



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Procurement Manual

REVISED 2022

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Preface

This Procurement Manual is prepared as guidance for the implementation of public procurement to ensure such activity is carried out properly and in a unified manner countrywide in order to secure the effective, efficient, economic, transparent, accountability and fair use of government funds in contributing to national socio-economic development.

This Manual is prepared in accordance with the provisions of Law No. 30/NA on Public Procurement, dated November 02, 2017 and the Instruction on the Implementation of the Law on Public Procurement, No. 0477/MOF, dated February 13, 2019. The Ministry of Finance has prepared this Manual to facilitate the implementation of the legal framework consistent with the current conditions of economic growth of Lao PDR. This Manual sets out rules, principles and detailed procedures in the procurement process in compliance with procurement plan and state budget implementation plan of the fiscal year.

This Manual succeeds the Procurement Manual dated April 2009. Apart from including extensive changes necessitated by the new legal framework, sections have been added, on framework agreements and the complaint mechanism. Moreover, visual aids for procurement processes have been added to better guide the users on how to undertake various procurement activities.

This Manual will guide the ministries, equivalent agencies, provinces, districts and state-owned enterprises, bidding committee and staff responsible for procurement to enable them to implement appropriate rules, principles and procedures and to achieve state budget expenditure plan in accordance with the uniform plan approved for use throughout the country.

However, if the provisions specified in this Manual prove to be inconsistent with the conditions of economic growth of Lao PDR, the Ministry of Finance shall adapt and modify as appropriate.

We hope that this Procurement Manual will assist the relevant authorities achieve their duties in implementing procurement process.

Vientiane Capital, date:
Minister of Finance

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Part I: Introduction and Background

Section 1. Public Procurement in Laos

1.1 What is Public Procurement?

Public procurement is the process by which the government buys the inputs for vital public-sector investments and for the smooth operation of government. Those investments, both in physical infrastructure and in strengthened institutional and human capacities, lay foundations for national development. In procurement terms, those inputs are generally grouped into four categories:

- civil works - for example, bridges and buildings, harbors and highways;
- goods - typically equipment, material and supplies, commodities, textbooks, medical supplies;
- services – for example routine maintenance, security services, cleaning services and other services which are not associated with works, goods and consulting services; and
- consulting services – which refer to technical services such feasibility studies, research and analysis, design, surveys, management of government projects, financial and accounting management, expert advice and training, etc.

The quality, timeliness, appropriateness and affordability of those procured inputs can largely determine whether public investments and operations will succeed or fail. The beneficial impact and contribution of the inputs can exceed their direct costs, by several orders of magnitude. Yet procurement costs can be substantial, consuming scarce resources of tightly constrained government budgets. Often the required funding must be borrowed. Moreover, the process also consumes scarce skilled public-sector human resources. It takes time, not merely for procurement planning and contracting but also for contract supervision and execution but these are important steps and necessary for the proper expenditure of public monies.

Much of this process is highly visible, as well as controversial, exposing ministers and civil servants to scrutiny and second-guessing for procurement choices they made, deferred or discarded. It is thus important that all stakeholders are aware of the rules and comply with them.

1.2 What governs Public Procurement in Laos?

The Government of Lao PDR has issued

- (i) Law No. 30/NA on Public Procurement, dated November 02, 2017 and
- (ii) the Instruction on the Implementation of the Law on Public Procurement, No. 0477/MOF, dated February 13, 2019. The purpose is to:
 1. Ensure the transparency of public procurement through procedures set out in the Law on Public Procurement and the Instruction on the

- Implementation of the Law on Public Procurement (“the legal framework”);
2. Achieve regularity and uniformity of procurement procedures carried out by government entities and state enterprises;
 3. Achieve efficiency and economy in the government procurement of goods, works, services and consultancy services;
 4. Guarantee all economic sectors fair and equal treatment in competitive bidding for the supply of goods, works and services to government entities and state enterprises in accordance with the methods specified in the legal framework.

The government promotes public procurement by identifying appropriate procurement measures and procedures, through staff training, supply of equipment and facilities to build infrastructure and for the smooth operation of government services ensuring such activities are carried out in an effective and efficient manner.

The government encourages and promotes local and foreign individuals, legal entities and organizations to participate in bidding for works, goods, services and consulting services on the basis of equality.

The government promotes public procurement by protecting the rights and interest of the government, individuals, legal entities or organizations and preserving the environment for green sustainability.

Where procurement is funded under (i) international conventions and treaties to which the Lao PDR is a party or (ii) agreements between government and donors, the procurement is regulated either:

- by the procurement rules specifically established under that convention, treaty or donor agency agreement, or
- where no particular procurement procedures are specified, by the legal framework of the Lao PDR

1.3 Principles of the Procurement

The fundamental principal hallmarks of proficient public procurement set out in the Law on Public Procurement are:

- a) economy,
- b) efficiency
- c) equality,
- d) openness,
- e) fairness,
- f) transparency, and
- g) accountability.

- a). **Economy:** procurement is a purchasing activity whose purpose is to give the Procuring Entity best value for money. For complex purchases, value may imply more than just price, for example, since quality issues also need to be addressed. Moreover, lowest initial price may not equate to lowest cost over the operating life of the item procured. But the basic point is the same: the ultimate purpose of sound procurement is to obtain maximum value for money.
- b). **Efficiency:** the best public procurement is simple and swift, producing positive results without protracted delays. In addition, efficiency implies practicality, especially in terms of compatibility with the administrative resources and professional capabilities of the Procuring Entity and its procurement personnel.
- c). **Equality:** bidders will only respond well and provide their best offers if they are treated fairly and in the same way as other bidders. To ensure the confidence of bidders, the legal framework guarantees the equal treatment of all bidders - local and foreign individuals, legal entities and organizations.
- d). **Openness:** this is a combination of transparency and fairness and is designed to ensure that the government does not operate in a clandestine way but operates openly and transparently providing fair and equal treatment to all stakeholders.
- c). **Fairness:** Good procurement is impartial, consistent, and therefore reliable. It offers all interested contractors, suppliers and consultants a level playing field on which to compete and thereby, directly expands the procuring entity's or project owner's options and opportunities.
- d). **Transparency:** Good procurement establishes and then maintains rules and procedures that are accessible and unambiguous. It is not only fair but should be *seen* to be fair.
- e). **Accountability:** Good procurement holds its practitioners responsible for enforcing and obeying the rules. It makes them subject to challenge and to sanction, if appropriate, for neglecting or bending those rules. Accountability is at once a key inducement to individual and institutional probity, a key deterrent to collusion and corruption, and a key prerequisite for procurement credibility.

A sound procurement system is one that combines all the above elements. The desired impact is to inspire the confidence and willingness-to-compete of well-qualified contractors, suppliers, service providers and consultants. This directly and concretely benefits the Procuring Entity and its constituents, responsive contractors and suppliers or consultants, and any donor agency that may be providing project finance.

Conversely, a procurement system that fails to follow the above elements stimulates hesitation to compete, submission of inflated bids containing risk premium, or submission of deflated bids followed by delayed or defective performance. Other direct results include collusion in bribery by frustrated or unscrupulous contractors, suppliers and consultants and Procuring Entity, bad value for those entities and their constituents, and betrayal and abuse of the public trust for personal gain.

In sum, proficient public procurement is not difficult to describe in principle or to distinguish from its antithesis in practice. But it does require varied professional and technical know-how to establish, as well as discipline and determination to administer.

1.4 What is the Procurement Manual?

This Procurement Manual (PM) provides procurement officers with a clear and concise guide to procurement which is easy to read and understand. It will guide officers through the execution of their duties, whilst being a source of information to others, for any procurement financed using public funds. The PM is not, however, designed to be the definitive guide for the procurement practitioner.

This version of the PM, and its subsequent revisions, supersedes all previous Manuals issued by the Government.

The PM outlines the procedures and methods for public officers engaged in planning and managing the procurement of goods, works, consultancy services and general services on behalf of Government, in accordance with its policy on public procurement. It also provides information for suppliers/ contractors and consultants to better understand Government procurement policies and to assist them to submit better bids and proposals, thus meeting the objectives set by Government.

The PM **does not** cover supply management or stores procedures.

The PM **does not** provide procedures for administrative review or the monitoring or audit of public procurement, although they establish the procedures against which reviews and investigations will be made.

The PM covers the entire procurement cycle from conception through to contract completion. It provides guidance on all methods of procurement, the procurement of goods, works, consultancy services and general services.

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

- reference material in accordance with the new legislative framework governing the Government procurement system to meet international standards and best practices;
- supplements to the Act and its attendant regulations;
- references to the Act and regulations, to enable users to quickly find the relevant parts of the legislation;
- a user-friendly procurement tool aimed at providing clear and concise guidance for procurement officers in the field of operations;
- understanding where the procedure fits from the highest level of Government procurement reform through to more detailed procurement steps;
- clarification on which methods and types of procurement to apply;
- the purpose of the procedure, to assist users in understanding the importance of following the specified procedure and the reasons for the rules which apply;
- clarity on best practice when breaking down the overall procedure down into a series of small steps, which are easier to follow;

- details of the approvals required, to ensure that the appropriate approvals are obtained at the appropriate time;
- a list of the documents and/or records required for each procedure and the information to be included in each, to assist users in maintaining the required records;
- improved linkages and understanding between procurement specific issues and topics with a specific focus;
- an explanation where there is ambiguity within the process;
- advice for the development of training material.

The PM will be upgraded to reflect amendments in legislation, changing needs, the commercial environment, and the adoption of new improved procedures and practices. Revised sections of the PM or additional sections on new subjects will be issued by the Ministry of Finance from time to time.

The Ministry of Finance encourages feedback from procuring entities, and suggestions from suppliers, contractors, service providers and consultants to assist the continued development of best practices in public sector procurement in Lao PDR. Feedback should be sent to: State Assets Management Department.

1.5 The Structure of this Manual

The PM is presented in different parts covering different aspects of the procurement process.

Part I covers the introduction and background to the development of the PM.

Part II covers the cornerstones of public procurement in Lao PDR. It underlines the importance and relevance of the legal and regulatory framework which now guides public procurement and provides guidance on the roles and responsibilities of the Government actors in the procurement environment.

Part III provides more detailed guidance on the techniques and procedures in public procurement.

Part IV provides step by step guidance on procurement procedures.

Part V covers the procurement of consultancy services.

Part VI considers issues of contract management.

Part II: Key Elements of Public Procurement in Lao PDR

Section 1. The Legal and Regulatory Framework

2.1 Law and Instruction

Law No. 30/NA on Public Procurement, dated November 02, 2017 defines the principles, regulations and measures regarding the management monitoring and performance of public procurement to ensure such activity is carried out properly and in a unified manner countrywide in order to secure the effective, efficient, economic, transparent, accountability and fair use of government funds in contribution to national socio-economic development.

This Instruction on the Implementation of the Law on Public Procurement, No. 0477/MOF, dated February 13, 2019 elaborates on and provides greater detail on some articles of Law on Public Procurement such as scope of application of the law, preparation of procurement plan, thresholds, timeline required for advertisement/notification for procurement of goods, works, services and consulting services, procedures and implementing rules for each type of methods of procurement and selection of consultants, tender committees, evaluation of bids/proposals, securities (guarantees) and other contents as stipulated in the Law for more detail and clear aiming to such law is implemented in proper, efficient, effective, and unified manner countrywide.

In the event of any inconsistency, the Law will prevail over the Instructions.

2.2 The Procurement Manual

The PM implements the instructions and institutional arrangements in the Law and Instruction by providing guidance on all aspects of Government public procurement.

In the event of any inconsistency, the Law and Instruction will prevail over the PM.

2.3 Standard Form Documents

The Ministry of Finance will develop and issue standard bidding documents (SBDs) which will include standard forms of contracts as well as other procurement related documents for use by procuring entities.

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

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

- are compliant with the rules and procedures contained in the Law, Instruction and PM; and
- include the basic contractual provisions and safeguards required by Government in the execution of public procurement and the use of public funds.

The use of documents with standard formats and clauses should:

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

In the event of any inconsistency, the Law and Instruction will prevail over the Forms.

2.4 Other Legislation

It is essential as part of their overarching responsibilities procuring entities must be mindful of other Government legislation which will be impacted by annual and individual procurement. This may include:

- Laws relating to the criminal activities of public officers
- Anti-corruption Law
- Law on officials and civil servants
- Environmental Law
- Tax Law
- Law on Value-Added Tax
- Contract Law
- Law on Business Competition
- Law on the Promotion Domestic Investment
- Custom Law
- Law on the State Asset
- Law on the State Budget
- Decision of the Minister on Public Administrative Budget Expenditure Norms
- Decree on Organization and Operation of Ministry of Finance
- Decision on Organization and Operation of State Asset Management Department

Procurement officers must comply with all relevant laws.

Section 2. Procurement Participants

The legal and regulatory framework applies to a number of different stakeholders.

In terms of management, the government delegates direct responsibility for the management of public procurement to the Ministry of Finance in coordination with the Ministry of Planning and Investment; ministries, agencies, local administrative authorities, and other parties concerned. The responsibilities may be considered to fall within two general categories:

- overall management
- implementation and execution

3.1 Overall Management

The key procurement management authorities are:

- the Ministry of Finance;

- provincial/capital Departments of Finance;
- district/ town/city Finance Offices.

3.1.1 Ministry of Finance

At the central level, the Ministry of Finance has the task of setting policy and implementation measures as well as of ensuring enforcement of the Law and Instruction.

In practice, it does this through the Procurement and Price Monitoring Division (PPMD), which is the specialised public procurement division.

Its key functions are:

- to disseminate policies, strategies, the Law on Public Procurement and other regulations translate them into actions to guide the PPMD's operations as per its mandates;
- to participate in periodic study, development and revision of secondary legislation on public procurement in order to propose amendments to the Director General for consideration according to established regulation;
- to participate in the committee overseeing a public procurement process starting from a stage of bid document preparation to a completion of a contract including the defect liability period in accordance with the established regulation;
- to ask for information about new construction and renovation of public buildings, procurement plans, material and vehicle maintenance and repair plans of line ministries, organizations at the national level financed by the national budget, loans, grants in order to monitor a bid execution in compliance with the public procurement regulatory framework;
- to collaborate with stakeholders to define median prices for public procurement purposes whether for work, supplies of goods, consultant services in compliance with the regulatory framework;
- to approve median prices of projects financed by state budget, loans, grants, SOEs' budgets prior to each bid as per the established regulation;
- to compile a list and monitor the implementation of annual procurement plans in collaboration with line sectors both at the national and sub-national levels as per the established regulation;
- to assess and report on public procurement on a monthly, quarterly, bi-annual and annual basis as per the established regulation;
- to propose the suspension or removal of decisions, orders, instructions and notices contradicting with public procurement regulatory framework for action by the Director General;
- to study and offer inputs to procurement plans for work, repair, vehicles and materials to be financed by the state budget including loans and grants as per the established regulation;

- to study and offer inputs on suspension of activities by natural and legal persons, and organizations found guilty of non-compliance with public procurement regulatory framework and contract obligations for consideration by the Director General;
- to study and recommend to the Director General administrative resolution to procurement disputes as per the State Asset Management Department's mandates;
- to monitor the undertaking of public procurement as per the regulatory framework; and
- to undertake other duties as being tasked by Director General.

3.1.2 Sub-central Departments and Finance Offices

The rights and duties of the provincial and capital departments and district/ town/city Finance Offices are almost identical. Their duty is primarily to implement the central policies of the Ministry of Finance. Their detailed tasks are to:

- implement policies, strategic plans, laws, programs and/or projects on public procurement;
- propagate, disseminate and educate on policy guidelines, strategic plans, laws and regulations, treaties and international conventions to which the Lao PDR is a party on public procurement;
- guide and manage the use of state funds in implementing programs and/or projects related to public procurement;
- monitor and inspect public procurement activities;
- propose training, upgrading, managing, employing civil servants on public procurements;
- use information technology systems in public procurement;
- summarize public procurement plans at the request of departments concerned;
- apply administrative measures to resolve disputes relating to public procurement according to their mandate;
- collaborate with parties concerned on public procurement;
- regularly report public procurement activities to the Ministry of Finance, province governors/mayor of capital city; and
- perform any other duties stipulated by laws.

In addition, the provincial and capital departments are required to maintain bilateral, regional and international relations and cooperation on public procurement.

3.2 Implementation and Execution

The Law and Instruction applies to all ministries, agencies, local administrative authorities and state enterprises using government funds to purchase goods, works and services (including consulting services).

“Government funds” mean the state budget which includes state funds, state enterprises' funds, foreign grants and loans obtained by the government from foreign countries and financial institutions

The Law uses the term **procuring entity** to refer to the purchaser when the procurement concerns goods and services and the term **project**

owner when the procurement concerns works, and consulting services. This reflects the habit of donors of referring to large works contracts which comprise a number of different contracts as ‘projects’, so that the purchaser becomes the project owner. That terminology is also used in Laos.

However, the choice of term makes no difference to the rights and duties of the procuring entity/project owner and, in this manual, unless otherwise stated, the term procuring entity will also cover the term project owner.

3.2.1 Duties and Responsibilities

The primary responsibility is to **plan** and **execute** procurement according to the Law and Instruction and in accordance with the national budget. This includes the preparation of essential documents such as the **bidding documents** as well as appropriate **evaluation reports**. To the extent that measures have been put in place, procuring entities should develop and use information technology systems in public procurement.

They have the responsibility of entering into contracts with the successful bidders and performing their rights and obligations under the contract including paying for the goods works and/or services to suppliers, contractors and/or services providers according to the contract provisions. This may include amending the terms or prices of the contracts or terminating contracts in the event that the other contracting parties fail to perform according to the contracts. Where appropriate, they may consider postponing or terminating public procurements.

As part of this responsibility, procuring entities have the duty to encourage, monitor and inspect the implementation of public procurement according to their procurement plans and contracts and to take the lead in ensuring the regular technical review of relevant procurements by the appropriate inspection department.

Their overall duties to ensure the proper implementation of the legal framework are to:

- collaborate with finance or related agencies in implementing procurement in accordance with the regulations;
- report public procurement activities on a quarterly, semi-annual and annual basis to the Ministry of Finance for consolidation and report to the Government;
- manage, follow-up and collaborate with public procurement management authorities in accordance with their mandates.

3.2.2 Managing Procurement

It is important for procuring entities to comply with the Law and Instruction. But that is not enough to carry out efficient procurement. To do that, procuring entities also need to manage the procurement function so that they buy what they need when they need it and at the right price. To make sure this happens, the procuring entity needs to have a team of people in place to carry out all of the necessary functions from the beginning of the process to the end of the process.

It is for the head of the procuring entity to decide how to organise the procurement function within the procuring entity. The way this is organised is likely to be different depending on the procuring entity: some procuring entities have very little procurement and some have a lot of complex procurement. The staffing levels and skills needed will vary depending on these characteristics. So, the head of the procuring entity needs to decide on the size, location, and structure of the procurement function, taking into account its procurement requirements and the availability of trained and experienced officers.

The head of the procuring entity will always remain responsible and accountable for the procurement of the procuring entity but can give the job of managing the day to day functions of procurement to others with specialized training or skills. The head of the procuring entity should, therefore, assign or delegate responsibility for the **day to day** procurement function to identified persons. This could be just one person where the level of procurement is small or infrequent. This could be someone in the finance or administration department (to the extent that they are not also implicated in payment processes).

It will be more usual, however, especially where there is frequent or large or complex procurement for the head of the procuring entity to delegate responsibility for the various functions to a number of people. These could be located in different parts of the procuring entity (e.g. finance, administration, technical etc.) or the procuring entity could elect to create a permanent procurement team in the form of a unit, a division, department or other appropriate grouping to coordinate the procurement function and act as secretariat for all procurement activities.

However, the procuring entity chooses to manage its procurement function, it is important that

- a person or persons are identified for particular tasks
- there is a suitable job description provided for each team member
- these persons are made responsible for their actions and report to the most senior member of the team or to the head of the procuring entity
- coordination is established between the team members (especially if they are located in different parts of the organization)
- they are given suitable training appropriate to their functions
- they are familiar with the obligations imposed on the procuring entity so that they can comply in the course of their work

It is recommended that the head of the procuring entity should develop an overall job description for the procurement team. The following description could serve as a minimum:

Procurement Team Draft job description

Purpose

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

Staffing

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

Responsibilities

The specialist procurement team will:

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

In terms of specific functions that need to be carried out and assigned to different team members, the procuring entity should consider the following:

- overall procurement planning on behalf of the procuring entity (including stocktaking and identification of needs);
- submission of the annual procurement plan to the head of the procuring entity for approval;
- preparing, in cooperation with the end-user department(s) procurement proposals of the procuring entity in respect of each procurement in accordance with the templates issued by the Ministry of Finance;
- preparing the draft bidding and contract documents, including qualification and evaluation criteria, in accordance with the templates issued by the Ministry of Finance for approval by the tender committee;

- ensuring the release of the performance security in accordance with the terms of the contract;
- publishing and dispatching requests for quotation and invitations to bid;
- receiving and safeguarding quotations, bids and applications to pre-qualify;
- responding to requests for clarification from bidders, seeking the assistance of the end-user department(s) where appropriate;
- organizing and recording pre-bid meetings and/or site visits, if any, and seeking the assistance of the end-user department(s) where appropriate;
- organising public bid openings on behalf of the tender committee;
- publishing the contract award notice;
- managing the awarded contracts;
- maintaining complete records using appropriate tools provided by the Ministry of Finance;
- carrying out other functions as directed by the tender committee or the head of the procuring entity.

The tender committees can also appoint members to a secretariat to assist them on individual procurements. It is logical that these should be selected from the procurement team members referred to above.

