to the procuring entity of each bid in a manner that permits a comparison to be made between the bids on the basis of the evaluated costs or prices.

(4) Prior to the detailed evaluation of bids, the bid evaluation committee shall carry out a preliminary examination of the bids to determine whether or not-

- (a) each bid is substantially responsive to the requirements of the bidding documents;
- (b) any securities have been provided where required;
- (c) the documents have been properly signed; and
- (d) the bids are otherwise generally in order.

**Examination, evaluation and comparison of bids**

28. (1) The bid evaluation shall be consistent with the terms and conditions prescribed in the bidding documents and such evaluation shall be carried out using the criteria explicitly stated in the bid documents.

(2) Bids shall be comparable among themselves in order to determine the evaluated cost for the goods, works or services.

29. (1) All bids shall be checked for substantial responsiveness to the terms and conditions of the bidding documents.

**S u b s t a n t i a l  
r e s p o n s i v e n e s s**

(2) For the purpose of this regulation, a bid is considered to be substantially responsive if it conforms to all the terms, conditions and specifications of the bid document without material deviation or reservations.

(3) Material deviations to commercial terms and conditions, which justify rejection of a bid shall include the following:

- (a) failure to sign the bid form and price schedules by the authorised person or persons;
- (b) failure to satisfy eligibility requirements;
- (c) failure to submit a bid security or bid-securing declaration as specified in the bidding documents;
- (d) failure to satisfy the bid validity period;
- (e) inability to meet the critical delivery schedule or work schedule clearly specified in the bidding documents, where such schedule is a crucial condition with which bidders must comply;
- (f) failure to comply with minimum experience criteria as specified in the bidding documents;
- (g) conditional bids such as conditions in a bid which limit the bidder's responsibility to accept an award;
- (h) inability to accept the price adjustment formulae of the bidding documents;
- (i) stipulating price adjustment when fixed price bids were invited;
- (j) subcontracting in a substantially different amount or manner than that permitted;
- (k) failure to submit major supporting documents required by the bidding documents to determine substantial responsiveness of a bid.

(4) Material deviations to the technical requirements of the bidding documents and non-conformity to technical requirements, which are justifiable grounds for rejection of a bid include the following:

- (a) failure to bid for the required scope of work as instructed in the bidding documents and where failure to do so has been indicated as unacceptable;
- (b) failure to quote for a major item in the package;
- (c) failure to meet major technical requirements, such as offering completely different types of equipment or materials from the types specified, plant capacity well below the minimum specified, equipment not able to perform the basic functions for which it is intended;
- (d) presentation of unrealistic and inadequate implementation plans and schedules regarding performance, technical or service factors.

(5) The procuring entity's determination of a bid's responsiveness shall be based on the contents of the bid itself without recourse to extrinsic evidence.

(6) Where a bid is not responsive to the bidding document, it shall be rejected by the procuring entity and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.

**Request for  
clarification of  
bid**

30. (1) A procuring entity may request a bidder to clarify his bid in order to assist in the examination, evaluation and comparison of bids but no advantage shall be sought, offered or permitted to change any matter of substance in the bid, including changes in price and changes aimed at making an unresponsive bid responsive.

**(2) Notwithstanding regulation 29(2) -**

- (a) a procuring entity shall correct purely arithmetical errors that are discovered during the examination of bids and the procuring entity shall give prompt notice of any such correction to a bidder that submitted the bid;
- (b) a procuring entity may regard a bid as responsive even if it contains minor deviations that do not materially alter or depart from the characteristics, terms, conditions and other requirements set forth in the bidding documents or it contains errors or oversights that are capable of being corrected without touching on the substance of the bid;



- (c) any such deviations shall be quantified to the extent possible, and appropriately taken account of in the evaluation and comparison of bids.