3.2.3 Tender Committees

Many of the functions described above in the context of managing procurement are continuing functions, e.g. planning. They take place independently of any specific procurement.

When a specific procurement is to be undertaken, procuring entities will appoint a tender committee for each procurement. Their job is to carry out each procurement in accordance with the procurement methods of the Law.

The Instruction sets out the membership of the tender committee. The tender committee consists of at least

- 3 to 7 members from the procuring entities' technical team and staff with specific sector experience including:
 - at **Ministry and agency level**, the Vice Minister or Deputy Head of equivalent Authority or assigned person as a chairman;
 - at **provincial level**, the Deputy Provincial Governor or Deputy Capital Governor or assigned person as a chairman; or
 - at **district level**, the Deputy Head of District, Deputy Head of Municipality or Deputy Head of city as a chairman
- the person in-charge of procurement/selection of consultants of procuring entity as vice-chairman; and

- the person in-charge of the relevant technical matters to be procured/selected as a member
(*this may be more than one person and could include 2 more with knowledge of the relevant technical matters*)

The tender committee members cannot transfer their tasks or assign other to participate in meetings on their behalf

It is important that the procuring entity chooses tender committee members with knowledge, experience and skills relating to the nature of procurement/selection of consultants such as technical skills, understanding the target of applications, knowledge of procurement

/selection of consultants, management skills and financial analysis including knowledge of laws. In nominating

members, the procuring entity should maintain sufficient flexibility so as to allow replacement members in the absence of any nominated member.

Tender committee members shall keep confidential all matters relating to the procurement/selection of consultants under consideration by them.

In addition, the tender committee may (it is not obligatory) appoint 3 to 5 members as a **secretariat team** to assist their work. The secretariat team members shall hold experiences, technical and basic knowledge of procurement or selection consultants matters.

The secretariat team does not vote or participate in decision-making

Given the tasks to be carried out, it is likely that where a secretariat team is appointed, its members should be selected from among the procurement team members used by the procuring entity to conduct day to day management of procurement.

The specific functions of the tender committees are to:

- set qualification requirements and conditions and **approve** bidding documents or request for proposals

in practice, the preparation of the bidding documents or requests for proposals which will include the qualification criteria and award criteria will be prepared by the procurement team or the secretariat team and will be approved by the tender committee before they are issued;

- carry out procurements, open bids or proposals;

in practice, the procurement team or the secretariat team will organize the submission and receipt of bids or proposals and the venue for bid opening and the tender committee will officiate over the opening;

- evaluate bids or proposals;

this is the key function of the tender committee, although they may also ask the procurement team or the secretariat team to prepare the documentation and any preparatory analysis;

- propose approving, suspending or canceling bids or proposals;

this will be the outcome of the evaluation process;

- report evaluation of bids or proposals to procuring entities;

this report will be sent to the head of the procuring entity for approval and to the procurement team which will enter it into the records being kept.

3.2.4 Contract Management Committees

Procurement does not end with the award of the contract. The contract and the successful bidder need to be managed and administered. For this purpose, the procuring entity will also need to appoint project management personnel for managing contracts to ensure the quantity, quality and timeframe in works and/or maintenance, supply of goods and/or services and consulting services contracts.

To the extent that the procuring entity has established a procurement team to manage its overall procurement, this is a function that could be carried out by members of this team. Where this has not been done, a procuring entity may appoint a separate contract management committee, although this function could also be given to the tender committee that conducted the procurement.

The procuring entity needs to arrange the contract management process and provide necessary tools and equipment including human resources to manage the contract execution in efficient and effective manner.

Specific responsibilities include:

- determining a process of acceptance and inspection of works and/or maintenance, supply of goods and/or services or consulting services;
- inspecting and certifying the execution procedures for works and/or maintenance, supply of goods and/or services or consulting services as stipulated in the signed contract;
- if fault is found as per the signed contract, reporting it to the procuring entity, if necessary, for the resolution of the issues;
- managing and seeking resolution of disputes in accordance with the provisions of the signed contract, including applying the agreed measures on breaches of contract;
- recording and retaining documents and reporting on contract execution.

3.3 Bidders

The other key participants in procurement are the bidders. These are the individuals or forms (legal persons) that seek, through the procurement process to become contractors, suppliers, service providers or consultants depending on the procurement.

The principles of the legal framework guarantee the fair and equal treatment of bidders and encourages and promotes local and foreign individuals, legal entities and organizations to participate in bidding for works, goods, services and consulting services on the basis of equality.

Bidders are given specific rights to:

- receive information relating to public procurements and to
- participate to tenders

They are required to:

- perform according to public tender regulations
- cooperate, supply information and facilitate the activities of the tender committees and
- preserve confidentiality

Where bidders consider that there has been a breach of the Law or Instruction or where there is otherwise a lack of transparency or fairness, bidders are obligated to complain to relevant authorities.

This process is explained in Part VI

Part III: Techniques and Procedures in Public Procurement

Section 1. Planning

Procurement planning means the process by which the efforts of all personnel responsible for procurement are coordinated and integrated through a comprehensive plan for fulfilling the Procuring Entities' need in a timely manner and at a reasonable cost. The planning process needs to start early in the procurement cycle to ensure that the procuring entity identifies its needs accurately and chooses the right process to obtain those needs efficiently and in accordance with the applicable norms.

This Section guides the user through the detailed process. Individual procurements will differ, but the PM seeks to ensure a consistent application of the Act and Instruction. It is important to note each procurement and each project is different. Whilst the PM provides a generic framework for users, the process must be adapted to fit the procurement, or the project being considered.

The Instruction formally identifies two separate plans:

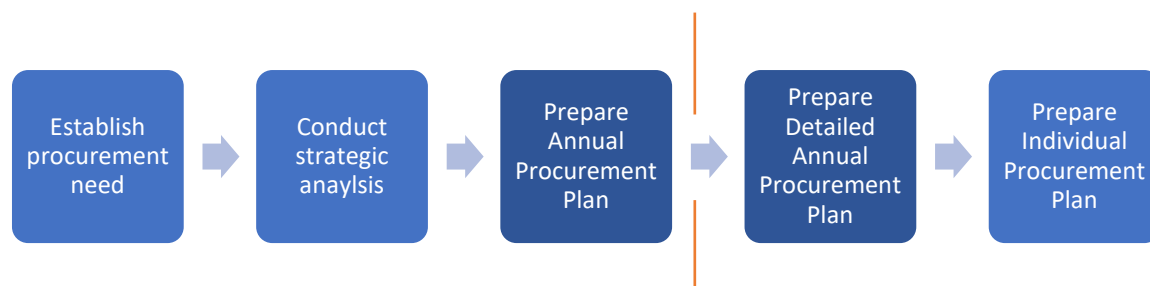
- the Annual Plan and
- the Detailed Annual Plan

These are specifically indicated in the legal framework because there are legal consequences to their preparation.

In the case of the Annual Plan, the head of the procuring entity will need to attach the Annual Plan to its annual budget plan as part of its budget appropriations procedure. This is effectively the document that requests budget from the National Assembly to cover, in this case, the costs of the envisaged procurement. By definition, this needs to be prepared before the budget is allocated to the procuring entity (or to the Ministry of which it forms part).

In the case of the Detailed Annual Plan, this is prepared only after the National Assembly's approval on the annual state budget has been granted. It is prepared, therefore, once the procuring entity knows what budget is available for its envisaged procurement. At this stage, if the full request was not granted, the original plan may need to be modified to reflect the available budget and the procuring entity may need to prioritize its requirements (e.g. by abandoning some procurements) or reduce its requirements (e.g. by procuring fewer goods, works or services than originally planned). This Detailed Annual Plan needs to be forwarded to Procurement and Price Monitoring Division (PPMD) which will make a summary of the Detailed Annual Plan on its standard template. This will form a key part of the procurement record. Procurement and Price Monitoring Division (PPMD) will also publish this summary on its procurement portal in order to inform potential bidders of the procurements likely to be advertised during the course of that financial year.

These are the formal planning stages identified in the Instruction. In preparing and conducting their procurement, however, the procuring entities will need to carry out a number of critical steps both before and after these formal steps are taken. These may be illustrated as follows:



As already explained, this illustrates the general steps needed but each procurement and project is different, so the detail of each step and the exact level of effort required for each step may differ. Nonetheless it is advisable to bear these general steps in mind in order to develop a good practice mind-set.

These steps will be applied to all four categories of procurement of goods, works, consultancy services and general services. Many of the techniques and procedures can be applied across all four categories. Therefore, each stage will discuss common approaches and when relevant each stage will also include a specific section for each category.

4.1 Annual Procurement Planning

Whilst this stage culminates in an Annual Procurement Plan, there is much to be done in preparing that plan. The process starts with establishing the procurement need. Sometimes that is all the preparation entails. However, at a time when procurement is becoming more professionalised and where procuring entities are using procurement as a strategic device rather than as a clerical tool, there is room and often a requirement to carry out a strategic analysis in order to provide for the optimum procurement. This is critical for any more complex procurement. Both preparatory stages are considered next.

4.1.1 Establishing the procurement need

This is about planning preparation so that the procuring entity can decide what needs to be in its procurement plans (annual, detailed annual and individual).

Each financial year, a procuring entity will start preparing its annual procurement plan as part of the budget process. In simple terms, this involves deciding what the procuring entity needs in terms of goods, works and services for the forthcoming financial year and how much of that it will need to procure. Some of what it needs will be in stock, some can be possibly be sourced from elsewhere (e.g. by transfer from another Ministry). This process is likely to involve a number of participants within each procuring entity (ministry, agency, local administrative authority and state enterprise) depending on the identity of the end user, i.e. the level within the organization that needs and will use the goods, works or services. For

procurements of any technical complexity, this will also require inputs from the technical staff of the procuring entity. How this process of identification is conducted will depend on the way in which each procuring entity manages its procurement. This will in turn depend, as we saw in section 3.2.2 above, on the way in which each procuring entity decides to manage its procurement function. The legal framework does not mandate any specific organization, and this will depend on the level and type of procurement.

As part of the planning preparation the procuring entity will need to collate data on all forthcoming procurements which the procuring entity may require for the forthcoming financial year. This will involve at least:

- identifying specific requirements from user departments (likely to be an iterative process)
- checking that the items required are not already in stock (planning of procurement of recurrent items should be based on an adequate stock control system) or subject to any ongoing purchase commitments (e.g. framework agreements)
- verifying that there is no existing procurement for the same item which may roll forward from the existing financial year
- enquiring as to whether the requirement may be met by a transfer of goods from another Ministry

As a result of this exercise, the procuring entity should be able to 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 any annual estimates.

To the extent possible, requirements should be aggregated to achieve economies of scale. If different user departments are seeking to procure the same items, then these should be procured together to reduce the number of procurement procedures engaged and to lower the overall costs of the procurement through the operation of scale economies. This would also be the time to identify opportunities for establishing framework and the timing of the procurement.

Since this exercise (at this stage) is part of the budget exercise, clearly the procuring entity will also need to estimate the cost of the envisaged procurements. In some cases, appropriated annual budgets may be based on historical appropriations so that the budget received by the procuring entity in one year will depend on or will reflect the budget received in the previous years. This is poor budget practice in general since there is little connection between needs and budget, so it is important to make the case for the budget that is necessary for achieving the required outputs (in terms of procurement). Where this is the budgeting mechanism, the result is either too little budget (meaning that the procurement and, therefore, the desired result will not be achieved) or too much budget (in which case funds will be diverted elsewhere and, possibly, not re-allocated in the following year). The procuring entity needs to

- ensure the estimate is as accurate as possible and includes any reasonable contingency (and, where budget is based on historical appropriations, analyze the procurement needs in line with the procuring entity's likely budget)
- identify the resources necessary to carry out the various project activities (especially in works contracts, the procurement may be divided into contract packages and could be procured separately, at different times and using different resources)
- compare the estimate of procurement requirements with the likely availability of voted or donor funds so that priorities for procurement may be determined in accordance with available funds
- prepare cost estimates based on available historical data or on the basis of identified prevailing market prices, using external assistance as required* (especially necessary in the case of complex technical procurements)

** note that external consultants would also need to be engaged following the procurement legal framework to the extent that the relevant thresholds are exceeded*

4.1.2 Conducting a strategic analysis

The purpose of conducting a strategic analysis is to determine the best approach to take to the procurement in order to deliver the right result. It allows the procuring entity to prepare each of the procurement plans and provides the basis for a series of actions and decisions that need to be taken before launching a procurement. In particular, it prepares the procuring entity to:

- define the procurement requirements (and prepare the most appropriate specifications)
- identify the procurement risks that will be used to define, among other things: -
- the procurement methods to be used (which method or methods, possibility of using frameworks)
- the packaging of contracts within a larger project (and also issues of aggregation or division into lots)
- the method of advertising (full open procedures or more limited invitations) and appropriate degree of competition (national/international)
- the qualifications needed (without being so stringent as to exclude competent bidders)
- the most appropriate evaluation methods (whether evaluated price or a combination of factors)

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

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

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

All of this impacts on the strategy to be adopted from the simplest procurements to the most complex.

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

It is also important that procurement officers develop their knowledge and understanding of the market as part of defining appropriate levels of eligibility and evaluation criteria in the bidding documents. For particularly complex markets, it may be necessary to conduct a particularly detailed and comprehensive market risk analysis. This will not be required very often but, if it is, the process explained in Annex 1 provides a good example of how this could be done.

4.1.3 The Annual Plan

Most of the data and analyses described above will, at this stage, be collected for internal use and should be recorded in an appropriate way. You may want to record this by way of narrative or in a table/matrix or by using one of the analytical tools found commercially, for example through the Chartered Institute of Procurement and Supply (www.cips.org). The scope and amount of information will depend on the nature of the procurement and the experience and capability of the entity's procurement staff.

The formal result of this preparatory work at this point is the creation of the Annual Procurement Plan which is to be submitted as part of the budget. The content of this Annual Procurement Plan will be far less comprehensive than suggested above.

The Instruction requires only 2 things:

- a summary list of the required procurement items classified under various categories (notably by bringing similar requirements together)
- a sufficiently robust cost estimate of the proposed procurements (to include expenses such as cost of advertisement and notification of bids)

In respect of the cost estimate, the Instruction also requires the cost estimate to be included in the approved annual budget plan.

Defining ‘similar categories’ may be more difficult. It is important to try to create sensible categories for at least two reasons. First, in terms of budget, it may be that certain requirements to hand in hand or that funds are allocated from similar budget lines. Grouping requirements in this way may increase the chance of obtaining the right level of budget. Second, you must remember that the Annual Plan (the Detailed Plan in most cases) will be published by Procurement and Price Monitoring Division (PPMD) for information purposes. Whilst publication is a matter of general transparency, the main purpose is to indicate to bidders the intention of the entities to award certain types of contract in the coming financial year (even if there is no guarantee that these contracts will be awarded – that depends on budget availability and other eventualities).

It might be sensible to group products into the same category where they fall within the same customs code but, from a practical point of view, it may also make good sense to consider the perspective of suppliers. This is the better practice and is the method employed mostly in Laos. For example, a typical supplier in any particular field will normally be able to provide a range of related products and would be interested in procurement covering a variety of those products. For the category definition to serve its intended purpose of alerting appropriate suppliers, the category should aggregate products to the level at which they are likely to fall within the range of a hopeful supplier. This could be a fine balance and requires looking at the procurement from the perspective of the bidders. Let’s take, for example, the procurement of office supplies. Customs codes might group together furniture made from particular materials (e.g. wood); different types of technology (computers and printers) or writing material (pens, pencils, erasers). This would provide 3 different categories and would attract specialist suppliers. On the other hand, there are very likely to be bidders established to cater specifically for businesses. They are likely to be able to supply all the materials necessary to run office: furniture technical equipment and supplies (paper, writing materials etc.). In this case, a single category would attract the right suppliers.

Categorizing services and consultancy services may be more difficult since services tend to be more specialized in scope, but the same principles would apply. Building maintenance companies may, for example carry out cleaning services, building repairs, plumbing, equipment maintenance and landscaping. Combining such services under one category might serve the same purpose as defining office supplies as a single supplies’ category.

Section 3.1 of the Instruction prohibits splitting a procurement requirement with the purpose of avoiding the threshold that applies to a specific procurement method, notably the open method.

Care needs to be taken, however, in developing such categories and you will need to exercise professional judgment. The product area chosen for a category could be so large as to include products which are unlikely to be within a single supplier’s product range or be such as to attract many who are incapable of fulfilling the

requirements, thereby wasting the time and resources of both procuring entities and suppliers. By contrast, it may be possible to define the product area so narrowly as to bring the intended procurement below the threshold value for using the open procedure, for example, thereby depriving potential suppliers of valuable information or deliberately restricting the procurement to known suppliers. But this would be illegal anyway.

In the case of works, categories might revolve around the nature (e.g. buildings, roads, bridges) and extent (small, large) of the works and the place of execution (within one school or several buildings within one village) and whether the work is to be subdivided into several lots which may be awarded separately. An estimate of the range of the cost of the proposed works would also be helpful.

Most of the information needed for the Annual Procurement Plan will be collated from the work carried out in assessing the procurement requirements described under 4.1.1 above. This is where the proposed procurement object is defined and where the cost estimates will be prepared.

Nevertheless, you will also need to address some of the information resulting from the strategic analysis, discussed in 4.1.2 above. For example, to be able to provide an adequate cost estimate which includes the costs of advertising etc., you will need to have decided which procurement method is most appropriate. That is because different costs attach to the different methods. A full open method, advertised internationally, will be much more expensive to carry out (costs of advertising, costs of sending documents and of communication, time involved etc.) than one advertised nationally and both of these will be more expensive than limited bidding, price comparison or direct contracting. It is not the cost of the procedure that should dictate which one is chosen but there will be cost implications, which need to be included in the Annual Procurement Plan, depending on which method turns out to be most appropriate following your strategic analysis.

Remember that the appropriate method will achieve the best result and will improve overall value for money. This will compensate for any additional transaction costs.

The template referred to in Table 1 should be used for the Annual Procurement Plan.

Table 1: Annual Procurement Plan

Name of Procuring Entity:

Fiscal Year:

	Procurement Category	Specific Requirements	Cost Estimate
	Goods:		
1			
2			
3			
	Works:		
1			
2			
3			
	Services:		
1			
2			
3			
	Consultancy Services:		
1			
2			
3			

Sign and stamp

4.2 Detailed Procurement Planning

After the approval of the National Assembly of the national budget for the fiscal year, the procuring entity will have received an expenditure plan of the fiscal year budget. On this basis, the procuring entity will establish the Detailed Annual Procurement Plan for that fiscal year budget in accordance with Table 2.

Frequently, the budget requested under the budget process is not awarded. This means that the procuring entity is going to have to make a decision about which procurements to abandon, which to modify and which to prioritize. If the preparatory work has been done thoroughly, this should not be problematic and any shortfall in the current fiscal year can be addressed in the planning for the next fiscal year.

In some cases, budget may be allocated based on historical allocations, i.e. without reference to any stated procurement needs. This is, of course, very poor procurement planning but, if this is the case, then it is at this stage, following budget allocation, that the planning really commences. This is less procurement planning; more expenditure planning. Either way, award of the budget now allows for the details to be filled in.

4.2.1 Preparing the Detailed Annual Procurement Plan

Section 4.1.2.1 of the Instruction sets out what is required to be done at this stage. The list includes elements that would be submitted formally in a template (and published in summary form for the benefit of potential bidders) and others that the procuring entity is required to accomplish as part of its detailed planning.

In terms of what can be presented in the form of the template, the Instruction foresees inclusion of:

- Detailed items of works and/or maintenance, supply of goods and/or services and consulting services as required

This will essentially be a revised version of the items contained in the Annual Procurement Plan to take account of any modifications made as a result of budget appropriations. More precise descriptions may be necessary where the categories used previously were broadly drafted. The Annual Procurement Plan required only a summary list. Here that list needs to be complete.

- Determination of the procurement method or selection method

In addition to deciding on the overall method, this is also the time to decide whether or not prequalification is needed in light of the complexity of the procurement. It is also the time when a strategic decision needs to be taken as to whether or not the most economic and technically efficient procurement can best be achieved by aggregating or separating contracts for each component (contract packaging) or by resorting to the use for framework agreements.

Pre-qualification is considered further in 5.3.3.

Contract packaging is considered further in 5.1.

Framework agreements are considered further in 7.1.

- Estimated timeline for bidding, delivery, contract execution or completion of works and/or maintenance, supply of goods and/or services and consulting services

Given the benefit of such a plan for the process of procurement and for bidders, when it is disclosed, it is necessary to provide some estimated dates for key milestones. In particular, it is important to know when the procurement process is likely to commence and when completion (or execution or delivery) is expected. This may well have an effect on the decision of bidders to participate. If pre-qualification is envisaged, the likely time for publication of the invitation to pre-qualify is also important.

- Combination into group of items for same contract bidding (i.e. where there is a division into lots)

In many cases, notably works, projects may be composed of a number of different contracts or packages of contracts which may be awarded at different times. It is important to see how these different procurements fit together.

Table 2 is based on this list.

Table 2. Detailed Annual Procurement Plan

Detailed Annual Procurement Plan

Name of Procuring Entity:

Fiscal Year:

<i>No</i>	<i>Tender Reference No</i>	<i>General Description</i>	<i>Divided into lots? If Y, how many</i>		<i>Estimated Value (Kip)</i>	<i>Method of Procurement</i>	<i>Pre-qualification/ Expressions of interest (if appropriate)</i>	<i>Invitation to Bid/Quote/submit proposal</i>	
			<i>Y/N</i>				<i>Estimated date of Invitation to pre-qualify</i>	<i>Estimated date of Invitation to bid/quote/submit proposal</i>	<i>Estimated time for delivery/execution/ completion</i>
1									
2									
3									
Etc.									