31. A procuring entity shall reject a bid if-

**Power to reject  
bid**

- (a) the bidder is not qualified or eligible;
- (b) the bidder does not accept a correction of an arithmetical error made pursuant to regulation 30;
- (c) the bid is not responsive;
- (d) the bid is not accompanied by an appropriate bid security, if required;
- (e) the bid is received after the deadline for submission of bids.

32. (1) The bid evaluation committee shall evaluate and compare all bids that are accepted in order to ascertain the successful bid, in accordance with the procedures and criteria prescribed in the bidding documents.

**Evaluation and  
acceptance of  
bids**

(2) The successful bid shall be the bid that meets the criteria established by section 41(1) of the Act.

33. (1) Where so indicated in the bidding documents and strictly in accordance with any rules or schemes for national preference approved by the Board through instructions or otherwise, a margin of preference may be applied to eligible bids.

**N a t i o n a l  
preference**

(2) Any rules or schemes issued under sub-regulation (1) shall clearly state the:

- (a) eligibility for the margin of preference, in terms of ownership, location of bidder or production facilities, origin of labour, raw material or components, extent of sub-contracting or association with local partners or any other relevant factor;
- (b) documentation required as evidence of eligibility for the margin of preference; and
- (c) percentage of the margin of preference and the manner in which it will be applied during the evaluation.

(3) The procuring entity may only apply the preference where it is satisfied that the bidders benefiting from the limitation have the capacity and experience necessary to provide the required goods, works or services, and are able to submit responsive bids which, in particular,

meet the terms and conditions, qualification criteria and technical specifications set out in the bidding documents.

(4) In the case of goods contracts, preference may be applied to bids that contain:

- (a) goods manufactured exclusively in Saint Vincent and the Grenadines, or
- (b) goods partially manufactured or assembled in Saint Vincent and the Grenadines where the bidder establishes to the satisfaction of the procuring entity that the proportion of national value added to the total value of those goods is equal to or greater than 30% of the ex-works (EXW) price of the goods offered.

(5) In establishing the national value added in accordance with (4)(b) above, the procuring entity shall take account of the value of national labour, raw materials or components manufactured within Saint Vincent and the Grenadines as well as the value of any manufacturing or assembly carried out in facilities within Saint Vincent and the Grenadines.

(6) As part of their bids, bidders are required to certify that the necessary manufacturing capacity exists where national value is to be added.

(7) In the case of works contracts, preference may be applied to bids that employ 50% or more of national labour. 'National labour' includes

- (a) skilled or unskilled labour and may include management input; and
- (b) may be provided by the bidder directly where that is a national contractor or indirectly by foreign contractors through sub-contracting of Saint Vincent and the Grenadines labour or through association with national contractors that employ Saint Vincent and the Grenadines labour.

(8) For comparison purposes, responsive bids shall be classified in one of the three groups:

- (a) Group A: bids offering goods manufactured locally if the bidder satisfactorily establishes that
  - (ii) local labour, raw material and components will account for more than 30% of EXW price to the product offered, and

- (iii) the production facility in which those goods will be manufactured or assembled has been engaged in manufacturing/assembling such goods at least since the time of bid submission.
- (b) Group B: all other bids offering, local goods.
- (c) Group C: bids offering the goods from abroad and to be directly imported.

(9) The price quoted for goods in bids of Groups A and B shall include all duties and taxes paid or payable on the basic materials or components purchased in the national market or imported, but shall exclude the sales and similar taxes on the finished product. The price quoted for goods in bids of Group C shall be on CIF (place of destination), which is exclusive of customs duties and other import taxes already paid or to be paid.

(10) In the first step, all evaluated bids in each group shall be compared to determine the lowest bid in each group. Such lowest evaluated bids shall be compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest, it shall be selected for the award.

(11) If as a result of the comparison under paragraph ten above, the lowest evaluated bid is a bid from Group C, the lowest evaluated bid from Group C shall be further compared with the lowest evaluated bid from Group A after adding to the evaluated price of goods offered in the bid from Group C, for the purpose of this further comparison only, an amount equal to margin of preference applied to (for example 15 percent of) the CIF bid price. The lowest evaluated bid determined from this last comparison shall be selected.