Sign and stamp

In addition, the Instruction requires the procuring entity as part of its Detailed Annual Plan to:

- Prepare technical specifications and/or terms of reference for the procurement (of goods, works, and services) or selection of consultant as per scope of contract

The specifications will already have been prepared to a large extent as part of procurement preparation. It is only where the object of the procurement has been identified precisely that a proper cost estimate can be prepared. So, if this was not done, the estimate may have been inaccurate from the beginning. In some cases, the cost estimates may simply have been based on previous procurements of the same nature so that specifications may not have been drafted afresh. In this case, now is the time to prepare complete and comprehensive technical specifications (or procurement requirements) for the proposed procurement. Specifications are considered further in 5.2 below.

- Prepare cost estimate for each contract as per budget list

This was prepared for the Annual Procurement Plan but if, following the budget appropriation, less budget has been awarded to the procuring entity for its procurement, there will be a need to re-calculate the previous estimates. This will also be necessary if quantities have been reduced as a result of the budget appropriation. The estimates are included in form set out in Table 2 because it is useful both for the procuring entity and the PPD to be aware of the final cost estimate. The estimated value should not, however, be published or otherwise made available to the bidders. Their role is precisely to propose a realistic price based on the specifications.

- Perform others relevant actions

This is also the point at which procurement preparation should start taking place. Apart from preparing the final specifications, this is also the time when work on preparing the bidding documents should begin, if that has not already been started. The preparatory work carried out during the previous stages of planning should have led to a clear understanding of how the procurement will take place and the information gathered during the strategic analysis should by now have crystallized into specific actions. This will already have dictated the choice of procurement method and degree of advertising and will have led to any modifications to the technical specifications made necessary by the procuring entity's study of the market.

It should also inform the preparation of the bidding documents which will identify:

- the qualification criteria that will apply to the selection of bidders;

This will often depend on the value of the contract, the complexity of the technology and the level of experience required. It will also dictate whether pre-qualification is appropriate.

- the award criteria that will be applied to the evaluation of bids or the selection methods to be applied to consultants;

In the case of goods, works and services, the strategic analysis will reveal whether value for money is to be achieved through the application of lowest evaluated price, whether life-cycle costing should be taken into account and, to the extent possible, whether criteria relating to sustainability should be taken into account. At least, the decision of whether to apply domestic preferences should be considered at this point. For consulting services, the decision on the selection method to be used should be taken – whether this is to be based on QCBS, QBS etc....

- the type of contracts to be used.

The strategic analysis will also reveal the best contracting and pricing strategy. Is this a procurement where long-term relationships are important; does it suggest the use of a framework agreement. Should the procuring entity be looking at a lump sum contract; a cost-plus contract; a contract based on schedules of rates (admeasurement contract); a time-based contract, or a performance-based contract. The decision will dictate the type of contract attached to the bidding documents.

This is also probably a good time for those responsible for procurement to establish a checklist of things to do, assigning responsibility to individuals and providing timelines within which actions should be taken. Individual procurement plans will need to be developed but these also require other actions to be concluded before they can be finalized, e.g. preparation and approval of bidding documents. To ensure that the procurement is kept on track it is good practice to maintain and abide by such a checklist. An example of such a checklist is provided in Table 3 but you should design one that suits your own needs, depending on the nature and level of procurement undertaken.

Table 3. Sample Checklist

Action	Responsible Party	Output	Deadline

4.2.2 Publishing the Detailed Annual Procurement Plan

With the aim of informing potential bidders of upcoming procurements during the financial year and to allow them to prepare for such opportunities, Procurement and Price Monitoring Division (PPMD) will publish a summary of the procuring entities' Detailed Annual Procurement Plans. These summaries will be published on the PPMD website.

Whilst the summaries will be based on the Annual Procurement Plan and the Detailed Annual Procurement Plan, they will not contain all the information contained in those Plans. The purpose is to provide advance information to bidders on the upcoming opportunities. Full details will appear at the appropriate time, when the procurement is commenced. The summary need only provide details of what will be procured and when it is proposed to start the procurement. To the extent that the categories used in the Annual Procurement Plan have been designed based on the ability of bidders to supply, this will be the information that should be published, together with an indication of when the procurement will start.

The template for the summaries is contained in Table 4.

Table 4. Procurement Plan Summary

Name of Procuring Entity:

Fiscal Year:

	<i>Procurement Category</i>	<i>Specific Contracts</i>	<i>Procurement Method</i>	<i>Proposed date of pre-qualification/ call for expressions of interest</i>	<i>Proposed date of invitation to bid/quote/submit proposal</i>	<i>Estimated time for delivery/execution/ completion</i>
		Goods:				
1						
2						
		Works:				
1						
2						
		Services:				
1						
2						
		Consultancy Services:				
1						
2						

Sign and stamp

4.3 Individual Procurement Planning

Whilst the information contained in the Annual Procurement Plan and the Detailed Annual Procurement Plan are sufficient for budgeting and transparency purposes (as well as for preparing the procurement), when it comes to carrying out the procurement of each contract, it is preferable to prepare an individual procurement plan setting out the precise formal steps to be taken to accomplish the procurement.

The development of an individual procurement plan is encouraged for all procurements. The level of planning should be comparable to the complexity of procurement and must reflect the data provided in the annual procurement plan. Examples of individual procurement plans are included in Annex 2.

For example, a procurement plan for direct contracting would be expected to be simple. However, if the requirement is being procured through open bidding or limited bidding the level of planning will be commensurately higher and needs to be consistent with the budget threshold and type of bidding.

The individual procurement plan should include as a minimum:

- short title of the procurement (including any reference number)
- estimated budget
- method of procurement
- breakdown of activities in accordance with the selected procurement method
- identification of responsible party for each activity
- timeline and milestones taking into consideration procurement method and required approvals (internal and external)
- plan dates, revised plan dates, actual dates

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

It is recommended that each individual procurement plan has a designated procurement officer who is responsible for administering the plan. This should be in line with any designated levels of approval within the procuring entity and could be linked to the checklist mentioned in 4.2.1 above.

The plan should be circulated to all parties supporting the process with clear instructions on their responsibilities and relevant plan dates. Individual procurement plans should be updated on a quarterly *or* semi-annually basis.

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

The Instruction requires that each period of time for each step of the procurement or selection be defined and also include in the bidding documents or request for proposals. These periods of time must cover of the following:

- time for preparation of bidding documents or request for proposal,
- time for evaluation of bids or proposals,
- time for approval of winning bidder or consultant,
- time for negotiation and
- time for contract signing.

Remember that the Instruction provides for minimum time periods for bid submission following the invitation to pre-qualify/bid/quote/submit proposal. This needs to be taken into account within the timelines of the individual plans.

These should also be included in the individual procurement plan when considering the timeline and milestones.

Examples of individual plans are provided on the following pages. Editable versions will be available to download on the PPMD website.

Example of Individual Procurement Plan for Goods, Works and Non-consulting services

Name of Procurement Entity or Project Owner:														
Fiscal Year:														
No	Description	Reference Number	Estimated Value (Kip)	Method of Procurement	Pre-qualification					Invitation for Bid				Contractor/Suppliers Name
					Publication/Invitation Date	Submission Deadline and Opening Date	Notification of Award	Bid Publication/Invitation Date	Bid Submission Deadline and Opening Date	Bid Evaluations and Bid Evaluation Report	Notification of Award	Negotiation and Contract Signing	Completion date/Goods or Works or Services	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
GOODS														
1	IT Equipment	G-01	600.000.000	Opening Bidding										
2	Office furniture	G-02	195.000.000	Price Comparison										
3	Stationary	G-03	4.500.000	Direct Contracting										
4														
WORKS														
1	Construction new office	W-01	800.000.000	Opening Bidding										
2	Office renovation	W-02	350.000.000	Price Comparison										
3														
GENERAL SERVICE (NON-CONSULTING)														
1	Air condition maintenance	Ser-01	400.000.000	Opening Bidding										
2	Office cleaning service	Ser-02	180.000.000	Price Comparison										

Example of Individual Procurement Plan Consulting Services

Name of Procurement Entity or Project Owner:																										
Fiscal Year:																										
No.	Description	Reference Number	Estimated Value (Kip)	Selection Method	Types of Contract	Pre-qualification					Invitation for Bid															Consultant Information
						Request for Proposals	Notification to submit proposals	Submission Deadline	Evaluate and Select	Approval of Shortlist	Preparation Request for Proposals (RFP)	Approval of RFP	Invitation of RFP	Submission Deadline and Opening	Evaluate and Technical Evaluation Report	Approval of Technical Evaluation	Opening of Financial Proposal	Combined Evaluated (Fin+Tech) Report	Notification of Award	Contract Negotiation	Contract Signing					
1	2	3	5	6	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26				
QCBS																										
1	Consultant firm to survey and design road	Consul-01	1,200,000.	QCBS																						
2	Consultant firm to survey and design new office	Consul-02	3,200,000.	QCBS																						
CQS																										
3	Audit Firm	Consul-03	500	CQS																						
IC																										
4	Procurement Consultant	Consul-04	300	IC																						
5	Project Assistant	Consul-05	200	IC																						

Section 2. Procurement Preparation

5.1 Contract Packaging

There will be routine procurements and there will be project related procurements which may contain any number of individual contracts or packages of contracts. A project could, for example, be anything from the refurbishment of a hospital ward to the establishment of health specific clinics across Laos. It is important that consideration is given to the whole portfolio and the range of procurement approaches. Requirements could be broken down so construction of buildings, supply of beds and medical equipment, redecoration and refurbishment etc, are procured separately. Procurement approaches could range from price comparison through to a build, operate, transfer model, depending on what is being procured.

The key is to remember that, however a project is packaged, for the purposes of the thresholds, the value of the project is the aggregate value of all the lots or packages taken together. The method chosen will be dictated by the overall value.

A procuring entity should 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.

Broadly speaking, for purposes of maximizing economy and efficiency in its procurement, a procuring entity may do two different things. It may

- may group goods, works or services of a broadly similar or related nature (compare the ‘categories’ of the Annual Procurement Plan), 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
- may divide contracts into several lots or packages

Whenever a requirement which could be procured as a single contract is divided into lots, the procuring entity

- should ensure that the size of the package is designed to foster maximum competition and obtain the most economic contract
- state in the instructions to bidders (i) the number of lots or packages; (ii) the nature, location and size of each lot; and (iii) where appropriate, the minimum and maximum number of lots or packages for which a bidder may bid
- permit bidders to bid for a single lot, any combination of lots or all lots

When aggregating requirements by grouping them, the procuring entity should also consider whether it is worth entering into a framework agreement.

In the case of dividing contracts, this should not be done:

- for the sole purpose of avoiding thresholds
- 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
- where the award of several separate contracts would invalidate otherwise restrict any provider's warranty or liability
- where the award of several separate contracts would increase the costs of servicing, maintenance or similar requirements

5.2 Procurement Requirements

This section will cover both general requirements and contract specific issues. It is important to get the procurement requirements right. Many problems in implementation arise from poor preparation of the requirements.

5.2.1 Drafting the requirements

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

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

Goods	→	Technical Specifications
Works	→	Works Requirements
Consultancy services	→	Terms of Reference (TOR)
General services	→	Service Requirements

The following advice is generic advice across all four categories. Requirements must:

- be as open as possible to encourage the best possible competition. However, they may not be so broad that performance of the goods, works consultancy services or general services may be compromised
- consider the purpose or intended use as well as a list of all the required attributes, variables and parameters
- be based on performance (output) and functional requirements where possible
- use language, which is simple, clear and explicit
- reference national, international and professional standards, as a minimum, wherever possible
- make no reference to brand names, trademark, patent or unique characteristics unless this cannot be avoided; if that is the case, words like 'or equivalent' should be added to the requirement, as appropriate
- specify that all materials provided under the contract are the latest design and are new and unused
- include any environmental or safety features
- detail any inspection or testing requirements.

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

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

Performance (output) specifications

These are functional specifications (based on the functions to be performed) where the outputs to be achieved can be described. They are different to specifications which require conformity with specific designs, descriptions, characteristics or resource requirements.

Even where performance specifications are used, they will often be accompanied by a requirement to comply with mandatory specifications based on such things as safety levels, industry standards or environmental standards.

5.2.2 Developing the Technical Requirements through staged bidding

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

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

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

Advantages of developing specifications through two stage bidding are:

- It is a more flexible approach to awarding contracts because it allows participation of prospective bidders in the definition of the technical specifications and scope of work.
- The selected bidder is more likely to have a good understanding of the requirement, which potentially reduces risks in the implementation of the contract.
- Prospective bidders are able to make suggestions for improvement of the technical specifications and scope of work of the assignment, through their technical proposal and clarification discussions.
- The second stage bidding period is reduced.
- The technical approach and methodology can be adjusted to suit the agreed technical specifications and scope of work.
- Risk is minimized given the early involvement of prospective bidders in the definition of the technical specifications and scope of work.
- A contract is negotiated on the basis of the agreed technical specifications and scope of work.
- More certainty regarding the qualifications of the preferred bidder.

Disadvantages of this approach are:

- Extended procurement lead-time due to two stage submission process.
- Second stage negotiations with the highest ranked bidder could prove difficult and protracted because the bidder may feel he is in a stronger position with no competitive pressure from other bidders.
- There is risk of price escalation, and negotiations becoming adversarial in the second stage.
- Once a firm is selected for negotiations, competition is lost, and this may impact price.

5.2.3 Requirements for different types of contract

In this section we look at the specificities of the requirements for each type of contract: goods, works, consulting services and general services.

5.2.3.1 Goods Requirement

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

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

Office Equipment			
Item	Description	Qty	Unit of measure
1	Desktop computer	4	each
1a	Monitor	4	each
1b	Hard drive	4	each
1c	Keyboard	4	each
2	Photocopier white 80gsm	10	reams

or

4WD Vehicle			
Item	Description	Qty	Unit of measure
1	4WD Vehicle	4	each
2	Spares and Accessories		
2a	Wheels	5	Per vehicle
3	Service		

3a	After sales service	1	Per vehicle
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The description should be a brief outline of what is required and include units of measure e.g. kilograms, litres, reams etc. Consideration should be given to including any spare parts or consumable items required, either by specifying the items required or requesting the spares or consumables normally required for a specified period of operation, such as one year. The list of goods should also describe any incidental works or consultancy services required, such as installation and commissioning, preparation of the site for installation or user training.

To accompany this the procuring entity must prepare the detailed specification. This should be incorporated into a Statement of Compliance format. It may include performance specifications but will probably contain a mix of different requirements, relating to function, performance and outputs as well as stricter mandatory requirements relating to such things as quality, safety or environmental standards.

Item no	Technical Specification	Statement of Compliance

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

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

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

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

Item no	Technical Specification	Statement of Compliance
1	MANDATORY Functions or characteristics e.g. dosage of a drug, air-conditioning in a vehicle to include any required manufacturing processes, workmanship or materials Performance	

Item no	Technical Specification	Statement of Compliance
	<p>e.g. the speed of a printer or the accuracy of laboratory equipment</p> <p>Quality standards ISO 9001</p> <p>Purpose To include the intended use</p> <p>Operating conditions e.g. temperature or humidity ranges or, where no specific or unusual conditions apply, state “suitable for use in Laos”</p> <p>Drawings Of the goods, including site plans for installation.</p> <p>Environmental or safety features ISO/IEC 17025</p> <p>Packaging, marking and labelling e.g. pills to be packaged in blister packs corresponding to weekly dosages, for HIV test kits to be individually packaged, along with the required protective gloves and instructions for use or for drugs to be marked with their expiry date</p> <p>Documentation e.g. manuals, user guides, licenses, test certificates etc.</p> <p>OPTIONAL</p> <p>Inspection and testing including performance parameters, including outputs, timescales, and any indicators or criteria against which the satisfactory performance of the goods will be tested.</p> <p>Maintenance and after-sales support e.g. what post-contract support may be required including any requirements for in-country support and presence qualifications of in-country staff, national stock holdings etc.</p> <p>Training eg the number of people to be trained in use, maintenance or repair of equipment,</p>	

Item no	Technical Specification	Statement of Compliance
	<p>the location for training, the standard to be attained etc.</p> <p>Incidental works or services</p> <p>eg preparing a site for installation, the current state of the site and the work required should be stated e.g. a thickness of concrete base for machinery</p>	

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

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

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

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

- The delivery and completion periods should be realistic. Unrealistically short delivery or completion expectations may result in restricted competition or may prompt complaints from prospective bidders and/or an increase in cost in order to accommodate the delivery requirement.
- The delivery and completion periods are best expressed as a number of days, weeks or months from the date of contract award, as precise dates cannot be determined until the contract has been placed.
- The delivery period should take into account whether the procurement is of standard, readily available goods or goods which are likely to be manufactured to order.
- Where appropriate, different delivery periods should be given for different items or the total requirement should be split into several batches, with phased deliveries.
- The delivery period should take into account whether the goods are likely to be available in Laos or require importing. Where the goods are likely to be sourced internationally, the location of the goods and likely transport times should be considered.

When the description of requirements is included in an invitation for bids, the procuring entity should check that the delivery period specified takes into account the Incoterm specified for delivery. It must be remembered that under the Incoterms CIF, CIP, FOB, FCA or EXW, the delivery of goods takes place when they are delivered to the carrier, not when they are

Incoterms are discussed in 5.7

delivered to the final destination. Under other Incoterms, a realistic time should be allowed for delivery considering the mode of transport

5.2.3.2 Works Requirements

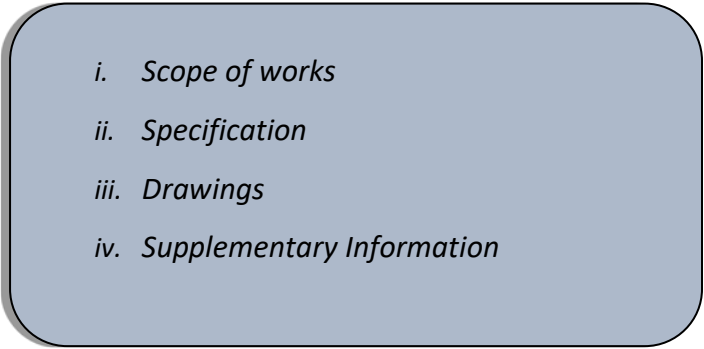
Procuring entities should be mindful that works procurement may include an element of goods or services procurement in which case reference should also be made to Technical Specifications and TOR.

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

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

Works requirements should be structured as follows:

In this table, there is the word Drawings two times

- 
- i. Scope of works*
 - ii. Specification*
 - iii. Drawings*
 - iv. Supplementary Information*

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

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

i. Scope of works

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

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

The scope of works should provide:

- a description of the works;
- approximate quantities of major items;
- a background narrative to the work required, where appropriate; and
- the objectives of the works required, where appropriate.

ii. Specification

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

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

iii. Completion Schedule

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

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

iv. Drawings

Technical drawings are required to define the works required by the procuring entity. The construction drawings, even if not fully developed, must show sufficient detail to enable bidders to understand the type and complexity of the work involved and to price their bids.

In addition to the construction drawings, a simplified map showing the location of the site in relation to the local geography, including major roads, ports, airports and railroads, is helpful.

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

The list should detail:

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

v. Supplementary Information

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

vi. Bill of Quantities or Activity Schedule

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

Therefore, the objectives of the bill of quantities are:

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

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

payment purposes. Sample bill of quantities are provided in the Standard Bidding Documents (SBD).

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

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

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

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

5.2.3.3 Consultancy Services Requirements

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

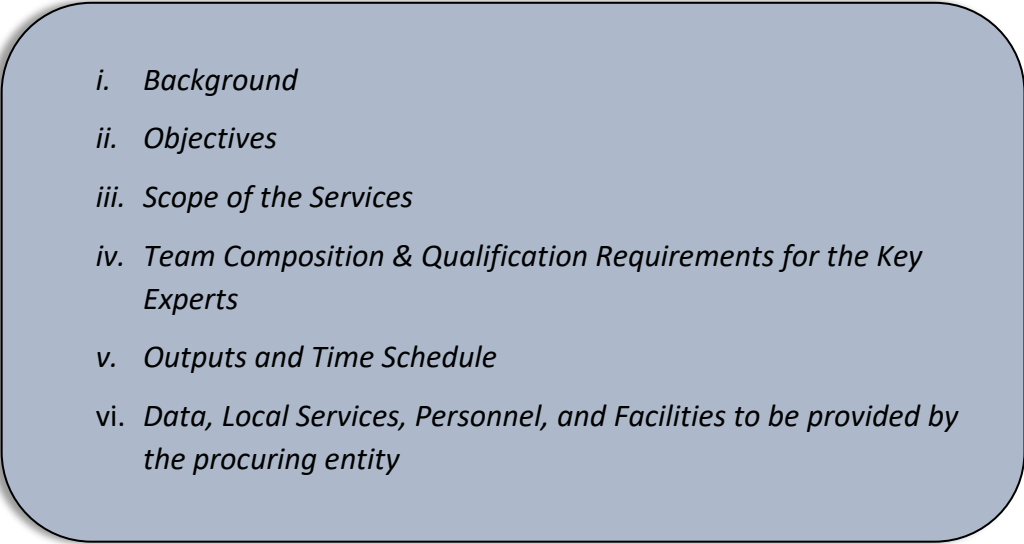
The TOR need to communicate to the bidder the full scope of consultancy services required by the procuring entity without being too prescriptive. TOR need to allow consultants to match their skills, experience and the integration of latest best practice with the requirements of the procuring entity in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

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

The TOR should be titled to provide a brief description of the type of consultancy services required and where the consultancy services would be performed, for example curriculum

and assessment adaptation for primary schools in Laos; monitoring and evaluation of road safety across Laos.