34. (1) A detailed report on the evaluation and comparison of bids, setting out the specific reasons upon which the determination of the successful bid is based, shall be prepared by the bid evaluation committee.

#### Evaluation Report

(2) The bid evaluation report shall be submitted to the accounting officer to ensure that it is consistent with the bidding document.

(3) If the accounting officer is satisfied with the bid evaluation report he or she shall approve the report or, where the threshold value set out in regulation 5 is exceeded, forward the same to the Central Procurement Board for approval.

(4) Where the accounting officer or Central Procurement Board, as appropriate, is not satisfied the bid evaluation report shall be returned, with reasons, to the evaluation committee for re-evaluation.

**Procedure for  
Two-stage  
bidding**

35. (1) The provisions of these regulations for open competitive bidding shall apply to two-stage bidding procedures except in so far as this section provides.

(2) The bidding documents shall call upon bidders to present, in the first stage of two-stage bidding procedures, initial bids containing their proposals without a bid price.

(3) The bidding documents may solicit bids relating to the technical, quality or performance characteristics of the subject matter of the procurement, contractual terms and conditions of supply and, where relevant, the professional and technical competence and qualifications of the bidders.

(4) A procuring entity may, in the first stage, engage in discussions with bidders whose initial bids have not been rejected pursuant to the provisions of the Act or these Regulations concerning any aspect of their initial bids.

(5) Without prejudice to sub-regulation (4), when a procuring entity engages in discussions with any bidders, it shall extend an equal opportunity to participate in discussions to all bidders.

(6) In the second stage of two-stage-bidding procedures, a procuring entity shall invite all bidders whose initial bids were not rejected in the first stage to present final bids with prices in response to a revised set of terms and conditions of the procurement.

(7) In revising the relevant terms and conditions of the procurement, the procuring entity shall not modify the subject matter of the procurement but may refine aspects of the description of the subject matter of the procurement by-

- (a) deleting or modifying any aspect of the technical, quality or performance characteristics of the subject matter of the procurement initially provided and adding any new characteristics that conform to the requirements of these regulations; or
- (b) deleting or modifying any criterion for examining or evaluating bids initially provided and adding any new criterion that conforms to the requirements of these regulations, only to the extent that the deletion, modification or addition is required as a result of



changes made in the technical, quality or performance characteristics of the subject matter of the procurement.

(8) Any deletion, modification or addition made pursuant to sub-regulation (7) shall be communicated to bidders in the invitation to present final bids.

(9) A bidder who does not wish to present a final bid may withdraw from the bidding procedures without forfeiting any bid security that the bidder may have been required to provide.

(10) The final bids shall be evaluated with a view to ascertaining the successful bid.

36. (1) In the case of single source procedures, the letter of invitation shall be sent to the selected bidder and shall contain-

**Procedure for  
single source**

- (a) the full name and address of the procuring entity;
- (b) instructions for submission of a quotation;
- (c) a full description of the goods, works or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
- (d) in the case of works, bills of quantities, the location and the required time for their completion;
- (e) the quantities of any goods, or the desired results of any service to be supplied or provided and the required time and place of delivery, any requirements for minimum performance, warranty and maintenance for such goods or management and reporting requirements of a service provider;
- (f) whether any alternatives to the required specifications or characteristics of the goods, works or services, or to other contractual conditions, are to be permitted;
- (g) the period during which the quotation is to remain valid;
- (h) the form of contract, to include all conditions and terms of payment;
- (i) a statement of the currency in which the supplier or service provider will be paid;
- (j) a statement that the procuring entity does not bind itself to accept the quotation.

(2) The procuring entity shall scrutinize any quotation received and, where necessary, negotiate with the supplier with a view to ensuring that the requirement for the goods or services are complied with, and the price quoted is not excessive and is in line with reasonable expectations.

(3) The procuring entity shall not make undesirable reductions in the quality of the goods or services in order to achieve cost savings.