The TOR should then be structured as follows:

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

i. Background

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

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

ii. Objectives

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

iii. Scope of the Consultancy Services

This section will describe the specific activities that the consultancy services will address, including any environmental or safety objectives. It should not discuss the approach or methodology by which the results may be achieved (that is for the bidders to propose). It is important to be as precise as possible in this section as the information it contains will

indicate to the consultants how much effort or person days the assignment is expected to take.

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

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

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

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

iv. Team Composition & Qualification Requirements for the Key Experts

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

v. Outputs and Time Schedule

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

If additional reporting is required then the format, frequency and content should be specified. The procuring entity should specify the language of the reports and the number of copies.

This section should also include the overall duration for the assignment and if there is any final completion date. The time schedule for relatively straight forward assignments such as

the one used as an example are fairly easy to set down. More complex assignments that involve various stakeholders and procuring entity approvals beyond the direct control of the consultants have to allow more time. However, the mechanisms for managing these more complex timelines can be dealt with through contractual conditions

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

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

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

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

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

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

5.2.3.4 Services Requirements

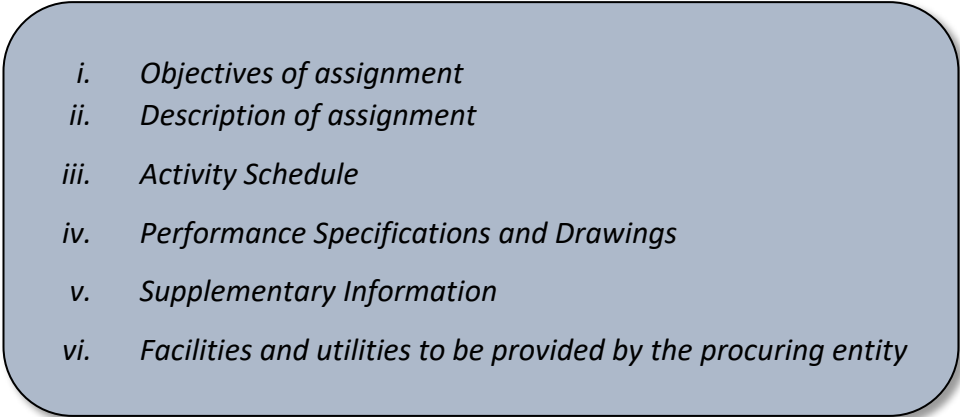
Procuring entities should be mindful that services procurement may include an element of goods and works procurement in which case reference should also be made to Technical Specifications and Works Requirement.

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

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

- the purpose of the assignment and what it is expected to achieve;
- a description of the scope of the services required;
- the location or locations for performance of the services e.g. specify the address, where services are to be performed on the procuring entity's premises;
- the role, qualifications and experience of any key staff required, such as supervisors;
- the duration of the contract or expected completion date;
- the hours of work or hours when the supplier will have access to the site;
- an estimate of the amount or value of work involved, where the scope of the general services cannot be precisely defined e.g. vehicle repair services for 50 vehicles for a one-year period;
- any facilities, services or resources to be provided by the procuring entity;
- any particular equipment to be provided by the supplier e.g. security screening equipment for a building security contract;
- any required performance targets or response times e.g. routine repairs must be completed within 3 days;
- arrangements for reporting to the procuring entity, including lines of communication and the contact point for management and administration of the assignment;
- any other details or requirements relevant to the assignment.

In order to capture this level of detail the Service Requirements should be structured as follows:

- 
- i. *Objectives of assignment*
 - ii. *Description of assignment*
 - iii. *Activity Schedule*
 - iv. *Performance Specifications and Drawings*
 - v. *Supplementary Information*
 - vi. *Facilities and utilities to be provided by the procuring entity*

i. Objectives of the assignment

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

ii. Description of the assignment

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

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

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

However, there may also be an element of goods and works procurement in which case the procuring entity must also follow the guidance at 5.2.3.1 Goods Requirements and 5.2.3.2 Works Requirements respectively.

iii. Activity Schedule

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

a) Daywork Schedule

- A list of the various classes of services, labor, materials, and plant for which basic daywork rates or prices are to be inserted by the bidder, together with a statement of the conditions under which the service provider will be paid for services delivered on a daywork basis.
- Nominal quantities for each item of daywork, to be priced by each bidder at daywork rates as bid. The rate to be entered by the bidder against each basic daywork item should include the service provider's profit, overheads, supervision, and other charges.

b) Provisional Sums

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

c) Bill of Quantity

See 5.2.3.2 on drafting the Works Requirements.

d) Personnel Activity Schedule and Key Personnel

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

e) Material Schedule

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

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

f) Essential Equipment

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

iv. Performance Specifications and Drawings

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

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

In all other respects the procuring entity should follow the advice at 5.2.3.1 Goods Requirements and 5.2.3.2 Works Requirements.

V Supplementary Information

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

VI Facilities and utilities to be provided by the procuring entity

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

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

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

5.3 Bidder Selection

Bidder selection is a critical component of public procurement. It is designed to ensure that the bidders have the capability and resources to successfully perform the contract in question.

In most cases, bidder selection takes place at the same time as bid evaluation, i.e. bidders submit documentation to demonstrate their qualifications as required by the bidding documents at the same time as submitting their bids containing documentation demonstrating their compliance with the technical specifications and their financial proposals. Procuring entities will first assess the bidders' qualifications before turning to verifying compliance with the technical requirements and then comparing the bids according to the evaluation criteria set out in the bidding documents. The bids of those bidders that fail to meet the qualification criteria established by the procuring entity must be rejected at this stage.

In some cases, the qualifications of bidders may be assessed separately and before invitations to bid are dispatched containing the detailed technical requirements of the procurement. This is called pre-qualification. Only those bidders who have successfully pre-qualified will be invited to submit a bid.

Where pre-qualification takes place a long time before bids are evaluated and awarded, it may be necessary to conduct post-qualification which is a process designed to ensure that the information submitted by the successful bidder at the pre-qualification stage remains current and valid.

Each of these steps is described in more detail in the following sections.

5.3.1 Bids by Joint Ventures

Special conditions apply when a bidder is a joint venture formed by two or more firms. It is essential that the bidding documents state clearly the conditions applying to joint ventures, and to any change in its membership during the bidding process.

- No firm or individual partner of the joint venture is allowed to submit or to participate in more than one bid and the procuring entity should reject any bid submitted in violation of this rule.
- Applications submitted by a joint venture must meet the following requirements:

- each partner in the joint venture must submit the complete documentation required of a bidder bidding alone;
- the partners must confirm that the bid as well as (in case of an award) the resulting contract would be signed so as to be legally binding on all partners jointly and severally and a joint venture agreement providing that joint and several liability of all partners in respect to the contract would be submitted together with the bid;
- the bid must include a description of the proposed participation and responsibilities of each partner of the joint venture;
- the bid must include a statement of proposed capital contribution of each partner, and the sharing out of profits and losses among the parties;
- the percentage participation in the joint venture of each of its members (in terms of the corresponding value of the contract) must not exceed each member's capacity in terms of each of the qualifying criteria; and
- the application must designate one of the partners, as the partner in charge through whom any correspondence between the bidder and the procuring entity will be channeled.

The procuring entity should not approve any changes in joint ventures if they would in the procuring entity's opinion result in:

- a substantial reduction of competition;
- the inclusion of a firm which had not previously met the qualification criteria (either individually or as a part of another joint venture); or
- acceptance of the joint venture's qualifications below the minimum requirements stated as acceptable in the bidding documents.

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

5.3.2 The Qualification Process

In practice, bidder selection consists of a number of elements which are often called, generically, 'eligibility', 'qualification' or 'selection' criteria. Whichever term is used, the criteria can be divided into those which:

- are not directly connected with the bidders' ability to perform the contract but which nevertheless are indicators of the suitability of the bidders generally (these are most often called 'eligibility' requirements)
- disqualify bidders from the procurement (these are sometimes called 'exclusion' criteria)

- explicitly demonstrate the capacity and experience of the bidders to perform the contract (these are most often called ‘qualification’ criteria).

5.3.2.1 Eligibility Requirements

There are essentially three eligibility requirements under the legal framework:

- **Legal capacity:** bidders must have legal capacity, i.e. they must be able to enter into contracts (they cannot, for example, be minors)
- **Professional licences:** where necessary, bidders must have the required business licences or professional licences to carry out the business in question. They may, for example, need to be registered with the appropriate authorities or professional bodies.
- **Tax compliance:** bidders are required to demonstrate that they have paid taxes due through the production of a relevant tax certificate. See requirements stated in the current Tax law of Lao PDR.

There are no restrictions under the legal framework on foreign bidders. They may submit bids in the same way as Lao bidders (although Lao bidders may benefit from certain preferences: see 8.6.5). However, foreign bidders must still demonstrate compliance with the eligibility requirements, i.e. they must provide evidence of compliance with all three requirements in their country of incorporation or registration.

Note that if the winning bidder is foreign, that bidder must comply with the Lao taxpayer regulation

Note also that bidders who are State-owned enterprises are eligible to bid only if they are financially autonomous, operate under commercial law and are not under the supervision of the procuring entity carrying out the procurement.

5.3.2.2 Grounds for Disqualification

The legal framework envisages mandatory disqualification in two cases:

- (1) Where the bidder has been sentenced to imprisonment for crimes related to business operations
- (2) Where a bidder has a conflict of interest, particularly if it is involved in a procurement in which it was involved in preparing the design or the bidding documents

Bidders must be free from any relationship or affiliation that would compromise their ability to perform the contract or assignment in an objective manner. The potential effects of conflicts of interest must be addressed early and re-examined at every stage of the selection process. To determine whether a conflict actually exists, the situation has to be examined, taking into consideration the appearance of conflict, that actual or potential impact of the conflict and any possible mitigation measures that may be taken to avoid the conflict.

Action should be taken to reject a bidder only where a potential conflict is likely to affect competition and where there is no means of avoiding it. No situation should automatically give rise to exclusion.

Common areas for conflict of interest include:

- **Conflict between consultancy activities and procurement of goods, works or general services:** Where a firm was contracted to provide consultancy services for the preparation or implementation of a project (e.g. design) and wishes subsequently to bid for the provision of goods, works or services resulting from, or directly related to the firm's consultancy services for such preparation or implementation, there is a danger that it (i) will possess privileged information relating to the project that is not available to other bidders or (ii) may have prepared the design in such a way that favors its own chances of winning subsequent bids.

This should not be the automatic conclusion but should lead the procuring entity to examine the situation:

- If it decides that the design is biased in favor of the firm that prepared the design and that wished to bid for the contract, then it may disqualify that firm or its affiliates from bidding for the contract. However, if a design is found to be biased in any way, it may be preferable to seek another objective design.
 - If it decides that the firm possesses privileged information, it should then decide whether that provides an unfair competitive advantage, i.e. whether it puts the firm into a better position as a result of that information. If that is the case, then it should consider whether the apparent conflict could be overcome by disclosing the same information to all potential bidders. If that does not overcome the unfair competitive advantage, then it may disqualify that firm or its affiliates from bidding for the contract.
- **Conflict among consultancy assignments:** There may be circumstances where an assignment to be provided by a firm may, by its nature, be in conflict with another of their assignments. For example, there would be an obvious conflict if consultants contracted to prepare an engineering design for an infrastructure project were also to be engaged to prepare an independent environmental assessment for the same project. The latter assessment would be evaluating the first so that objectivity is likely to be compromised. Such a perception cannot be easily displaced.

In such cases, neither the consultants (including their personnel and sub-consultants) nor any of their affiliates should be contracted for both assignments.

- **Relationship with procuring entity's staff:** where consultants (including their personnel and sub-consultants) have a business or family relationship with a member of the procuring entity's staff who are directly or indirectly involved in any part of: (i) the preparation of the requirements for the contract, (ii) the selection process for such a contract, or (iii) supervision of such a contract, there arises a clear conflict of interest which needs to be removed.

Examples might include heads of procuring entities also sitting on the board of a State owned enterprise bidding for work with that procuring entity or family members of those involved in procurement working with the suppliers selling goods, works or services to the same procuring entity.

This may be done:

- by resolving the conflict stemming from this relationship in appropriate manner, e.g. by having the procuring entity staff recuse himself/herself from duties associated with the procurement in question or simply removing them temporarily from such functions; or
- where that is not possible, by disqualifying the bidder which has such a conflict

5.3.2.3 Qualification Criteria

Bidder selection should be based entirely upon the technical, managerial and financial capabilities of prospective bidders to perform the particular contract satisfactorily, their past performance and litigation history. The procuring entity should assess the qualifications of suppliers and contractors in a manner that takes into consideration the period over which the contract will be executed and known commitments of the bidder over that period.

The procuring entity should avoid using rigid statements when setting qualification criteria such as words to the effect that applicants who do not answer all questions or submit all required information “shall be disqualified”. The expression “may be disqualified” is preferable, as it provides flexibility. It is also not in the procuring entity’s interest to reject applications of qualified applicants on the basis of trivial or narrow interpretations of the qualification criteria. However, the procuring entity should reject incomplete applications.

The evaluation of qualifications should be based on compliance with quantifiable and clearly identified minimum thresholds, which establish the capability of a bidder to carry out the contract satisfactorily. The criteria should also be objective; ambiguous requirements such as “general reputation”, or “co-cooperativeness” or irrelevant ones are not acceptable and thus should not be used. Likewise, the criteria should not be unfairly discriminatory and should not be used as a means of favouring any particular bidder.

Qualification criteria are made up of (i) financial capability and (ii) technical capacity, including experience. The requirements will be contract specific and will depend both on the type of contract (goods, works or services) and on the scope of the contract (value and complexity).

(i) Financial capability

The bidding documents should specify a specific monetary amount that the applicant must demonstrate he can finance, to cover cash flows for the contract over a given period. Cash requirements for other known commitments over the same period should also be added to this amount. The amount will be based on what is actually needed for the successful completion of the contract.

The period of time should be calculated by adding the time realistically necessary for the procuring entity to pay the contractor from the time of presentation of monthly statements. The time necessary for a certificate confirming acceptance, receipt, delivery or completion (depending on the contract) and the time taken by the procuring entity's finance department to issue payment, after obtaining all the necessary approvals is taken into account in this regard. It is probably then advisable to add some additional time (up to two months) as a safety measure. Cash requirements for the project itself should be calculated from the estimate of the total cost and completion time, on a straight-line basis, neglecting the effect of any advance payments and retentions (in the case of works).

The working capital necessary for "other known commitments" can be determined for each applicant from his submission of information on current commitments. Applicants should present evidence of having available the necessary working capital, from sources available to them including, lines of credit, overdraft facilities, cash in hand, unencumbered assets, shares and bonds, etc. They are also required to produce evidence to this effect.

All other financial information such as balance sheets, letters from insurers and sureties, should confirm all the above submissions, by way of demonstrating the general financial capability of the applicant. Lack of any of the documents should not be a cause for automatic disqualification, but rather, for making further inquiries from the applicant.

The types of documents that may be requested by the procuring entity include:

- annual financial statements for the last five years, including an interim statement not over six months old. These should be supported by audit statements or tax returns;
- financial projections for the next two years, including the effect of known commitments;
- name and address of the bidder's banker, identification of individuals familiar with the bidder's standing;
- statement from the bidder's bank, insurer or other surety that it is prepared to issue bid guarantee or bond (as required by the prospective bidding documents); and
- documents to demonstrate availability of lines of credit, overdraft facilities, supplier's credit, unencumbered assets, or other proof of capability to comply with the financial requirements of the prequalification document.

(ii) Technical capacity

The evidence requested will depend very much on the contract in question. The types of evidence required will include references to personnel, equipment and experience.

In terms of **personnel resources**, this might include having a pool of experienced staff capable of performing the key functions required for the contract, from which contract personnel will be drawn. This is mostly relevant to works and services contracts. The bidding documents should list the assumption of the procuring entity in terms of essential functions and the number of years of relevant experience of the personnel to be detailed in the submission. At least two staff members for each essential position should be available. The Procuring Entity should avoid using words such as "qualified" or "licensed" as well as "university degrees", unless they are essential for a specific function. It is also important not to be too restrictive. It is for the bidder to propose the personnel he/she considers necessary

for completion of the work, but the required qualifications and expertise need to be provided for the personnel proposed. Bidders should not be bound to appoint specific staff to the contract but should demonstrate having in their own staff sufficient experienced personnel for the contract and for other known commitments. Experience and not academic qualifications should be the key requirement.

Example of key personnel resources required for a highway construction project:

- Project manager, with a minimum of 15 years experience of which at least 10 in similar works, and no less than 4 as a project manager;
- Equipment manager, minimum 15 years experience;
- Asphalt Plant Operator, minimum 10 years experience;
- Site manager, minimum 10 years experience, at least 5 in similar works;
- Pavement Works Superintendent (or Senior Foreman) with no less than 15 years experience.

In terms of **equipment resources**, this might include having available specialized equipment essential for the execution of the contract. This could include, for example, a dredger, pile driver, slurry trencher and an extra heavy face shovel. The list should be limited to highly specialized or heavy equipment which would be critical to the execution of the contract, and cannot easily be purchased, hired or leased in the market, or readily manufactured for the task. Normal construction equipment (scrapers, bulldozers, loaders, tip trucks and pavers) which can normally be bought leased or hired “off-the-shelf” should not be listed, unless there are particular circumstances which would make access to them difficult. Equipment need not be owned by the bidder but must be ‘available’.

It is unlikely that specific equipment resources will need to be identified for goods contracts, unless there is a degree of innovation involved. However, where the products or services to be supplied are complex or, exceptionally, are required for a special purpose, a check may be carried out by the procuring entities or on their behalf by a competent official body of the country in which the supplier or service provider is established, subject to that body’s agreement, on the production capacities of the supplier or the technical capacity of the service provider and, if necessary, on the means of study and research which are available to it and the quality control measures it will operate.

In terms of **experience**, the experience required will depend on the contract in question, whether goods, works or services. The length of time over which proof of experience is required will also differ both in terms of the type of contract and scope of the contract. Experience in Laos is not usually a relevant criterion; however, experience in countries with similar climatic, hydrographic, topographic or cultural conditions may be relevant in some cases where that is relevant to the contract in question.

In the case of works, for example, the procuring entity might ask for a list of the works carried out over the past five years (the usual period in the case of works), accompanied by certificates of satisfactory execution for the most important works. These certificates should

indicate the value, date and site of the works and specify whether they were carried out according to the rules of the trade and properly completed. It is not the number that is important but the number that were successfully completed.

In the case of supplies and services, the procuring entity might ask for a list of the principal deliveries effected or the main services provided in the past three years (the usual period in the case of goods and services), with the sums, dates and recipients, whether public or private, involved. Evidence of delivery and services provided may be given in the form of certificates issued or countersigned by the purchaser.

In some cases, it may be appropriate, for the products to be supplied, to require samples, descriptions and/or photographs, the authenticity of which must be certified if the procuring entity so requests.

5.3.3 Pre-Qualification

Prequalification is common for large works, civil works, turnkey plants, BOT, some special goods and complex information technology systems. However, prequalification is not generally needed for simpler procurement such as for vehicles, PC supply and ordinary goods. The purpose is to save time and money: (i) for bidders who are not qualified to submit bids and (ii) for procuring entities from evaluating bids from unqualified bidders. For large, complex procurements, a great deal of time may be needed in preparing and evaluating bids, time that can be saved if it can be established early on those bidders are not qualified.

Prequalification is appropriate in the case of large-scale, technically complex and high value projects when the suitable bidders must be assessed in advance

The pre-qualification process is carried out as an open public bidding procedure with the addition of a pre-qualification step. Prequalification documents will be issued indicating the criteria and conditions to be met all interested companies.

Applicants who meet the criteria and conditions set out in the pre-qualification documents will then be invited to submit bids. The selection criteria shall be the same as those used for bidder selection set out in the previous sections.

The project owner or procuring entities may apply single-stage, two-envelope bidding procedure in the event of time constraint and time-consuming for pre-qualification procedure.

5.3.3.1 Use of prequalification

Prequalification is aimed at ensuring that only contractors and suppliers who have the required experience, technical and financial resources bid for a contract. Prequalification screens potential bidders and is designed to provide the following benefits:

- Unqualified bidders save the cost of bid preparation which results in lower overhead costs to them and, therefore presumably lower bid prices in the long run, to the benefit of the procuring entity.
- Leading contractors and suppliers, particularly the international ones, are more likely to bid knowing that competition is confined to only those qualified. This is also to the benefit of the procuring entity.
- The scale of interest by potential bidders can be measured, affording the opportunity to revise bidding conditions as necessary to develop adequate competition.
- The evaluation of only bids from qualified bidders may result in time and cost savings to the procuring entity, as well as a reduction (or elimination) of the threat of pressure being applied by marginally or unqualified bidders for their low prices to be considered.
- An early indication of the procuring entity's procurement capability is provided, allowing necessary improvements to be made at the initial stages of procurement.
- A preliminary indication of a contractor's eligibility for domestic preference in civil works/goods contracts is given, where this is allowed.
- The creation of appropriate joint ventures is encouraged.

However, prequalification has some potential disadvantages:

- It may increase procurement lead time, although this can be minimized by good procurement scheduling, e.g. undertaking the process while bid documents are in preparation;
- Names of all prequalified bidders are known in advance of bid submission, making it easier for bidder collusion and price fixing to occur; and
- Prequalification should not be used for the bids which is known to have limited interested contractors or suppliers.