**Procedure for  
Request for  
Quotations**

37. (1) Quotations shall be solicited from at least three suppliers.

(2) The letter of invitation for quotations and any attachments shall contain –

- (a) the full name and address of the procuring entity;
- (b) a full description of the goods, works or services to be procured, including the required technical or quality characteristics, specifications, designs, plans and drawings, as appropriate;
- (c) the quantities of any goods to be supplied and the required time and place of delivery, any requirements for such goods;
- (d) in the case of works, bills of quantities, the location and the required time for their completion;
- (e) in the case of services, a list of targets to be achieved by a service provider, list of specific tasks or duties to be performed, a schedule of deliverables or outputs against which the achievements of the services shall be measured, the duration of the services and method of measuring the performance of services delivered;
- (f) the qualification requirements a bidder must meet to be awarded the contract;
- (g) information of any elements other than the charges for the goods or services themselves, such as any applicable transportation and insurance charges customs duties and taxes, that are to be included in the price;
- (h) the period during which the quotations are to remain valid;
- (i) the form of contract or Purchase Order, to include all conditions and terms of payment;

- (j) all documents and information requirements that shall be submitted as part of the quotation;
- (k) a statement that the procuring entity does not bind itself to accept any quotation and may reject all quotations;
- (l) the manner in which bidders may seek clarification on the RFQ;
- (m) the manner in which the quotations shall be submitted; and
- (n) the place, date and time for the submission of quotations.

(3) All prospective bidders shall be provided with the same information and shall be assured of equal opportunities to obtain additional information on a timely basis.

38. (1) Following a decision to award the contract to the successful bidder pursuant to section 41(1) of the Act and approval under section 41(2) of the Act, the procuring entity shall, prior to the expiry of the bid validity period, notify the successful bidder of the proposed award advising the successful bidder to complete the requirements, including the furnishing of any performance security, and specifying the time within which the contract shall be signed which shall be not less than 10 days from the date of the notice.

**Award of  
Contract**

(2) A notice shall simultaneously be given in writing to all unsuccessful bidders, specifying the name and address of the proposed successful bidder and the price of the contract.

(3) In the absence of any challenge brought in accordance with Part 9 of the Act, the contract document must be signed by the duly authorised representatives of the parties on the date specified and must bear the date of signature.

(4) Where the contract is not signed by both parties simultaneously,

- (a) the procuring agency shall send to the proposed contractor or supplier two original copies of
  - (i) the full agreed contract and
  - (ii) the letter of acceptance, each copy to be signed by its duly authorised representative, together with the date of signature;

- (b) the letter of acceptance shall indicate the deadline by which it must be accepted which would normally be no more than 30 days;
- (c) the contractor or supplier, if he agrees to conclude the contract, must sign and date all original copies of the contract and letter of acceptance and return one copy of each to the procuring agency before the expiry of the deadline indicated in the letter of acceptance.

(5) Where the successful bidder fails to provide the required performance security within the prescribed period, the provisions of section 40(4) of the Act shall apply.

#### Negotiations with bidders

39. (1) Following bid submission, all negotiations with bidders on fundamental aspects of the proposed procurement, in particular on prices, shall be prohibited to the extent that they may distort competition; negotiations may be held to amend the scope of the final contract provided the principle of equal treatment is maintained.

(2) Notwithstanding sub-regulation (1), negotiations may be undertaken with the successful bidder relating to-

- (a) a minor alteration to the technical details of the statement of requirements;
- (b) reduction of quantities for budgetary reasons, where the reduction is in excess of any provided for in the bidding documents;
- (c) a minor amendment to the special conditions of contract;
- (d) finalising payment arrangements;
- (e) mobilisation arrangements;
- (f) agreeing final delivery or work schedule to accommodate any changes required by the procuring entity;
- (g) the methodology or staffing; or
- (h) clarifying details that were not apparent or could not be finalised at the time of bidding.