Prequalification should not be used to limit competition to a predetermined number of potential bidders. All applicants who have the qualifications to perform the proposed contract must be prequalified and bidding documents made available to all those who prequalified. No upper limit should be imposed on the number of prequalified potential bidders, but, if the prequalified applicants are too few to ensure competition, a reassessment of the situation can be carried out. This includes:

- further advertising for prequalification submission;
- extension of the deadline for applications;
- review of the proposed contract conditions to reduce contractors' risks; and
- improvement of advance mobilization payments.

The procuring entity may also review prequalification requirements but should not lower them merely to increase competition. Setting of standards/requirements at different well-defined levels may be justified when a contract is divided into several smaller, less complex contracts, and bidding is on a slice or package basis.

After prequalification, prequalified bidders are invited to submit bids which are eventually evaluated. The procuring entity is required to award the contract to the bidder meeting the award criteria set out in the bidding documents.

5.3.3.2 Advertising for prequalification

Advertisements and invitations for prequalification should be published and provided in the same way as for open bids and have the following information:

- a brief description of the goods and works to be procured;
- the contract conditions;
- selection requirements for potential bidders, suppliers and contractors; and
- the time and place where prequalification documents can be obtained.

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

- the proposed procurement;
- location of the work;
- selection requirements including, eligibility requirements for domestic preference;
- procurement scheduling of goods or works to be procured;
- abbreviated specifications and conditions of contract;
- main quantities to be procured;
- delivery or implementation schedules;
- requirements for bid and performance securities;
- payment terms;
- price adjustment provisions;
- other information in sufficient detail to enable bidders, suppliers or contractors to assess their interest and respond appropriately; and
- the name and address of the procuring entity and of the procuring entity's official in charge of the procurement with a statement of their roles.

For purposes of evaluating the applicants, the prequalification documents should include a questionnaire, requiring applicants to respond to direct questions as well as to complete a series of forms. The information solicited and the number of forms to be filled should be the minimum essential required to make an objective decision as to the bidder's capabilities.

The procuring entity should avoid requesting excessive form-filling, testimonials, affidavits from bidder's former or current clients, notarized documents and any other non-essential documents and information which will deter some of the qualified firms from applying. Properly designed and completed, the questionnaire should provide the procuring entity with a good framework for evaluation, while encouraging applicants to provide full pertinent details on their capabilities.

5.3.3.3 Prequalification for Multiple Contracts

Prequalification can also be used for a package of contracts essentially similar in type and size. Under these circumstances, applicants can be prequalified for a specific or single contract, combinations of contracts or the entire package. The prequalification document should thus describe the package and the slices, and the criteria required for bidders to meet the qualification requirements for slices, groups of slices or the whole package. The applicant should be asked in the prequalification documents to indicate the contracts for which it wishes to be considered.

5.3.4 Post-Qualification

If a long time has passed between the prequalification and contract award, it is advisable for the procuring entity to carry out post-qualification. The procuring entity should ask the potentially successful bidder to confirm the essential prequalification information before proceeding to award the contract. The apparently successful bidder may be denied the contract if evaluation of the updated information indicates that the bidder no longer possesses the necessary capabilities. This could occur, for example, because of changed financial situation, loss of equipment or key personnel, or lack of capacity because of new contract commitments on the bidder's part.

5.4 Evaluation criteria

The aim of bid evaluation is to achieve the key objective of procurement i.e. value for money. The evaluation criteria used should:

- maximize competition;
- be based on the completeness of the bid (responsive to the procuring entity's requirements)
- guarantee fairness and transparency
- offer the lowest evaluated price

Regardless of how well the other steps in the procurement process are conducted, if bids are not evaluated correctly and fairly, the process has failed. Unfortunately, bid evaluation is the step that is most easily manipulated if one wants to favor a particular bidder.

Value for money is a difficult concept to apply. In some cases, it means simply the lowest price, provided that the goods, works or services offered meet the requirements set by the procuring entity in the first place. But, in most cases, the prices offered need to be *evaluated* (re-assessed) based on the requirements and conditions of the procurement to reach an *evaluated price* which takes account of those requirements. Sometimes, the procuring entity's requirements cannot be expressed in terms of price (money). This is usually the case when sustainability (e.g. environmental) conditions are taken into account. In this case, a scoring mechanism is needed to identify value for money using a combination of evaluated price and non-price factors.

It is thus very important to ensure from the outset that the procuring entity knows exactly what it wants to buy and how it is going to evaluate the offers it receives. Deciding on the appropriate evaluation criteria is part of the planning stage and results from the market analysis. These evaluation criteria must be set out in advance and published in the bidding documents. If a scoring mechanism is used, this must also be stated in the mechanism, along with any formula to be applied.

Any evaluation criterion not contained in the bidding document cannot be used for evaluating bids.

In all cases of evaluation, the first step will be to make sure that the bids received are substantially responsive. A substantially responsive bid is one that conforms to all the terms, conditions and specifications in the bidding documents without material deviations, reservation or omission. The full process is described in 8.6.

After the preliminary bid evaluation stage, the bids are taken through a detailed evaluation in order to select the bidder whose bid not only complies with the technical requirements in bidding documents, but also offers the procuring entity the best value for money for the goods, works and/or services to be procured.

Value for money in this context will mean different things depending on the procuring entity's needs:

Lowest price: in the procurement of simple commodities, semi-finished raw materials and goods, where all offers are of identical and comparable material, price alone may be an appropriate deciding factor. The only additional requirement will be that, for comparison purposes, prices will be assessed using different methods, e.g. when comparing local and foreign bids for goods contracts, the comparison will be between the EXW price of goods offered from within the procuring entity's country with the CIF (named port of destination) price of goods offered from outside the procuring entity's country. The bidder with the lowest priced bid is then awarded the contract.

'EXW' and 'CIF' are
acronyms based on
Incoterms which are
described further in 5.7.

Other expenses may also be taken into account in the calculation of the price. For example, the bidding documents may require (but this must be explicitly stated) the comparison of bids on the basis of the total cost of goods until they are delivered to the project site. The procuring entity in its evaluation of foreign bids, can take into consideration the cost of inland freight and other expenditures incidental to the handling transportation and delivery of goods to the place of their use or installation if they are not already included in the Incoterms selected. This is in addition to the price of the bid. This cost will be from the place of entry to the project site and may include:

- port handling cost;
- inland transportation from the place of entry to the project site; and
- insurance from the port of entry to the project site.

Lowest price in conjunction with other price factors: the legal framework explicitly refers other factors which may be taken into account which may also be subject to specific pricing. These include the schedule for the completion of works or services and/or delivery of goods, frequency of related maintenance services and supply of spare parts for the goods supplied:

- *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 procuring entity 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 of 0.01 of the price for each day of delay beyond the base and this will be added to the bid price for the purposes of evaluation.

- *Frequency of related maintenance services*

The frequency is a method for identifying the multiplier that will be applied to the various fees for maintenance which should be included in the contract. The multiplier will be applied, as appropriate to maintenance fees, after sales service fees and technical support fees.

- *Cost of spare parts (if applicable)*

In the procurement of simple durable goods such as engines, pumps, vehicles, tractors, etc., the cost of initial and subsequent spare parts is very important as it adds up to a substantial part of the maintenance costs. Bidders should be required to include in the bid the price of spare parts over a specified period of time. These prices are added to the bid price when evaluating the bids. Bidders should also be asked to include the costs of maintenance and the supply of spare-parts. After the lowest evaluated bidder is determined the procuring entity and such bidder could enter into an appropriate arrangement for both the supply of spare-parts and maintenance as may be required in the specific circumstances.

Evaluation on the basis of Life Cycle Cost (LCC): in some ways, this is a more sophisticated way of taking account of the above criteria but forms part of the permitted value for money evaluation based on ‘usage’.

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 works plant or equipment. In the procurement of works 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 procuring entity to evaluate bids on the basis of life cycle cost.

Life cycle costing should be used when the costs of operation and/or maintenance over the specified life of the goods or works are estimated to be considerable in comparison with the initial cost and may vary among different bids.

The elements to be taken into account will differ depending on what is being procured. The following elements would comprise a typical life cycle assessment in the procurement of highway transport trucks, for example:

- initial purchase price;
- adjustment for extras, options, delivery, variations in payment terms, etc.;
- estimated fuel cost during the life of the truck;
- estimated cost of spare parts and labor for maintenance during the life of the truck; and
- estimated residual scrap value at the end of its economically useful life (e.g. six years)

The follow-on costs such as fuel, spare parts, maintenance and residual value should be discounted to net present value to make the proper comparison. In some situations, such as the procurement of a major thermal plant, the relative life cycle cost can be evaluated by capitalizing the differences in efficiency in the boiler, turbine, generator and transformer.

In an industrial plant, in addition to the total life cycle cost of the plant itself, the procuring entity may also include the factor of the productivity of the plant and determine the total life cost per unit output. For example, in the procurement of a fertilizer plant or a steel bar mill or oil palm mill, the total cost will be divided by the rated output to arrive at “per tonne of output” cost which will become the basis of comparison.

Example of Life Cycle Cost portion of bidding documents for goods

If specified in the bid data sheet, an adjustment to take into account the additional life cycle costs for the period specified below, such as the operating and maintenance costs of the goods, will be added to the Bid price, for evaluation purposes only.

The adjustment will be evaluated in accordance with the methodology specified below and the following information:

- (a) number of years for life cycle cost determination *[insert the number of years]*;
- (b) the discount rate to be applied to determine the net present value of future operation and maintenance costs (recurrent costs) is *[insert the discount rate]*;
- (c) the annual operating and maintenance costs (recurrent costs) shall be determined on the basis of the following methodology: *[insert methodology]*;
- (d) and the following information is required from bidders *[insert any information required from bidders, including prices]*.

Lowest price in conjunction with non-price factors: this will be used where the procuring entity wants to assess value for money using price as well as other factors which are not capable of being expressed as a price. This may be the case, for example,

- quality of methodology or workplan, use of technology, method of construction, access to key equipment, management in the execution of works and/or maintenance in the supply of goods or services (e.g. site organization, safety, quality assurance, mobilization schedule, implementation schedule and any other activities as specified by the procuring entity; and
- ability to meet and exceed any sustainable procurement requirement if specified in the bidding documents, e.g. environmental impact and promotion of environmental objectives.

Non-price criteria such as these and sub-criteria, as appropriate, are prioritized, assigned merit points, and weighted according to their relative importance in meeting the requirements. The number of criteria and sub-criteria should be kept to the essential minimum. The scores to be given to each criteria and sub-criteria are specified in the bidding documents.

When combining with price criteria, the total weightings of all non-price criteria should normally not exceed 30% but it may be set as high as fifty percent (50%) if justified to achieve value for money.

5.5 The Bidding Documents

Bidding documents are documents issued by the procuring entity which must contain all the information necessary to enable a bidder to prepare complete and proper documents and to make an informed decision on whether or not to participate in the procurement procedure. The preparation of the bidding documents is critical for each proposed purchase involving competitive bidding, both to inform and instruct potential bidders, suppliers and contractors of the requirements expected of them in particular procurement opportunities. The bidding documents should clearly define the scope of works, goods or services to be supplied, the rights and obligations of the procuring entity and of suppliers and contractors and the conditions to be met in order for a bid to be declared valid and responsive.

The bidding documents must be written in terms that are clear and precise. The basic principle in selecting the winning bid must be clearly described in the general instructions and/or specific instructions to bidders. They should also set out fair and non-discriminatory criteria for selecting the winning bid. Bidding documents should thus encourage eligible potentially qualified firms to bid, by making reasonable demands for information and form-filling; not discriminate against any potential bidder; and provide a clear, objective means of evaluating the bidders.

Bidding documents can be sold at a reasonable price covering the costs of printing, delivering and other necessary expenses.

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*; the IFB is normally used by the procuring entity to invite potential bidders to present their bids for the project at hand; it describes the procuring entity and indicates the goods, works or services to be procured. An IFB is issued prior to the preparation of the bidding documents.
- b) *Instructions to Bidders*; providing information to bidders regarding the form, procedure and timing of bidding. IFB contain the general principles which the procuring entity should not modify.
- c) *The Bid Data Sheet*; which specifies the parameters of the Instructions to Bidders for the particular procurement including, selection requirements, procedure for clarification, bid preparation form, number of copies to be submitted, language of the bids, pricing and currencies and currency conversion mechanism, instructions on modification and withdrawal of bids, bid submission procedures, closing date, bid validity period, bid opening, evaluation and award of contract procedures, procedure for correction of mathematical discrepancies in bids, procuring entity's right to accept any bid and reject any or all bids; award criteria; notification of award and procedures for signing of contract.
- d) *Evaluation and Qualification Criteria*; this section specifies the criteria that the Procuring Entity will use to select qualified bidders and evaluate the bids.

- e) *The General Conditions of Contract*; setting out the general provisions of the contract between the procuring entity and the contractor or supplier awarded the contract. GCC sets out the general legal provisions which the procuring entity should not modify.
- f) *Special Conditions of Contract*; which modify the General Conditions of Contract for the particular procurement. The procuring entity may specify to conform to such procurement.
- g) *Schedule of Supply*; which specifies the quantities, delivery locations and dates for the items required by the Procuring Entity. For works contracts, this is the Bill of Quantities.
- 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 materials, 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.

5.5.1 Standard Bidding Documents

To facilitate in preparation of the bidding documents the Ministry of Finance has developed a suite of Standard Bidding Documents (SBDs) for guidance of implementation for the procuring entity. These are mandatory for all public procurement but must be tailored by the procuring entity for each procurement. There are standard parts which must not be changed and this affords efficiency within Government as procuring entities will be able to focus only on the necessary non-standard data to complete their own bidding documents, whilst those reviewing or approving will also be assured of the standard elements. Standardization also means that bidders will be familiar with the structure and approach which will result in a reduction of minor questions and a focus on serious clarifications.

The procuring entity is responsible for drafting the IFB, in consultation with the technical advisers. A well drafted IFB should result in a successful procurement process. It is recommended that the procuring entity adopts an internal review process for IFBs.

The recommended approach in editing the SBD:

1. Select the appropriate standard SBD for the requirement, threshold and method.
2. Consult with the technical adviser if required, regarding finalization of the technical requirements plus advice on other relevant aspects such literature required, delivery etc.
3. Include the final description in the IFB.
4. Complete the Bid Data Sheet with details of the bidding process e.g. the bid closing date, the address for submission, the evaluation criteria to be applied, any qualification criteria to be applied etc. Note that the Bid Data Sheet modifies the

Instructions to Bidders – the text of the Instructions to Bidders must NOT be modified.

5. Complete the Special Conditions of Contract with the conditions which will apply to the contract e.g. payment terms, delivery/completion period, warranty, liquidated damages. Note that the Special Conditions of Contract modify the General Conditions of Contract – the text of the General Conditions of Contract must NOT be modified.
6. The form of contract should be left blank for inclusion in the IFB, as these details can only be completed when the successful bidder has been decided.
7. Ensure that any related documents have been prepared e.g. the IFB notice or list of prequalified bidders (where appropriate).

The format of the data in the Bid Data Sheet will vary according to the particular SBD. It can be amended where indicated.

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

- a) Maximum number (up to 5) of bidders in a JV.
- b) Site visit and pre-bid conference.
- c) Deadline for clarifications which should normally be within 10 days of receipt of the bidding documents.
- d) The minimum documents which comprise the bid are specified in the Instruction to Bidders (these vary by IFB); however, the procuring entity has the option to specify additional documents which must be submitted as part of the bid.
- e) Whether the procuring entity will accept alternative bids. Further instructions must be provided to the bidder in the '*Evaluation and Qualification Criteria*'.
- f) How the requirements will be packaged i.e. as one single lot, multiple lots or single items. For example, if procuring drugs, it may be beneficial to award on an item-by-item basis but laboratory equipment may be packaged by general/ electrical/ scientific etc. The procuring entity may also allow for a quantity variance, but this must be limited to a maximum of 15%.
- g) Whether any adjustment to the bid price would be permitted in contracts exceeding 18 months.
- h) Any documentary evidence that the procuring entity requires, for example test certificates. The procuring entity must also decide if any Subcontractors experience will count towards the bidder's qualifications.
- i) Whilst the IFB also allows for the option on a '*Manufacturers Authorization*' from a manufacturer (but not from a dealer) we would recommend this is always required.
- j) The requirement and level of bid security required.

- k) Bid validity period.
- l) The format of the authorization required. The bidder must provide a power of attorney duly authorized by the bidding entity. The power of attorney should indicate the scope of the authority delegated to the individual signing the bid e.g. authority to sign the bid, authority to negotiate any resultant contract.
- m) Whether the procuring entity will accept any variance on the quantities being procured
- n) Whether a standstill period is required.

5.5.2 Contract Provisions

As with the Instructions to bidders, there are two levels: the general conditions of contract and the special conditions of contract.

5.5.2.1 General Conditions of Contract (GCC)

The General Conditions of Contract contain provisions that cannot be changed or omitted. The GCC contains:

- **Operational Clauses:** These establish the relationship between the procuring entity and the suppliers/contractors they contain information regarding:
 - Definitions;
 - Rights and obligations of both parties;
 - Procedures for shipment and documentation;
 - Delivery and transfer of risk;
 - Terms and currencies of payment;
 - Mode and form dispute settlement;
 - Governing language; and
 - Applicable law.
- **Protective Clauses:** They establish protection against various risks and allocate them between the parties. They include instructions on:
 - Performance security;
 - Retention of payments;
 - Insurance;
 - Inspection and tests;
 - Warranty;
 - Protection against third party infringement suits; and
 - Force Majeure.
- **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:

- Quantity changes;
 - Adverse physical conditions;
 - Price adjustments; and
 - Changes in delivery requirements.
- **Remedies:** This deal with the breach of contract by one of the parties. They include provisions on:
 - Forfeiture of performance security;
 - Procedure for damages, penalties for delay;
 - Procedure for suspension and termination; and
 - Non-payment or failure to provide required approvals and information.

5.5.2.2 *Special Conditions of Contract (SCC)*

Special Conditions of Contract contain provisions that should be drafted specifically by the Procuring Entity for each procurement. The SCC are meant to assist the procuring entity in providing contract-specific information relating to corresponding clauses in the GCC. The procuring entity must specify all information relating to the GCC which need to be added to the SCC when preparing bidding documents. In preparing the SCC, clauses which need to be specified shall have the same legal value as a GCC clause.

5.5.3 Securing bidders' obligations

Bidding documents will also contain instructions and forms covering a number of different types of securities.

For a number of reasons, procuring entities may wish to strengthen the obligations undertaken by bidders by requiring a security of some sort. It may be a security or guarantee, issued by a bank; a bond, issued by an insurance company or earnest money, paid in cash or by banker's certified cheque, cash warrant or demand draft. It may also take the form of earnest money. For bid securities, there is also an alternative in the form of a bid securing declaration.

They come in various forms.

5.5.3.1 *Bid security*

The purpose of the bid security is twofold: to ensure (1) that no bidder withdraws its bid during the period of validity of the bid specified in the bid form and (2) that the successful bidder enters into the contract following award and furnishes the required performance security. The bid security relates only to the bid itself and guarantees that it remains valid and that the successful bidder signs up for the contract.

It operates as compensation to the procuring entity for the time and money lost if the successful bidder fails to honor its bid and enter the contract. Bid securities may not be

required in small contracts and should not be too high. About 2% of the contract price is usually acceptable.

The bid security should be issued by a reputable bank or financial institution selected by the bidder. If the security is issued by a financial institution that is located outside Laos, that financial institution must have a correspondent financial institution located in Laos to make it enforceable.

In the event of withdrawal before the end of the bid validity period or the failure of the successful bidder either to sign the contract or provide the required performance security, the bid security of that bidder will be forfeited. The period of validity of the bid security will extend beyond the period of validity of the bid itself in order to take account of those eventualities. There must be sufficient time within which to conclude the contract and obtain the performance securities. In addition, should the successful bidder fail to sign the contract, the purchaser may further need time to approach the second ranked bidder, where appropriate.

The bid securities of the unsuccessful bidders will be discharged/returned promptly after the award of the contract (usually within 7 days) and, in any event, within the period of validity of the security.

5.5.3.2 Bid securing declaration

The costs involved for bidders in obtaining bid securities are not negligible. Charges imposed by banks are frequently in the order of 2-10% of the value of the security. In addition, the Bank will often require collateral before providing a security, often of a value equal to or greater than the value of the security sought. This may be so onerous as to make it impossible for a bidder to obtain the security. The requirement to provide bid securities may well act as a deterrent to many companies, especially where the value of the contract being let is relatively low. The charges incurred by the bidders in obtaining the securities will also, in one way or another, be passed on to the purchaser by way of increased bid prices. Care needs to be taken, therefore, in deciding whether bid securities are necessary.

They may be advisable in the case of large works contracts where the time involved in conducting an open bidding process is so costly that the untimely and unjustified withdrawal of a bidder would have significant time and cost implications for the purchaser.

They may also be advisable in the case of bids which are open to international competition (by definition, mostly higher value contracts) where purchasers are less inclined to trust the potential, largely unknown, bidders. Where bid securities are required when they are, in reality, unnecessary the consequences may be fewer bidders and increased costs for the purchaser. They are less frequently used in the case of limited bidding and in the procurement of consultancy services. They are inadvisable in the case of low value contracts.

The alternative is to use a bid-securing declaration. This is a declaration signed by the bidder ~~counter signed by the procuring entity under which the bidder~~ under which the bidder guarantees to abide by the terms of the bidding documents in the same as would otherwise be done by way of a security, notably:

- not to withdraw its bid during the period of validity of the bid specified in the bid form;
- if successful, to enter into the contract following award, and

- to furnish the required performance security

The bidder agrees that failure to abide by any of these conditions will lead to exclusion from bidding for any Government contract for a period of two years.