(3) Negotiations shall not be conducted under sub-regulation

(2)-



- (a) to substantially change the specification or details of the requirement, including tasks or responsibilities of the bidder;
- (b) to materially alter the terms and conditions of contract stated in the bidding document;
- (c) primarily for the purpose of reducing prices in case of procurement of goods, works or services;
- (d) to substantially alter anything which formed a crucial or deciding factor in the evaluation of bid.

(4) Negotiations with the successful bidder are not permitted until after the accounting officer or the Central Procurement Board, as the case may be, has approved the bid evaluation committee's recommendations in respect of the successful bid.

40. (1) The cancellation of procurement proceedings shall be avoided whenever possible, but is permitted where there is written finding that:

**Cancellation of  
procurement  
proceedings**

- (a) the procurement need has ceased to exist or changed significantly;
- (b) insufficient funding is available for the procurement;
- (c) there is a significant change in the required technical details, bidding conditions, conditions of contract or other details, such that the recommencement of procurement proceedings is necessary;
- (d) there is evidence of collusion among bidders; or
- (e) it is otherwise in the public interest.

(2) A procuring entity shall incur no liability towards bidders solely by virtue of its invoking this regulation.

41. (1) Where insufficient or no responsive bids are received, the procuring entity shall investigate the failed procurement proceedings and record in the procurement record the reasons the procurement was unsuccessful and the course of action taken.

**Unsuccessful  
procurement**

(2) The investigation should consider all relevant issues, including whether:

- (a) the bidding period was sufficient, considering the factors set out in section 33(1) of the Act;
  - (b) the requirements of the bidding documents, including the technical specifications, and the terms and conditions of the proposed contract were clear, non-discriminatory, proportionate, reasonable and not so excessive as to deter competition;
  - (c) any invitation notice was published in an appropriate publication and on the required date;
  - (d) there was any delay in issuing the bidding documents;
  - (e) any amendments or clarifications to the bidding documents allowed sufficient time for bidders to take them into account in preparing their bids;
  - (f) there were other extraneous events or circumstances, which may have affected the ability of bidders to respond;
  - (g) the evaluation process was conducted in accordance with these Regulations and the bidding documents and whether officers responsible for the evaluation had adequate skills and resources;
  - (h) there is any suspicion of collusion between potential bidders; and
  - (i) the original choice of procurement method was appropriate.
- (3) The procuring entity shall take any appropriate action suggested by the cause or causes of failure which may include, but are not limited to:
- (a) the use of an alternative method of procurement;
  - (b) amendments to the bidding documents, including bidding requirements, the type of contract or the terms and conditions of the proposed contract;
  - (c) alternative publication of any invitations to bid, similar notices or bidding documents; and
  - (d) the introduction of international competition.

42. (1) Framework agreements are awarded by way of the open bidding method pursuant to these regulations and may be concluded with one or more bidders.

**Framework  
Agreements**

(2) Where a framework agreement is concluded with a single bidder, contracts based on that agreement shall be awarded within the limits of the terms laid down in the framework agreement.

(3) Where a framework agreement is concluded with more than one bidder, contracts based on that agreement may be awarded either:

- (a) by application of the terms laid down in the framework agreement without reopening competition, or
- (b) where not all the terms are laid down in the framework agreement, by a re-opening of the competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework agreement.

(4) The procedures for awarding framework agreements and for contracts based on framework agreements shall be set out fully in Guidelines issued by the Central Procurement Office.

## **PART VI**

### **CONSULTING SERVICES**

43. (1) Under the Requests for Proposals procedure, the selection process includes the following steps:

**Request for  
proposals  
procedure**

- (a) preparation of the terms of reference;
- (b) preparation of cost estimate and the budget, and short-listing criteria;
- (c) advertising in accordance with section 51(4) of the Act;
- (d) preparation of the short list of consultants;
- (e) preparation and issuance of the Request for Proposals

(2) The terms of reference shall define clearly the objectives, goals, and scope of the assignment and provide background information (including a list of existing relevant studies and basic data) to facilitate the consultants' preparation of their proposals. If transfer of knowledge or training is an objective, it should be specifically outlined along with

details of the number of staff to be trained, to enable consultants to estimate the required resources. The terms of reference shall list the services and surveys necessary to carry out the assignment and the expected outputs but should not be too detailed and inflexible, so that competing consultants may propose their own methodology and staffing. The procuring entity's and consultants' respective responsibilities should be clearly defined in the terms of reference.

(3) The cost estimate shall be based on the procuring entity's assessment of the resources needed to carry out the assignment: experts' time, logistical support, and physical inputs (for example, vehicles, laboratory equipment). Costs shall be divided into two broad categories: (a) fee or remuneration (according to the type of contract used), and (b) reimbursable items, and further divided into foreign and local costs. The cost of experts' time inputs shall be estimated based on a realistic assessment of required international and national expertise. The request for proposal shall indicate the estimated level of experts' time inputs or the estimated total cost of the contract, but not detailed estimates such as fees.

(4) The Request for Proposals shall include:

- (a) a Letter of Invitation, which states 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) Instructions to Consultants and Data Sheet containing all necessary information that would help consultants prepare responsive proposals and which brings as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors, their respective weights, and the minimum passing quality score. It should specify the proposal validity period, which should be adequate for the evaluation of proposals, decision on award and finalization of contract negotiations where appropriate;
- (c) the terms of reference, and
- (d) the proposed type of contract.

(5) The procuring entity may also consider engaging individual consultants in accordance with the following procedure for assignments, where (i) a team of experts is not required, (ii) no additional outside (home



office) professional support is required, and (iii) the experience and qualifications of the individual are the paramount requirement. Under this procedure:

- (a) an advertisement seeking expressions of interest is required when the procuring entity does not have knowledge of experienced and qualified individuals or of their availability, or the services are complex, or there is potential benefits from wider advertising. In all other cases and in the case of small value contracts individuals may be selected in accordance with section 51(4)(a) of the Act;
- (b) all invitations for expressions of interest should specify selection criteria that are solely based on experience and qualifications;
- (c) individual consultants are selected on the basis of their relevant experience, qualifications, and capability to carry out the assignment. They do not need to submit proposals and shall be considered if they meet minimum relevant requirements which shall be determined by the procuring entity on the basis of the nature and complexity of the assignment and assessed on the basis of academic background and relevant specific experience;
- (d) the selection shall be carried out through the comparison of the relevant overall capacity of at least three qualified candidates among those who have expressed interest in the assignment or have been approached directly by the procuring entity;
- (e) the individuals selected shall be the most experienced and best qualified, and shall be fully capable of carrying out the assignment;
- (f) the procuring entity shall negotiate a contract with the selected individual consultant after reaching agreement on satisfactory terms and conditions of the contract, including reasonable fees and other expenses.



## PART VII

### PROCUREMENT MANAGEMENT

44. (1) The contract administrator shall-
- (a) manage the obligations and duties of the procuring entity specified in the contract; and
  - (b) ensure that the contractor performs the contract in accordance with the terms and conditions of the contract.
- (2) The contract administrator shall be responsible for-
- (a) monitoring the performance of the contractor, to ensure that all delivery or performance obligations are met or appropriate action taken by the procuring entity in the event of obligations not being met;
  - (b) ensuring that the contractor submits all required documentation;
  - (c) ensuring that the procuring entity meets all its payment and other obligations on time and in accordance with the contract;
  - (d) ensuring that there is adequate costs, quality and time control, where required;
  - (e) preparing any required contract variations or modifications and obtaining, as appropriate, the required approval under section 55(1) of the Act before their issue;
  - (f) managing any handover or acceptance procedures;
  - (g) making recommendations for contract termination, where appropriate, and obtaining all required approvals and managing the termination process;
  - (h) ensuring that the contract is complete, prior to closing the contract file;
  - (i) ensuring that all contract administration records are kept and archived as required; and
  - (j) ensuring that the contractor and the procuring entity act in accordance with the Act, these Regulations and the contract.