The appropriate form is included in the bidding documents.

5.5.3.3 Performance securities

These are guarantees by bidders that they will properly perform contracts awarded according to the agreed contract conditions. The performance security is there to guarantee the performance of the contract and will be of a value significantly higher than the bid security.

Procuring entities may specify the amount of performance security but the amount of the security should not exceed 10% of the contract price. They should be gradually reduced during project implementation in contract with a duration of more than 2 years. Where a performance security is required in addition to retention money, the amount should be reduced to less than 10%. The contract should define clearly the kind of defaults that would lead to the surrender of the performance security e.g. the contract may provide that the performance security be payable only once default has been established by an arbitral award.

In cases where the procuring entity elects to proceed to contract, notwithstanding the existence of an abnormally low bid (see section 8.6.4), the amount of the performance may be increased up to 20% to ensure satisfactory completion.

Where there is no default, the performance security must be discharged after completion of the contract and expiration of the warranty period. The performance security will be returned to the contract after the issuance of the certificate of substantial completion of the contract.

Procuring entities may also decide may not require this performance security, depending on the contract amount or anticipated risks of non-execution of contract conditions. If this risk is the case, the project owners or procuring entities shall apply the other option such as the temporary suspension of payment (payment retention).

5.5.3.3 Advance payment guarantee

Another form of security is the advance payment security which guarantees advance payment made by the procuring entity (which should not exceed 30% of the contract value) against the bidder'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. Guarantees must be denominated in the currency of the bid or another freely convertible currency.

5.6 Transportation and Insurance Issues in Procurement

These are important issues in procurement since the conditions that apply to their calculation will have a significant effect on the prices offered by bidders.

5.6.1 Transportation

Freight or cost of transportation services, is a substantial element in the delivered price of most imported goods and may be high. The final price may have a range of up to 15% of the cost of the goods. During transportation and storage, cargo may be exposed to various dangers, such as damage, pilferage and theft, breakage, non-receipt of parts or entire consignments. Cargo insurance provides protection against financial losses resulting from these risks. To protect the interest of the Procuring Entity, follow the guidelines provided below:

- goods must be covered for all risks, including war, strikes, riots and civil commotions (SRCC).
- the duration of the insurance coverage should be sufficient to cover the period of transportation from “warehouse to warehouse” and include a minimum of 30 days, in store at destination.
- goods must be insured in an amount equal to 110% of DDP value.

5.6.2 Insurance

The procuring entity should take out and maintain with responsible insurers, insurance against such risks and in such amounts as is consistent with appropriate practice. Insurance issues arise in various forms during the procurement aspect of the project. Instances where the procuring entity may have to deal with insurance include *inter alia* cargo insurance during transportation of goods, installation all risks insurance, third party liability insurance, automobile liability insurance, worker’s compensation and employer’s liability. As all of these issues are subject to the final agreement between the procuring entity and the supplier or contractor, this section merely gives a brief description of what is covered under these types of insurance.

a. Transportation Insurance

Adequate provisions for the insurance of, imported goods should be arranged, against hazards incidental to the acquisition, transportation and delivery of such goods to the place of use or installation. Indemnification should be in the contract amount or in a freely convertible currency. Suppliers should be allowed to arrange insurance from any eligible source.

Depending on the transport provisions in bidding documents, the procuring entity or the supplier makes arrangements for transportation and must obtain insurance against loss or damage for internal transit and storage. In the case of DDP for example, the supplier has to insure the goods up to the port or other destination where delivery is to be made.

(If, on the other hand, procurement of goods is on FOB terms, once the goods are on board, it is up to the procuring entity to arrange for the necessary insurance to cover the goods to their destination.)

b. Contractor’s Insurance

Bidding documents usually require all contractors to take a Contractor's All Risk Insurance (CAR). CAR is generally used as the main protection against physical loss, damage, or injury to the project works and property of third parties.

The amount of insurance coverage should be commensurate with the liability that the insured third party may incur. In case of a physical asset, for example, this means the replacement cost, payable in a freely convertible currency, or in currencies in which replacement costs would be incurred.

c. Designer Liability

Consulting engineers or architects may be engaged by the procuring entity to provide preliminary designs, technical specifications, detailed designs, working drawings, construction inspection and approvals for the project. Loss or damage due to defective design in these instances is usually covered under a professional liability insurance cover taken by the service provider. The procuring entity should ensure that the hired party is insured under such coverage or other similar coverage which will cover any defects in the design of procured items that may arise due to the contractor's negligence.

d. Third Party Liability Insurance

This covers bodily injury or death suffered by third parties, including the procuring entity's personnel and loss or damage to property occurring in connection to the supply and installation of procurement related facilities. Third party liability insurance is governed by the laws of Lao PDR.

e. Worker's Compensation and Employer's Liability

These cover bodily injury or death suffered by the procuring entity's or contractor's employees and are usually governed by the statutory requirements applicable in the Lao PDR.

f. Evaluation of Insurance Needs

The Procuring Entity undertakes a comprehensive analysis of risk and insurance needs before the procurement process begins, so that project costs are optimized to include insurance coverage. This analysis provides an informed basis upon which the procuring entity will decide which risks it should take on itself and which should be covered by insurance. The obligation to analyze insurance needs extends to the duration of the procurement and not merely to the implementation period and includes all risks which a prudent investor would insure against.

g. Effect of Transport and Insurance Issues in Bid Evaluation

All Incoterms are free of taxes including value added taxes (VAT) in Laos. In most situations where only imported goods are involved, evaluation is generally straight forward, provided only one port or point of destination is specified. However, if imports can be received in a number of points or by different modes, the cost of different methods of further handling and transportation should be taken into account in bid evaluation.

5.7 Incoterms 2020

Incoterms are commonly used terms of sale which are included in contracts to define the responsibilities of sellers and buyers. The Incoterms are a set of 11 individual rules issued by the International Chamber of Commerce (ICC) which define the responsibilities of sellers and buyers for the sale of goods in international transactions. The latest version is the **Incoterms® 2020** rules and is published by the **International Chamber of Commerce (ICC)** and protected by copyright. The revised rules reflect the latest developments in commercial transactions. To obtain a copy of the Incoterms® 2020 rules visit the ICC website at

https://2go.iccwbo.org/incoterms-2020-eng-config+book_version-Book/

An Incoterm specifies who is responsible for paying for and managing the shipment, insurance, documentation, customs clearance, and other logistical activities. The Incoterms are grouped into two categories reflecting modes of transport. Of the 11 rules, there are seven for any mode of transport and four for sea or land or inland waterway transport.

The seven Incoterms for any mode(s) of transport are:

EXW	-	Ex Works (insert place of delivery)
FCA	-	Free Carrier (Insert named place of delivery)
CPT	-	Carriage Paid to (insert place of destination)
CIP	-	Carriage and Insurance Paid To (insert place of destination)
DAP	-	Delivered at Place (insert named place of destination)
DPU	-	Delivered at Place Unloaded (insert of place of destination)
DDP	-	Delivered Duty Paid (Insert place of destination).

Note: the DPU Incoterms replaces the old DAT, with additional requirement for the seller to unload the goods from the arriving means of transport.

The four Incoterms for Sea and Inland Waterway Transport are:

FAS	-	Free Alongside Ship (insert name of port of loading)
FOB	-	Free on Board (insert named port of loading)
CFR	-	Cost and Freight (insert named port of destination)
CIF	-	Cost Insurance and Freight (insert named port of destination)

Incoterms clarify responsibilities of parties to a sales transaction:

- In each Incoterm rule a statement is provided as to seller's responsibility to provide the goods and commercial invoice in conformity with the contract of sale. Likewise, a corresponding statement is provided which stipulates that the buyer pay the price of goods as provided in the contract of sale.
- Each Incoterm rule has a statement stipulating which party is responsible for obtaining any export license or other official authorization required for export and for carrying out the customs formalities necessary for the export to proceed. Similarly, each rule has a corresponding statement as to which party is responsible for obtaining any import license or other official authorization required for import

and for carrying out the customs formalities required for the import of goods. These statements also specify which party bears the cost of handling these tasks.

- Similarly, each Incoterm rule specifies which party to the transaction, if any, is obligated to contract for the carriage of the goods. Another point addressed in each Incoterm rule is which party, if any, is obligated, to provide for cargo insurance coverage. These statements also specify which party bears the cost of the handling these tasks. Each rule also contains statements, among others, as to which party is responsible for packing the goods for transport overseas and for bearing the costs of any pre-shipment inspections.
- Each Incoterm rule specifies the seller's obligations as for cargo delivery and clarifies when delivery takes place. Each rule also specifies when the risk of loss or damage to the goods being exported pass from the seller to the buyer by reference to the delivery provision.

Incoterms do not cover everything. They do not

- address all the conditions of a sale;
- identify the goods being sold or list the contract price;
- reference the method or timing of payment negotiated between the seller or buyer;
- establish when title, or ownership of the goods, passes from the seller to the buyer; specify which documents must be provided by the seller to the buyer to facilitate the customs clearance process at the buyer's country; and
- address liability for the failure to provide the goods in conformity with the contract of sale, delayed delivery, or dispute resolution mechanisms.

The most widely used term by the Government is Delivered Duty Paid (DDP) terms, rather than CIF terms.

The Government's Standard Bidding Documents for Goods, in the Instructions to Bidders, require bidders to indicate separately on the Price Schedule *inter alia*:

- For goods offered within the procuring entity's or project owner's country, the price for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination, if specified in the Bid Data Sheet.
- For goods offered from abroad: the price of goods shall be quoted DDP named port of destination in the Lao PDR, as specified in the Bid Data Sheet. In quoting the price the bidder is free to use transportation through carriers registered in any eligible countries.

Section 3. Procurement Methods

The method of procurement that the procuring entity chooses to use for a particular project depends on the nature and size of a project and its procurement element and the urgency with which the goods or services to be procured are required. The decision on the appropriate method is made during the planning phase, except for urgent situations which arise beyond planning.

There are also:

- (i) a number of financial thresholds which trigger certain procurement methods (e.g. open, price comparison and direct contracting) and
- (ii) a number of conditions which must be satisfied before applying other procurement methods (e.g. limited bidding, direct contracting).

6.1 Methods of Procurement and Threshold Values

The legal framework provides for the following procurement methods in respect of goods, works and services:

- Open bidding
 - with or without pre-qualification
 - in one or more stages
- Limited bidding
- Price comparison
- Direct contracting

The method of selecting consultants is covered in Part V of this Manual.

In terms of financial thresholds, these differ depending on whether the subject matter of procurement is either (i) goods and services or (ii) works (including services connected to those works). These thresholds are set at a level at which it is considered that the benefits of using the method outweigh the costs. It is expected, for example, that the benefit in greater choice and lower prices will be greater than the costs of conducting open (preparation of bidding documents, advertising, copying and despatch of documents, time involved in preparation and evaluation). . In some cases, i.e. where the value of the contract is relatively low, the additional savings to be made by using open bidding may not be very big but the costs of conducting the procedure will be the same. As a result, low value contracts do not need to be conducted by open procedure but by way of a least costly and time consuming procedure. The Ministry of Finance will review these thresholds every two years to ensure that they remain valid based on inflation indexes and to ensure consistency with the economic situation in Laos.

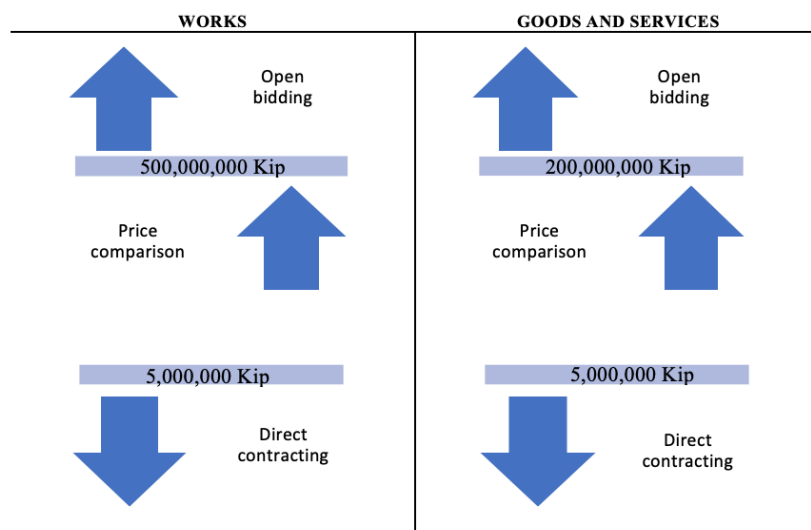
In the case of goods and services, the open bidding method must be used whenever the estimated value of the contract exceeds **200,000,000 Kip**.

In the case of works, the open bidding method must be used whenever the estimated value of the contract exceeds **500,000,000 Kip**.

Below those thresholds, procuring entities may use the price comparison method.

For very low value contracts of any type (below **5,000,000 Kip**) where the expense of conducting a competitive award procedure outweighs the benefit to be gained, procuring entities may use the direct contracting method. Note that direct contracting can also be used (regardless of value) when one of the relevant conditions are met (see 6.5.1.)

The applicable thresholds are represented in the following figure.



6.1.1 Calculating threshold values

For the purposes of calculating the threshold values, the value will be the estimated value of the contract at the time of initiating the contract award procedure. This must be a genuine estimate. If it is not, the procuring entity may be held to be in breach of the rules if the miscalculation has the effect of making the procurement subject to a less competitive procurement method.

As we saw in section 5.1, it is possible to package projects or contracts into separate lots to be awarded independently. It is important to remember, however, that for the purposes of the thresholds, the value of the project/contract is the aggregate value of all the lots or packages taken together. So, if there is a works project which is split into 3 packages of 200,000,000 kip each, the total (aggregate) value of the project is 600,000,000 kip, i.e. above the threshold for open bidding. That is the value that determines which method must be used. If the contracts are awarded separately, they must each be awarded using the open bidding method even if the value of each lot is only 200,000,000 kip.

In looking at aggregation, i.e. how to calculate the value of separate contracts, there are certain rules:

- in the case of works contracts, the procuring entity aggregates the total value of works and related services which, taken together, fulfill an economic and technical function.

- in the case of the procurement of goods which are awarded over a period of time by means of a series of repetitive contracts awarded to one or more suppliers, the procuring entity aggregates the total value of the contracts with similar characteristics to be awarded within 12 months following the first award or the total value of the contract where its term is longer than 12 months.
 - for example, if a procuring entity buys cleaning fluid on a regular basis, e.g. every month for a year, the value will be taken to be the value for the whole year. If that procurement is carried out every month for 3 years, the value will be the value of purchases for the 3 year period.
 - the purpose of this rule is to prevent the artificial splitting of contracts so the value of the contract for the purposes of calculating the financial threshold value will be the value of all the individual contracts taken together.
 - in these cases, it would be preferable for the procuring entity to consider using framework agreements which are specifically designed to cover repetitive contracts (see section 5).

6.2 Open bidding

Open bidding is the appropriate method for the procurement of all contracts which exceed the threshold values indicated above. It also applies to the establishment of public private partnerships (PPPs), using two stages.

Check that the thresholds have not changed

Experience has shown that in many cases open bidding which is open to all eligible and qualified bidders, with an optional element of domestic preference in the case of international participation, achieves the principal objectives of public procurement most effectively. However, in circumstances in which it can be demonstrated that open bidding is not appropriate, the Procuring Entity may with the necessary approvals use the other methods of procurement. In such cases the MOF/PPMD requires the procuring entity to ensure that the method used is the most economic and efficient method. The procuring entity also has to show that by using such a method it will get the best value for money.

The purpose of open bidding is to give all eligible and qualified prospective bidders' adequate and timely notification of a procuring entity's requirements and to give them equal access and a fair opportunity to compete for contracts for required goods and services. Bidding opportunities must therefore be advertised widely, and all eligible bidders given reasonable possibilities to participate.

Open bidding requires formal bidding documents which are fair, non-restrictive, clear and comprehensive. The bidding documents and technical specifications relating to the project should clearly describe the criteria and methodology for evaluation of bids and selection of the successful bidder. The MOF/PPMD requires the procuring entity to use the Standard Bidding Documents (SBD) prepared by the PPMD for the procurement of particular types of goods and services. When an SBD does not exist for a particular type of procurement, the procuring entity may use other bidding documents provided that they contain internationally recognized standard conditions of contract and contract forms acceptable to the MOF/PPMD.

6.2.1 National and international open bidding

The PPL allows procuring entities to limit participation in procurement to local persons and legal entities. There are no indications, however, in the legal framework as to when the procurement should be limited in this way.

In many cases, it is not realistic to limit participation, especially when the goods, works or services cannot be provided within Laos or cannot be provided economically or efficiently within Laos. On the other hand, where the goods, works or services required can be provided in Laos at competitive prices, there is no reason why participation should not be limited.

In deciding whether or not to limit participation to local persons and companies, the following considerations are relevant:

- the nature or scope of the goods or works being procured (i.e. are they easily procured in Laos?);
- when the advantages of international participation are clearly outweighed by the administrative or financial burden involved (i.e. where international bidding would not result in price savings that exceed the cost of the using the method)
- contract values are small;
- works are geographically scattered (so that international participants would have more difficulty managing the procurement packages); or
- the goods, works or services are available locally at prices below the international market

The essential differences when limiting participation to locals is that the notifications take place through national media.

Where international bidding is used the bidding documents should be prepared in both Lao and English and currency of the bid and payment may be extended to include currencies other than kip.

6.2.2 Pre-qualification

In the case of large-scale, technically complex and high value projects, the suitability of bidders may be assessed in advance by way of prequalification. This is described in 5.3.3 above. The prequalification process is carried out as a potential open bidding procedure with the pre-qualification documents indicating the criteria and conditions to all applicants who are interested in bidding. Applicants meeting the criteria and conditions set out in the pre-qualification documents will then be invited to submit bids.

6.2.3 Single stage open bidding

Single stage open bidding may be conducted using a one or two envelope approach.

The detailed instructions for the sealing and marking of bids will be contained in the bidding documents and form part of the Instructions to Bidders.

6.2.3.1 One envelope

The one envelope approach is the most common and is used where there is no special complexity or advanced technology to be used and where goods, for example, are readily available on the market.

In this case, bidders will place all of the required information into one sealed envelope for bid opening. This includes:

- response to qualification criteria
- proof that they meet the technical requirements
- price or proof of compliance with other award criteria

Each element may be included in a separate envelope but all of them, however presented, must be packaged into a single sealed envelope for submission to the procuring entity. In this approach, all the envelopes contained in the single sealed envelope will be opened at bid opening.

6.2.3.2 Two envelopes

This approach may be used when the procuring entity is faced with evaluating technically complex goods, works or services where a more detailed and potentially subjective assessment is required of the technical aspects of the bids. The purpose of using two envelopes is to ensure that knowledge of the price of a bid (which will be unknown) does not influence the evaluation of the technical part of the bid.

Using this approach, the required information will be placed into two sealed and marked envelopes before both of these are then placed into one sealed envelope for bid opening.

Envelope 1 will contain:

- response to qualification criteria
- proof that they meet the technical requirements

Envelope 2 will contain

- price or proof of compliance with other award criteria

Only envelope 1 will be opened at the initial bid opening. Once the procuring entity has completed the assessment of the bidders' qualifications and responsiveness to the technical requirements, all those bidders that are qualified and who meet the technical requirements will be invited to the opening of the financial envelope.

The financial proposal of all unqualified bidders and non-responsive bidders will be returned unopened.

6.2.4 Two stage open bidding

Sometimes it is not possible for the procuring entity to set out the precise technical specifications in advance, usually in the case of complex contracts. The legal framework allows use of a two-stage method in the case of large-scale and high value projects where the procuring entity has no experience in the preparation of such technical specifications or high value design.

This is likely to be the case where

- it is not possible to determine in advance the specific technical characteristics and quality features of the deliveries, services or construction being procured
- technical discussions with suppliers or contractors are necessary because of the special nature of the deliveries, services or construction to determine what the procuring entity needs
- the subject matter of the procurement is research, experiment, preparation of a scientific opinion or performance of other specialized services
- the procurement concerns complex construction design and works

In these cases, the procuring entity may conduct the procurement in two stages where the first is used to fully define the requirement/specification and the second represents the normal open bidding stage.

In the first stage, suppliers or contractors submit a preliminary proposal containing the proposed specification or methodology and without specifying the price. The Procuring Entity may request suppliers or contractors to define the parameters of the subject matter of the procurement. The Procuring Entity may negotiate with each supplier or contractor the content of the submitted preliminary, keeping confidential the content of conducted negotiations.

The procuring entity may then modify the technical and quality requirements set forth in the initial specifications, as well as modify the criteria for evaluating the offers. In the invitation to submit final offers, the procuring entity must inform suppliers or contractors about any modifications made in the initial specifications.

In the second stage, qualified bidders will be invited to submit bids, although there is some scope for more discussion. This may be necessary in the case of PPPs.

The place, time period and deadline for submission of final bids shall be specified in the invitation. Suppliers or contractors shall provide bid security when entering the second stage of bidding.

For these purposes, qualified bidders are those whose preliminary proposals satisfy the requirements of the original specification.

6.3 Limited bidding

Limited bidding may be used when the procurement requires high-level expertise or specific techniques and/or technology that can be provided only by a limited number of contractors, suppliers or service providers. If the source of supply is limited, there is no benefit to holding open bidding because the identity of the bidders is known. It is the same few bidders that will

respond, regardless of how many times the procurement is advertised. Nothing will be gained from expensing the costs necessary to carry out an open bidding procedure.