(3) The contract shall state that the procuring entity has the right to inspect goods or works at any reasonable time or place clearly state all requirements relating to inspection.

(4) The procuring entity shall ensure that all goods, works and services are subject to inspection and verification by the contract administrator, supervising engineer or inspection and receipt committee, as appropriate, prior to their acceptance.

(5) The inspection and verification shall ensure that-

- (a) the correct quantity has been received;
- (b) the goods, works or services meet the technical standards defined in the contract;
- (c) the goods, works or services have been delivered or completed on time, or that any delay has been noted;
- (d) all required deliverables have been submitted; and
- (e) all required manuals or documentation have been received.

(6) The contract administrator, supervising engineer or inspection and receipt committee responsible for inspecting the goods, works or services shall issue interim or completion certificates or goods received notes, as appropriate and in accordance with the contract.

45. (1) The procuring entity shall maintain an easily accessible and retrievable individual record for each procurement requirement, which shall be marked with the relevant procurement reference number.

**Records and  
reporting**

(2) Where appropriate, the record shall contain the originals and copies, of all information, documents and communications related to that procurement proceeding and shall, to the extent not already contained in the proposed procurement plan, also include at least the following:

- (a) documents indicating approvals to execute the various stages of the procurement process;
- (b) the complete bidding document;
- (c) a description of the object of the procurement;
- (d) a list of the participating bidders and their qualifications and any reasons for limiting participation;

- (e) any requests for clarifications and any responses thereto;
- (f) reasons for any cancellation of bids;
- (g) a statement of the reason for choice of a procurement method;
- (h) bid prices;
- (i) a summary of the evaluation of bids, including reasons for any rejection based on abnormally low bids;
- (j) the manner of conducting and results of any trials, sample testing or other methods of technical evaluation applied;
- (k) the signed contract;
- (l) any decision based on a challenge of the procedure, and the related decisions; and
- (m) any other information required by the Office, to be recorded.

(3) The record shall be prepared and disclosed in a manner that avoids disclosure of proprietary commercial information.

(4) The record or selected parts of the record shall, on request, be made available to any person having a legitimate interest after a bid has been awarded, unless any portion of the record is required to be disclosed earlier pursuant to law, or by order of the Office, Public Review Commission, a competent court or a duly appointed arbitrator.

(5) Procurement records shall be kept for a minimum period of seven (7) years following completion or termination of the contract or cancellation of the procurement proceedings.

(6) Procuring entities shall submit report summaries on their procurement activities to the Office in accordance with templates and instructions issued by the Office.

## PART VIII

### PROCUREMENT REVIEW

46. An application for review under section 66(1) of the Act shall be accompanied by a refundable deposit of \$300. The deposit shall be returned to the bidder seeking review where the Procurement Review Commission finds in the bidder's favour.

**Deposit for  
Applications  
for Review**

47. (1) The Minister shall appoint a List of appropriately qualified and impartial members from whom to select the Members of the ad hoc Procurement Review Commission for the purpose of hearing the application for review under section 66 of the Act.

**List of  
Members for  
the  
Procurement  
Review  
Commission**

(2) Admission to the List shall be conducted by open competition based on objective criteria related to the qualifications of the Members. Following the initial appointment of the List, an open competition may be conducted to attract new Members either every three years or when the number of acting Members is reduced by more than one third, whichever is the earlier.

(3) In order to ensure sufficient choice and breadth of experience, the List will at any time consist of a minimum of 7 Members which shall include:

- (a) attorneys-at-law who have been practising or have practised for a period of not less than ten years before a judge of the High Court; and
- (b) persons who have wide experience and qualifications in legal, administrative, economic, financial, public procurement, engineering or scientific and technical matters.