In some cases, there are a known limited number of bidders worldwide for certain items. For example, there are maybe 3-4 manufacturers worldwide of power generating turbines. Similarly, there is a limited number of rolling stock suppliers. In less obvious situations, discovering the limited number of bidders may be the result of experience. If a procuring entity has carried out the same procurement by way of open bidding many times but only received the same bidders each time, there must be a question as to the extent of the supply market. This is one of the functions of the market analysis that should be done during the planning stage (see 4.1.2).

However, you cannot assume that a poor response automatically demonstrates a limited supply market. It may well be the result of poor preparation or bad drafting on the part of the procuring entity: maybe the qualification criteria are set too high, maybe the technical requirements are inappropriate or biased. The causes of poor bidder responses must be investigated before a procuring entity decides that it is the result of a market characterized by a limited number of bidders. The procurement record must contain an explanation of why limited bidding was chosen and set out the findings of the procuring entity which led to the conclusion that there are only a limited number of bidders.

In the absence of such a record, the only conclusion than can be drawn (by the competent authorities and courts) that the procuring entity is misusing this method.

Under limited bidding public advertisement of the contract through newspapers or the website is not required, and the known bidders may be solicited directly. Otherwise, the procedure follows the same steps as open bidding.

6.4 Price comparison

This method is used for the procurement of small works, routine maintenance and standard off-the-shelf goods which are of relatively low value.

It may be applied whenever the value of the contract is less than 500,000,000 kip in the case of works and 200,000,000 kip in the case of goods and services.

It is operated by way of a request for quotations (RFQ) which must be sent to at least 3 potential bidders. The evaluation will be completed only after receiving 3 bids from the qualified bidders, it is recommended that the RFQ should be sent out to more than 3 companies.

If a procuring entity is unable to make a selection for a particular type of procurement, then it would be advised to conduct an open bidding procedure at least once in order to identify likely candidates for future RFQs.

6.5 Direct contracting

Direct contracting is the least competitive procurement method and is only advised in very specific circumstances. In addition, it may only be used following approval of the relevant authority because it is the method which is most open to abuse.

'Candidate' is used to refer to a potential contractor, supplier or service provider

It is based on an invitation to and subsequent negotiations with one or more candidates.

In some cases (based on the grounds for use), direct contracting will be used with only one potential contractor, supplier or service provider. That is acceptable if the conditions are met. On the other, some grounds for use (e.g. urgency) do not automatically restrict the number of potential contractors, suppliers or service providers to one. It is perfectly possible to negotiate with more than one candidate at the same time.

So, whilst direct contracting may be used with one candidate, it is also possible to conduct this method with more than one. In order to achieve best value for money, it is advisable to negotiate with more than one candidate where that is possible in the circumstances.

6.5.1 Grounds for use

Apart from cases of very low value (the ceiling threshold is currently set at 5,000,000 kip for all types of procurement), direct contracting can only be used on the basis of defined grounds.

These are where:

- *there is only one source of products linked to copyright protection or subject to industrial or intellectual property rights*

The key element of this ground is that there must be only one possible source. To be relied upon successfully, it will be necessary to demonstrate that there are, in fact, no alternatives. Simply to prefer one type of process which is subject to exclusive rights over an alternative process which is itself the subject of exclusive rights will not be sufficient to trigger the derogation. Similarly, holders of exclusive rights may also license others to manufacture patented products or to use their technical knowledge or manufacturing process. This will happen particularly in cases where bidders get together to form joint ventures or where subcontractors need to use the proprietary rights held by the contractors in order to fulfil their contractual obligations. The existence of licensees may well give rise to the availability of the protected product from several sources, a situation which would prevent use of this condition.

- *specific equipment and goods from identified contractors or suppliers and/or service providers are required for maintenance or replacement*

This is a question of the availability of spare parts where these must be obtained from the original supplier. If this is critical, it should form part of the original contract, i.e. that should contain a clear commitment to the provision of spare parts over a given period of time and this should also form part of the evaluation criteria applied.

If this was not done, then much care needs to be taken in assessing these types of situations. Even if the original suppliers provide their own spare parts, alternative parts might also be available and at a lower cost. Procuring entities should ask themselves whether buying alternatives would lead them to acquiring material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance. If the same or equivalent (i.e. technically compatible) supplies are available from other suppliers and the value of the additional supplies exceeds the relevant threshold value, the contract should be advertised as a new contract. In the case of very specialised equipment (for which there is no obvious equivalent), then the original supplier for the spare parts in any event best placed to offer the best terms for additional supplies. Direct contracting would be the best solution.

To avoid the position where the same supplier is given an indefinite monopoly of supply (at least in the public sector), this should not become indefinite. There will be a point at which, where supplies are restricted by or to the original source of those supplies, it will be more economically advantageous for a purchaser to replace complete systems on the basis of competition rather than to bind itself to a single source supplier who will be able to impose monopoly prices.

- *extended for additional works, goods and/or services and consulting services of a similar nature; which value does not exceed twenty percent of the original contract*

For relatively small quantity additions, there is often no financial advantage to the procuring entity in re-advertising the original contract. The preparation time for works and the time required for familiarity with services, for example, mean that in most cases, it would be more expensive to award a contract to another contractor, supplier or service provider. Provided the value of the additions so not exceed 20% of the value of the original contract, procuring entities may enter into direct contracts with the original supplier. This applies to the total number of additions, not to each one. So, it is not possible to make one addition of 15% of the value of the original contract and then another of 10% - that would 25% and would not be permitted.

- *government project and activity in isolated areas with poor access infrastructure or very limited interested bidders*

In these sorts of cases, it may be difficult to attract bidders at all. There is a danger that there will be no response to an open competition so that the expense of conducting repeated competitions would result in high wastage. However, this is not an assessment that can be made without any evidence that this is really the case. It should be based on a full market analysis which demonstrates the difficulties of access or limited interest.

This could also be the result of one or more failed open bidding procedures but, if such a procedure has failed, the procuring entity should ensure that there are no other reasons connected with the parameters of that procedure (qualification criteria or scope of requirements) that made it inherently unwinnable before resorting to direct contracting. In this case, the remedy would be to correct the bidding documents and re-bid.

If no changes to the original bidding documents are required, then in order to avoid a situation in which the procuring entity drafts an impossible requirement with a view to discouraging bidders only to then enter into negotiations with its preferred supplier, the initial conditions of the contract should not substantially altered. In this way, neither the purchaser nor the ‘preferred’ supplier would be able to benefit since they could not negotiate away the original terms.

This is also a situation where it is possible and probably beneficial to seek to negotiate with more than one candidate. Even if there is limited interest, there could be two or maybe three possible candidates. In cases of poor access, there may be more than one local candidate. Where that is the case, negotiations should take place with all of them.

- *in force majeure or urgent cases*

This is a ground for justification that is most often abused.

Force majeure refers to catastrophic situations such as natural disasters, civil strife or even health and safety emergencies. Such situations are easily identified.

‘Urgent’ situations are usually open to more interpretation. Any procuring entity could create an urgent situation simply by failing to start the procurement procedure in time. But this is a question of planning, not urgency. If a procuring entity failed to check its stores of paper, it does not mean that the need for paper becomes urgent when it runs out. The ‘urgency’ is self-created and could have been avoided by checking the storeroom earlier. Creating situations of urgency is not acceptable as a ground for justifying the use of direct contracting. The situation which gives rise to the urgency must be out of the control of the procuring entity. This ground for justification should only be permitted (and approved) where strictly necessary (i.e. there is no alternative) when

- there are genuine reasons giving rise to the urgency;
- the urgency is brought about by events unforeseeable by the procuring entity;
- the time limit for the open bidding procedures cannot be complied with; and
- the circumstances invoked to justify extreme urgency must not in any event be attributable to the procuring entity.

This is also a situation where it is possible and probably beneficial to negotiate with more than one candidate. Where the identity of potential bidders is not otherwise restricted, see section 4 below for an example of how to select appropriate bidders.

When using direct contracting, the procuring entity will still need to provide a statement of requirements and the bidder or bidders will have to demonstrate both the ability to perform the contract (i.e. that it has the necessary qualifications required by the procuring entity) and that it is compliant with the technical requirements. The bidder or bidders must submit a tender demonstrating that they meet these conditions. The bidder or bidders should be given at least 3 days to submit their tender unless, in cases of extreme urgency, this is too long.

Where the prices tendered appear to be too high in comparison to prices found in the market, the procuring entity may enter into negotiations to seek to reduce the price.

6.5.2 Approval

Whenever a procuring entity is considering the use of direct contracting for a contract whose estimated value exceeds 5,000,000 kip, it must seek approval from the authorities set out below. In each case, an *ad hoc* tender committee is appointed as set out below.

Estimated Value (Lao Kip)	Ministry or Agency	Province or District level	Embassy or Government Office abroad
5 million - 500 million	<ul style="list-style-type: none"> • Permanent Secretary/Chief of Cabinet (if the budget is managed by the Ministry or Agency). • Relevant Department's director general (if the budget is managed by the Department). • Authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members. • 	<ul style="list-style-type: none"> • Head of Provincial Administrative Office (if the budget is managed by the province). • Provincial Department's director general (if the budget is managed by the Department). • Head of District, Head of Municipality, Head of City (if the budget managed by the District). • Authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members. 	Ambassador or Head of Office or authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members.
500 million - 10 billion	Minister or Head of Agency or authorized person to approve and appoint ad-hoc Committees which composed of 3-7 members.	<ul style="list-style-type: none"> • Provincial Governor, Capital Governor or authorized person to approve and appoint ad-hoc Committees which composed of 3-7 members. 	Ambassador or Head of Office or authorized person to approve and appoint ad- hoc Committees which composed of 3-7 members.
More than 10 billion	Government or authorized relevant agency responsible to approve and appoint ad-hoc Committees.		

Where direct contracting is used under donor grants or loans, approval and committee formation is based on the financing agreement and approved by the donor.

Section 4. Supplier Lists

The legal framework provides for procurement methods which, in some cases, require the procuring entities to identify bidders whom they will invite to participate in a procurement. This is notably the case where request for quotations (price comparison) is used and, sometimes, in the case of direct contracting, e.g. in the event of urgency where it may be possible to invite one or more potential bidders.

The Law and Instruction do not, however, set out any mechanism for identifying these bidders but it is the duty of the procuring entities to choose appropriate bidders from whom

to request quotations (in the case of price comparison) or to invite (in the case of direct contracting).

Though usually called ‘supplier’ lists, these lists may also contain contractors, service providers and consultants, depending on the nature of procurements carried out by the procuring entity.

In practice, procuring entities will often establish and maintain lists of known suppliers from among whom they will select the bidders to be invited. This is a practical and efficient process which will enable procuring entities to identify competent bidders in the shortest possible time thus ensuring value for money.

It is also, however, a procedure which is open to abuse because the lists have a tendency to become closed lists of bidders (which may exclude capable bidders) based on personal contact or to promote the use of prohibited practices.

They must be used only for those procurement activities identified in the approved procurement plan for the year (except in the case of urgency) so that their use is properly planned and transparent. Lists must not be used to circumvent the application of the Law.

The legal framework requires all procurement to be conducted openly, fairly, transparently and providing equal treatment of bidders (Article 5(3) of the Law). In addition, all contracts must be awarded on the basis of competition (Article 42(1) of the Law).

As a result, it is important that these principles are respected when designing and operating supplier lists. Any failure to respect these principles will amount to a breach of the Law.

These principles would be respected, for example, where the following processes are employed:

1. Applications for inclusion on a supplier list should be invited at the beginning of each fiscal year by a notice published in the same way as a procurement notice (see section 8.2.1). The notice should indicate the address from which the application documents may be obtained.
2. The application documents should detail the procedures for submitting applications and set out the criteria to be applied for inclusion.
3. Suppliers already included on the list need only update their relevant information in respect of the criteria identified in 2.
4. The decision to include a supplier should be made in a timely manner (e.g. within 1 month from the date of notification) but the list should remain open for the entire year. Any subsequent requests for inclusion on the list may thereafter be made at any time and a decision on admission will also be taken within 1 month.
5. Applicants may apply for inclusion on the list in writing enclosing all relevant information and documentary evidence demonstrating their compliance with the identified criteria.

PPMD has prepared a sample set of application documents which meet these conditions. They are available at: [PPMD website]

6. Reasons for the rejection of any applicant must be notified promptly to the unsuccessful applicant.
7. The list of suppliers may be consulted by any interested party upon request.
8. A supplier may be disqualified and/or removed from the list if it is found, at any time, that the information submitted concerning its qualifications was false or deliberately misleading.

The criteria used in 2 above should be objective and based only on the eligibility and qualification criteria permitted in the legal framework. Applying any other criteria would be a unlawful.

Specific contracts will also have requirements which are related only to those contracts. Listed suppliers will also have to demonstrate that they comply with the contract-specific criteria

Inclusion on the list establishes a presumption of general compliance with the criteria identified for inclusion on the list and qualifies listed suppliers to participate in price comparison and direct contracting procedures without the need once more to demonstrate their compliance with those identified criteria. They would still need to demonstrate that they meet the requirements of the specific contract being procured.

Suppliers who are not listed do not benefit from such a presumption of general compliance and will be required to demonstrate their qualifications to participate in the procurement procedure.

Section 5. Award of Framework Agreements

A framework agreement is not a procurement method. It is the result of an open bidding procedure.

Instead of awarding a fixed contract at the end of the open bidding procedure, a procuring entity may decide to use open bidding to award a framework arrangement. This differs from a normal contract because the procedure does not lead to a final and complete contract but rather to an agreement to enter into several contracts at a later date. The aim of the framework agreement is to consolidate the requirements of a procuring entity over a period of time and to agree the terms and conditions that will apply to contracts for those requirements over that period of time following a competitive procedure for all of the requirements but to leave the actual purchase until the requirement is needed. A contract comes into existence at the time the product is ordered. This avoids undertaking multiple procedures for low value contracts and leads to better value for money.

7.1 The framework agreement concept

A simple example may be the purchase of paper over a period of 2 years. Instead of either (i) buying small amounts of paper over a period of two years or (ii) buying the full requirement of paper once for the full period of two years and then warehousing that paper until needed, the procuring entity could

- aggregate its requirement over a 2-year period

- initiate an open bidding procedure for the total requirement
- award a framework agreement to the lowest bidder which fixes the price and other terms and conditions of sale
- when paper is needed over the following 2 years, make a simple purchase order against the framework agreement (called a 'call-off')

The point of the agreement is to fix prices and terms of delivery even if it is not known at the time of the agreement when paper will be needed and in what quantity. That will be determined at the time of the purchase order.

If the price, quantity and delivery dates are fixed in the agreement (e.g. deliver a quarter of the quantity every 6 months until all is delivered), that is actually a contract and not a framework agreement. This is a beneficial long-term supply contract and allows the procuring entity to benefit from an economy of scale, but it does not provide the flexibility of a framework agreement.

A more complex example may be for the maintenance of air conditioners. The procuring entity knows that there will be routine maintenance to be done and it also knows that, over a period of 2 years, there are likely to be breakdowns which it will want to have repaired quickly. It does not know when this will happen or what exactly will be needed to repair the equipment, but it does know that it will happen. Instead of waiting for the breakdown to happen and then start a procurement procedure (probably by price comparison), the procuring entity could

- aggregate its requirement over a 2-year period (i.e. calculate the number of units requiring maintenance)
- initiate an open bidding procedure for the total requirement asking for such things as hourly rates for labour, hourly rates for emergency call outs, standard prices for routine maintenance and prices of essential key parts (a bit like a bill of quantities in a works contract)
- award a framework agreement to the bidder which offers the best combination of prices taken as a whole (very much like life cycle costing), fixes the price and other terms and conditions of sale
- when routine maintenance or repair is needed over the following 2 years, make a simple purchase order ('call-off') against the framework agreement

These relatively simple examples can become more complicated by:

- adding more than one procuring entity (e.g. more than one school in a particular municipality)
- adding more than one supplier to the framework agreement (making it a multi-supplier agreement)

It depends what is needed.

Procuring entities are encouraged to create frameworks. The aim is to benefit from bulk purchasing discounts (scale economies) by consolidating the requirements of one or more procuring entities over a period of time. But there are many other benefits linked to efficiency.

These include:

- a streamlined procurement process for the procuring entity and supplier;

- fixed prices and conditions based on consolidation of needs and volume, over a fixed term;
- flexibility to determine the specific requirement at the call-off stage;
- leverage/economies of scale through aggregation - framework agreements can often cover hundreds of items with the prices and terms and conditions agreed;
- avoids duplication - one procuring entity goes out to the marketplace on behalf of other procuring entities;
- ease of access to goods, works, consultancy services and general services;
- lower transaction costs because of time and resources saved to receive and evaluate bids, and awarding a contract for each requirement (i.e. eliminates requirement for repeat bidding);
- can be used as a method of variety control/standardization as appropriate by offering procuring entities a specific choice of products within a category of spend which are provided for under the framework arrangement -alternatively the converse can be enabled through frameworks offering procuring entities a wider choice than they would have the time to arrange if sourcing independently;
- deliveries can be customized to fit in with the procuring entity's requirements and storage limitations.

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

- bids may include higher prices to compensate for the fact that the framework agreement establishes fixed prices for a period of time and are non-exclusive (i.e. can be awarded to more than one bidder, thus reducing the 'share' of contracts likely to be awarded to one bidder). This can be partly overcome by requesting a stepped pricing structure, i.e. where prices are based on the value of the contracts to be awarded. This may be achieved by having prices based on quantities, e.g. the higher the quantity awarded, the lower the price;
- risk that all parties may become less attentive to performance monitoring and quality inspection because there are more potential bidders and options if one of them fails.

7.2 When to use framework agreements

Since framework agreements are used over an extended period of time, usually 2-3 years, they should be used for the supply of off-the-shelf, readily available goods, routine works and maintenance, consultancy services and general services, i.e. low risk items. They should not be used for complex procurement which requires tailored solution or for high technology items where rapid technological improvement means that the items will often become outdated even within a 2-3 year period.

They are most often used for high volume/low value orders but are also useful for other segments of spend such as consultancy arrangements. They are particularly useful in construction projects as they enable detailed specifications to be worked up at an appropriate time within the project. They are generally used when the overall requirements are known, but the specific quantity and delivery date of any particular good may not be known.

Framework agreements are appropriate where:

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

7.3 How to use framework agreements

The Government is currently looking at framework agreements as a means of making procurement saving and achieving value for money. It is envisaged that pilot project will be initiated to demonstrate both how to use frameworks agreements optimally and show results.

Further guidance will be provided by the Government when appropriate but procuring entities are encouraged to be pro-active in identifying requirements which may benefit from framework arrangements.

For the present, two types of framework agreement are recommended.

7.3.1 Simple single-supplier framework

This could be used where the products, for example, are standard and stable (i.e. not subject to change) and where the quantities are reasonably well-known. It could be used for such things as paper, petrol, stationery, basic office equipment, cleaning fluids etc. It can also be used with works or consultancy services but the example will refer to goods). The call-off, when it comes, will be awarded on the basis of the prices and terms and conditions agreed in the framework agreement.

It can also be used in the case of the second example given above, i.e. in the case of the repair and maintenance of air conditioning units. In this case, when the purchase is needed, the procuring entity may not know exactly what it needs (e.g. the unit has broken down but the procuring entity does not know what the exact problem is). This is not a problem because the chosen supplier on the framework agreement has already given its prices for labour and for the various spare parts that are likely to be required. The call-off can be made as usual but, instead of an exact specification and price, the purchase order will state that the repair will be done on the basis of the prices and terms agreed in the framework agreement.

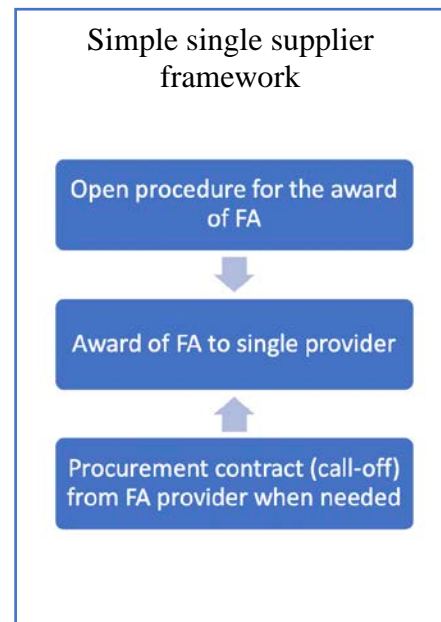
In this example, it is more accurate to speak of a 'pricing formula' rather than a price. The final price on call-off will be the result of the combination of prices established in the framework, i.e. a mix of labour and spare parts. The cost of each is known and established at

the time of the framework agreement, but the precise combination is only known at the time of the call off.

This type of framework agreement could be operated for the benefit of more than one procuring entity, provided the same goods are being purchased. In this case, a lead procuring entity must be nominated. They will be responsible for letting the agreement, managing the relationship with the supplier and keeping the other procuring entities updated. From a bidder perspective, the places of delivery or implementation need to be identified because this may have an incidence on prices if they are distant from each other.

To carry out this procedure, the procuring entity will:

- identify the product or products to be procured
- calculate the volume requirement over a period of up to 3 years
- in the case of a number of procuring entities, the lead procuring entity will solicit the requirements from all participating procuring entities
- initiate an open bidding procedure for the total requirement (estimated volumes, place of delivery) in accordance with the open bidding procedure (i.e. creation of bidding documents establishing technical requirements, bidder selection criteria and evaluation criteria)
- award a framework agreement to the lowest bidder which fixes the price of the product for the full term of the framework agreement and all the other terms and conditions of sale (this will be based on the draft contract attached to the SBD)
- when the product is needed over the period of the framework agreement, make a simple purchase order ('call-off') against the framework agreement based on the appropriate SBD
 - where the product and quantity are known, these will be identified in the purchase order
 - where the exact requirement is not known (e.g. repair of an air conditioning unit which has broken down but where the nature or scope of the required repair is not known), the purchase order will identify the repair and require the supplier to carry out the repair on the basis of the prices and terms agreed in the framework agreement.