(4) Once appointed to the List, Members shall be independent and impartial and shall, in all respects relating to their status and ethical standards, be bound by the general duty of section 59 of the Act. In particular,

- (a) every Member appointed must be and must remain independent of the parties to the dispute;
- (b) no Member having a beneficial interest in the case under consideration shall sit as a member of the Procurement Review Commission in that case;

- (c) before appointment, a prospective Member shall disclose in writing to the Office, which shall provide a copy to the parties, any facts or circumstances which might be of such a nature as to call into question the Member's independence or partiality in the eyes of the parties and the parties shall be given the opportunity of commenting upon the facts or circumstances within a time limit fixed by the Office;
  - (d) the obligation of paragraph (c) above is a continuing obligation on the Members appointed. They are required to disclose immediately to the Office any such facts or circumstances which arise between the date of appointment and notification of the final award.
- (5) Once appointed, a Member may be removed from the List only -
  - (a) in the case of his or her death or ill-health;
  - (b) upon his or her resignation;
  - (c) following any breach by the Member of the obligations contained in sub-regulation (4) above;
  - (d) by failing successfully to complete the training organised by the Office under sub-regulation (7) below.
- (6) The Minister shall be the competent authority to rule on cases falling within sub-regulation 5(c) acting on the complaint of a party to any procedure. The Minister shall remove a Member only after giving the Member an opportunity of presenting his or her defence and only where it is satisfied that the alleged breaches are substantiated.
- (7) The List of Members, together with an indication of their relevant qualifications, shall be open to inspection at the Office and a copy of such List shall be sent to all interested parties upon request.
- (8) The initial List of Members shall be required to undertake the specialised training organised by the Office. Training for subsequent members of the List shall be conducted every three years or when the number of acting members is reduced by more than one third, whichever is the earlier.
- (9) The Office shall organise a programme of continuing education for the List of Members in areas of relevance.



## PART IX

### DESIGN CONTESTS

#### Organisation of design contests

48. (1) Design contests may be organised:

- (a) as part of a procedure leading to the award of a public service contract; or
- (b) as a standalone contest with prizes or payments paid to participants.

(2) Procuring entities which wish to carry out a design contest shall make known their intention by means of a contest notice published in accordance with section 44(3) of the Act stating:

- (a) name and contact details of procuring entity and those from which the additional documents may be obtained;
- (b) description of the project;
- (c) procurement method;
- (d) time limit for the submission of projects;
- (e) criteria which will be applied in the evaluation of the projects;
- (f) names of any members of the jury who have already been selected;
- (g) indication of whether the jury's decision is binding on the procuring entity;
- (h) number and value of any prizes;
- (i) payments to be made to all participants, if any;
- (j) indication of whether any contracts following the contest will or will not be awarded to the winner or winners of the contest.

(3) Where design contests are restricted to a limited number of participants, the procuring entities shall lay down clear and non-discriminatory selection criteria in the contest notice and the number of candidates invited to participate shall, in any event, be sufficient to ensure genuine competition.

(4) Procuring entities shall appoint a jury of between 3 and 7 members to provide a recommendation as to the winner of the design contest.

(5) The jury shall be composed exclusively of persons who are independent of participants in the contest. Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

(6) The jury shall be autonomous in its decisions or opinions and shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

(7) The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.

(8) Candidates may be invited, if need be, to answer questions posed by the jury to clarify any aspects of the projects and complete minutes shall be drawn up of the dialogue between jury members and candidates.

(9) Procuring entities which have held a design contest shall send a notice of the results of the contest in the same media in which it was announced in accordance with sub-regulation (2), which shall contain:

- (a) Name and address of the procuring entity;
- (b) Description of the project;
- (c) Reference of the contest notice
- (d) Total number of participants;
- (e) Winner(s) of the contest;
- (f) Any prizes awarded.

Made this 22nd day of November, 2019.

**HON. CAMILLO GONSALVES**  
Minister of Finance, Economic  
Planning, Sustainable Development,  
and Information Technology.

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