7.3.2 Flexible single- or multi-supplier framework

This type of framework has advantages where

- the procuring entity or procuring entities are looking to purchase a range of similar products but cannot say with precision which items will be needed when (e.g. office supplies, pharmaceuticals);
- the place of delivery is not known in advance (e.g. in the case of a framework agreement with a number of procuring entities which have office and departments located in different parts of the country – the prices for each of these delivery locations may differ);

- the urgency of the delivery cannot be predicted (in some case, delivery can wait for some days, in some cases, it may be necessary to deliver urgently – the prices for each of these deliveries may differ)
- it is not possible to be accurate about the procurement needs at the time of the framework agreement (e.g. similar to the situation described in the air conditioning example above);
- different levels of engagement may be envisaged, e.g. there may be a consultancy framework agreement to cover different tasks which may result in different hourly rates depending on personnel required for the task (seniority or specialty)

Whilst these frameworks could be established with a single supplier, they generally provide more benefits when established with a number of suppliers. This provides a greater choice of product (where a range of products is required), more delivery options (when procuring entities and departments or offices are located in different places) and greater flexibility at the call-off stage (ability to define the precise requirement at the time needed; to choose a delivery option and degree of intervention).

If such a framework is established with a single supplier, it will be awarded in the same way as the simple framework (above, 1.) and the prices or pricing formula used in the framework agreement will be applied to the specific requirement identified at the call-off stage.

In the case of a multi-supplier framework agreement, the process is different.

(a) At the stage of awarding the framework agreement

First, the procuring entity or entities need to decide how many suppliers will be admitted to the framework agreement. The usual number is between 3 and 6. A minimum of 3 will ensure that there is sufficient competition and a maximum of 6 will ensure that the framework remains manageable and that bulk discounts will remain available – if there are too many suppliers, the bidders may not believe that they will be able to obtain high enough quantity orders to justify offering bulk discounts. It is a fine balance, but the procuring entity needs to make that decision based on the subject matter of the procurement and the quantities envisaged.

In defining the requirements in the bidding documents, the procuring entity needs to be very clear about the parameters/factors that will be taken into account in the evaluation and what the bidders need to provide in terms of pricing. This may include

- the range of products (generally for a similar function, e.g. office supplies)
- any differing qualities envisaged
- delivery locations
- speed of delivery (this may attract a premium supplement for speed of delivery)
- scope of task (e.g. in consultancy, seniority and specialty required which may differ depending in task)
- range of possible combinations

It will also be important to set out any pricing formula to be used, i.e. how these various components might be combined. There may be a matrix of prices depending on the need at the time of the call-off which will be used to determine the final outcome price based on

inputting the agreed prices for each element. Such a matrix may be used to determine the initial offered prices (even if the call-offs will differ).

The procuring entity will evaluate all responsive bids from qualified bidders and award the framework agreement on the basis of the evaluation criteria set out in the bidding documents. They will be chosen primarily on the basis of price (but non-price factors may be taken into account if these are relevant to the procurement in question). The award will be made to the 3-6 bidders that offer the lowest prices or which best meet the evaluation criteria applied.

Once evaluated, the designated number of suppliers (assuming that there are enough) will be admitted to the framework agreement. They will be sent a notification of award as normal but it will indicate that they are one of a given number (between 3 and 6) of bidders that have been successful.

Unsuccessful bidders will be notified in the usual way.

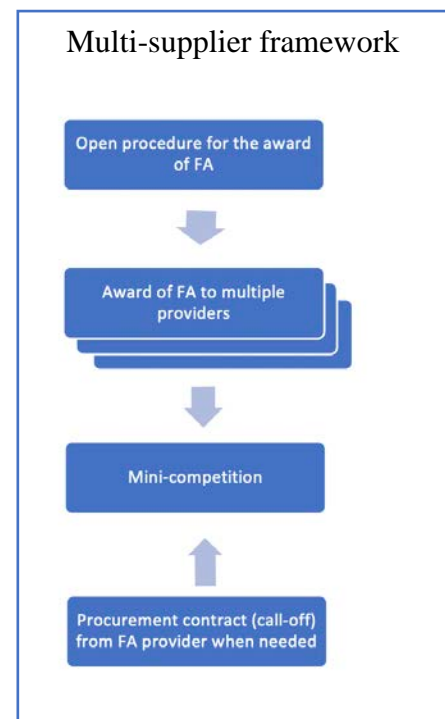
At this point no purchase is made. The framework agreement is merely an agreement to enter into contracts at a later date based on the terms of the framework agreement.

(b) At the stage of awarding the call-off contract

Given that framework agreements are likely to be used to cover different possibilities and at different times during their duration (and possibly by different procuring entities), the providers that appeared to submit the lowest priced bids or best bids (meeting the stated evaluation criteria) at the framework stage when the actual requirements of the contract were imprecise (timing, location, urgency level of effort, specialty required etc.), may not be the ones that offer the lowest priced or best bids at the time a particular order is placed. It is necessary, therefore, to introduce a second award stage. This is called a mini-competition.

The 'mini-competition' arrangement involves firming up the prices for the goods, works, consultancy services or general services incorporated in the framework agreement. This is done by formulating the precise requirements at the time of the call off (e.g. in terms of exact quantities, qualities, timing, delivery location, urgency level of effort, speciality required etc.) – these will all have been priced at the time of the framework agreement.

The procuring entity (or the user department or office) will directly invite (in writing or by e-mail) all providers on the framework agreement to provide a total price for the more precisely formulated requirement at that point in time. The prices and other terms and conditions must be based on those agreed in the framework agreement. There should be no potential for negotiation or varying the contract when calling off a requirement against a framework - finalizing the terms of any contract under a framework should almost be a 'mechanistic' procedure, not involving re-negotiation of the terms already established.



Nevertheless, the bidders may be able to offer reduced (never increased) prices at the time of the mini-competition. This will allow them to take account of any downward price fluctuations that have occurred in the interim or to offer discounts based on the quantities required, for example.

The call-off contract will be awarded to the supplier that offers the lowest or best bid at that point in time.

Part IV. Procedure for the Procurement of Goods, Works and Services

Section 1. Open and Limited Bidding

8.1 Preparedness

A contract award procedure is commenced by a notification, either by way of advertisement (open bidding) or by way of direct invitation (limited bidding).

By the time you have reached this point, you will have completed the following tasks:

- ☒ Individual Plan
- ☒ Appointment of tender committee
- ☒
 - Bidding documents
 - technical requirements
 - contract packaging
 - qualification criteria
 - evaluation criteria
 - procurement method
 - bid data sheet
 - SCC
 - choice of securities
- ☒ Approvals required

If not all of these actions have been taken, you are not ready to commence the contract award procedure.

8.2 Notification

The means of notification is the main difference between open and limited bidding. In all other respects they are the same.

Public advertisement of procurement opportunities guarantees the widest possible publicity of the contract and attracts the greatest amount of competition thus providing the procuring entity with the widest choice and best prices.

8.2.1 Place of publication

In the case of open bidding, the notification is made by way of an advertisement which will be placed in

- mass media (national newspaper in the Lao and, where appropriate, English language) and
- procuring entity and PPMD website, or
- electronic media

Currently, the recommended mass media at national level is:

- Vientiane Mai (Lao language)
- Pasason Newspaper (Lao language)
- Vientiane Times for English language
- 108.Jobs website (for consultants)
- Related Ministry's website/newspaper or organization or other social media.

At the sub-central level, the recommended mass media includes

- Capital, Provincial level
Provincial newspapers
Provincial television, radio, speaker or other social media
- District, municipality level
Provincial newspapers

Television, radio, speaker or other social media

If the procuring the entity has its own website, then the advertisement should also be placed on that website either on a page that is dedicated to procurement (which might be the case for procuring entities with a high volume of procurement) or otherwise in a very visible way (e.g. on the home page).

MOF/PPMD maintains a Procurement website which collates and publishes all open bidding opportunities in the country. These are published at:

<https://ppd.mof.gov.la/>

Procuring entities are required to send their advertisements to PPMD for publication on this site. Whenever international participation is invited, procuring entities should, in addition to the media described above, publish the advertisement in:

- appropriate mass media of international circulation such as newspapers or relevant trade journals in the English language published abroad
- internationally recognized websites for procurement opportunities such as UN Development Business (<https://devbusiness.un.org/>)

In addition, copies of the advertisements may be shared to foreign diplomatic missions in the Lao PDR.

Procuring entities are also permitted to notify known bidders of the advertisement but **not before** the advertisement has been published in the media described above

8.2.2 Content of advertisement

The notification must contain the following information:

- the identity of the procuring entity
- a summary of works, goods or services being procured
- the address from which to obtain bidding documents and further information related to the submission of bids
- the requirement for a bid security or bid securing declaration, if any
- the cost of the bidding documents
- key procedural requirements
- the final date, time and place for submission of bids.

For limited bidding, this is sent directly to the identified potential bidders. For open bidding, this is prepared for publication as set out in the previous in section.

Templates for advertising are attached below:



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Name of Ministry/Province/Organizations

Name of Procuring Entity

Name of Project

Contract No.

Date:

Invitation for bids for Open Bidding (Goods)

1. ***[The Procuring Entity]*** invites sealed bid from interested and qualified bidders to ***[Insert brief description of the Goods to be procure]***. The delivery period is ***[Insert date]***. *(If contract is constituted of Lot(s), insert No. in this paragraph).*
2. Bidding will be conducted through the open bidding procedures specified in the in Public Procurement Law and Instruction for the Implementation of Law.
3. This Procurement is open to all eligible bidders.
4. Interested eligible bidders may obtain further information **from *[insert complete legal name of the Procuring Entity; Name and e-mail of officer in charge]*** and inspect tender Documents at the address given below ***[State address]*** from ***[Office Hours]***.
5. A complete set of the Bidding Documents in the Lao Language may be purchased by interested bidders on the submission of a written application to the address below beginning ***[date]*** and upon payment of non-refundable fee ***[insert amount in Kip]*** or its equivalent other currency. The method of payment shall be ***[in cash or cashier's check]***.
6. Bids must be delivered to the address below at or before ***[insert the same time and date as the deadline, place for bid submission]***. Electronic bidding will not be permitted. Late bids will be rejected and returned unopened to the bidders. All bids will be opened at ***[insert the same time and date as the deadline, place for bid submission]*** in the presence of the Tender Committee and the Bidders representatives who choose to attend at address below.
7. All bids must be accompanied by a Bid-Securing Declaration or a Bank Guarantee of at least 2% of the bid price.
8. The address(es) referred to above is(are): ***[insert detailed address(es)]***

[insert name of office, room number]

Attn: *[insert name of officer & title]*
[insert postal address and/or street address]
[insert postal code, city, country]
Tel: *[include the country and city code]*
E-mail: *[insert electronic address if electronic bidding is permitted]*
Web site:

Signature of authorized person and stamp
Name and Surname:



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Insert Name of Ministry/Province/Organizations

Insert Name of Procuring Entity

Insert Name of Project

Insert Contract No.

Date:

Invitation for bids Open Bidding (Works)

1. **[The Procuring Entities]** invites sealed bid from eligible bidders to **[Insert brief description of the Works to be procured]**. The Completed Schedule is **[Insert numbers of months, years or date]**.
(If contract constitutes in Lot(s) (Package), insert Lot No.)
2. Bidding will be conducted the Public bidding procedures specified in the **Public Procurement Law and its implementation instruction**.
3. This Procurement is open to all eligible bidders, who have business license **[Grade]** in the country.
4. Interested eligible bidders may obtain further information from **[insert complete legal name of the Procuring Entity; Name and e-mail of officer in charge]** and inspect tender Documents at the address given below **[State address]** from **[Office Hours]**.
5. A complete set of the Bidding Documents in Lao Language may be purchased by the interested bidders on the submission of a writing application to the address below beginning **[date]** and upon payment of non-refundable fee **[insert amount in Kip]** or its equivalent other currency. The method of payment shall be **[in cash or cashier's check]**.
6. Bid must be delivered to the address below at or before **[insert the same time and date as the deadline, place for bid submission]**. Electronic bidding **[will or will not]** be permitted. Late bids will be rejected and returned unopened to the bidders. All bids will be opened at **[insert the same time and date as the deadline, place for bid submission]** in the presence of the Bidding Committee and the bidder's representatives who choose to attend at address below.
7. All bids must be accompanied by a "Bid-Securing Declaration" or Bid security with amount not less than 2% of Bid price.

8. The address(es) referred to above is (are): (Insert detailed address(es) including complete legal name of the procuring entity; office designation **[room number]**; name of office; street address, City. **[If addresses for purchase of tendering documents and the bid submission and bid opening are different, insert different address].**

Attn: *[insert name of officer & title]*

[insert postal address and/or street address]

[insert postal code, city, country]

Tel: *[include the country and city code]*

E-mail: *[insert electronic address if electronic bidding is permitted]*

Web site:

Signature of authorized person and stamp

Name and Surname:



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Insert Name of Ministry/Province

Insert Name of Procuring Entity

Insert Name of Project

Insert Contract No.

No.

Date:

Request for Quotation (Goods)

To: Name and Address of the Supplier

1. *[Insert Name of implementing Agency/Procuring Entity]* will apply the National Budget for *[FY]* or *[a part of a Grant or Loan from donor]* to finance the procurement of *[Name of the Goods]* under this Request for Quotation.
2. *[Insert Name of Procuring Entity]* invites you to submit a sealed Quotation for the supply of *[Insert Name of Goods to be procured]*. The delivery period is *[Insert number of days/weeks/months]*.
3. Bidding will be conducted through Request for Quotation procedure specified in the Law on Public Procurement Law and the Instruction of Implementation of Law on Public Procurement.
4. The Quotation shall be delivered before *[Time and date]* to *[address]*, and all Quotations will be opened at *[Time and date]* in the presence of the Tender Committee and the Bidder's representatives who choose to attend

Attn: *[insert name of officer & title]*

[insert postal address and/or street address]

[insert postal code, city, country]

Tel: *[include the country and city code]*

E-mail: *[insert electronic address if electronic bidding is permitted]*

Web site:

Signature of authorized person and stamp
Name and Surname



Lao People's Democratic Republic
Peace Independence Democracy Unity Prosperity

Insert Name of Ministry/Province

Insert Name of Procuring Entity

Insert Name of Project

Insert Contract No.

No.

Date:

Request for Quotation (Works)

To: Name and Address of the Contractor

1. *[Insert Name of Procuring Entity]* will apply [the National Budget for *FY*] or [a part of a Grant or Loan from *donor*] to finance the procurement of *[Name of the Work]* under this Request for Quotation.
2. *[Insert Name of Procuring Entity]* invites your Company to submit sealed quotation for *[Insert the works to be procured]*. The construction period is *[Insert numbers of days/weeks/months]*.
3. Bidding will be conducted through Request for Quotation procedure specified in the Law on Public Procurement Law and the Instruction of Implementation of Law on Public Procurement.
4. The Quotation shall be delivered before *[Time and date]* to *[address]*, and all Quotations will be opened at *[Time and date]* in the presence of the Tender Committee and the Bidder's representatives who choose to attend.

Attn: *[insert name of officer & title]*

[insert postal address and/or street address]

[insert postal code, city, country]

Tel: *[include the country and city code]*

E-mail: *[insert electronic address if electronic bidding is permitted]*

Web site:

Signature of authorized person and stamp
Name and Surname:

8.2.3 Minimum time period for the submission of bids

The objective of setting time limits is to provide bidders with adequate time to prepare and submit their bids and to provide equal time to all bidders. The time limit should also take account of the time necessary for responding to any requests for clarifications from bidders and any proposed any site visits required for the preparation of the bids or visits which become necessary based on the requests for clarification.

The time limits need to be realistic and take account of the above as well as of the complexity of the contract envisaged which will have an effect on the above requirements. In the event of international participation, longer time limits will be required in order to take account of the distances involved; the language and currency issues which need to be addressed and the need, where relevant, to make site visits in Laos.

The instructions must set out the *minimum* time limits leading to the submission of bids. Those time limits will only be indications of the normal time limits to be followed. They are not absolute time limits or targets and should be amended as appropriate in the circumstances. In reality, these minimum time limits are often wholly inadequate. Large infrastructure projects may require many months for bid preparation, site visits, studies and evaluation.

The minimum time periods are:

Open bidding:	not less than <u>35 days</u>	between publication and bid submission
Limited bidding:	not less than <u>30 days</u>	between date of direct notification and bid submission

8.3 Submission of bids

Currently, the submission of bids is envisaged as a manual process. The Government of Laos is working on developing methods of electronic procurement. When this system is available and sanctioned, this Manual will be amended to reflect the electronic system.

8.3.1 Place for submission

The place for the submission of bids or proposals must be the same venue as indicated in the advertisement or notification. This will be the same as the date included in the bidding documents.

The procuring entity must assign staff to be responsible for receiving submitted bids until the closing date and time for submission of bids.

In case of a change of place and address for the submission of bids (which should happen very rarely), the procuring entity must

- directly notify all bidders who have received the bidding documents [how long] before the deadline for submission of bids

8.3.2 Conditions of submission

It is the responsibility of bidders to ensure that the bids are delivered to the procuring entity before the closing date and time for submission. This means that bids must be submitted in the form required by the bidding documents, duly signed by the authorized person and accompanied by any bid security or bid securing declaration required by the bidding documents.

Bids must be sealed in the correct number of envelopes required by the chosen method of procurement and clearly marked as specified in the bidding document.

Bids must be directly delivered by hand or by courier (post office) by the deadline. Any late bid, i.e. one received after the deadline for submission of bids, shall be rejected and immediately returned unopened to the bidder.

The procuring entity will prepare a record of date and time of submission for bids received. In addition, a certificate recording of date and time the bid is received will be issued and signed by the authorized person.

If one or more of the envelopes received from a bidder is found to be torn or opened before the deadline for submission of bids, this shall be recorded as evidence of the actual state of receipt of the bid. For evidence. If it is a financial proposal that is torn or open, the bid shall be rejected and immediately returned to the owner.

8.3.3 Clarifications

Where a bidder requires clarification of the bidding documents, it must be requested in writing.

The procuring entity should then expeditiously provide a written response. This response should be sent together with a copy of the request to all bidders but without identifying the source of the request. It is recommended that the response should be provided at least 5 days before the deadline for submission of bids so that the bidders have time to make any adjustments to their bids.

In some cases, the request for clarification may be so significant that it would be better to call a pre-bid meeting so that the issues raised can be explained to all bidders simultaneously and any further questions dealt with.

8.3.4

Pre-bid meetings

In the case of complex or large procurement, it may be necessary to arrange a pre-bid meeting in any event to advise and address concerns of bidders and enable them to achieve detailed and proper understanding of the bidding documents.

When pre-bid meeting is required, the date, time and venue of the meeting will be indicated in the bidding documents. If a pre-bid meeting is not indicated in the bidding documents but becomes necessary based on requests for clarification from one or more bidders, a time will be set by the procuring entity that gives adequate time for potential bidders to attend. This should normally be about 10 days before the deadline for the submission of bids.

The timing may mean that the deadline for the submission of bids needs to be extended. In such a case, the procuring entity must

directly notify all bidders who have received the bidding documents of the new deadline for the submission of bids

8.4 Bid opening

All bids should be opened in public at the time and place specified in the Invitation to bid.

The tender committee will open all bids in the presence of bidders or their representatives who choose to attend, at the time, on the date, and place specified in the invitation to bid. Bidders are not obliged to attend. If bidders do not attend, their bids will be opened and recorded in the same way as the other bids.

8.4.1 Procedure

In the case of a **one stage, one envelope** method, the envelopes are opened and **prices read out**.

In the case of a **one stage, two envelope** method, the envelopes containing the bidders' qualifications and technical proposals shall be opened, while the financial envelopes are kept unopened until the evaluation of qualifications and technical proposals have been completed.

Following assessment of the bidders' qualifications and technical proposals (which will take place later in the absence of the bidders), only qualified and technically responsive bidders will be invited for the opening of financial proposals at a date to be fixed. The financial proposals of unqualified and/or non-responsive bidders will be returned unopened to them after the contract is signed.

At the time of bid opening, the tender committee inspect the bids, checking:

- whether the outer envelope seal and stamp and label as specified in the ITB.
- the number of copies: Original..... Copy.....
- whether the bid document is complete
- the date of bid validity
- whether the bid is signed by an authorized person
- the amount of bid security (if requested)
- whether there are "SUBSTITUTE" "WITHDRAWAL" or "MODIFICATION" envelopes in the bid submission
- whether there are any alternative bids, if permitted
- whether there are discounts offered
- the name of bidders or their representatives.
- in the case of one envelope: the total bid price or, if the bid is divided into lots, the price of each lot

No bid will be rejected at the bid opening, except for late bids.

8.4.2 Recording

After the bids have been opened, read, abstracted, they shall be dated and signed by the tender committee and the bidders' representatives who attended the bid opening.

The following information will be recorded in a suitable form signed by the tender committee and the bidders or their representatives in attendance:

- project reference/bid no.
- date and time of opening
- bidders' names
- whether business certificates required by instructions (e.g. business or tax payment) are provided
- whether there was a modification or withdrawal of bid
- bid price (for one stage, one envelope method)
- any discounts
- price of alternative bids, if approval
- bid security amount, if requested.

The tender committee members and bidders or their representatives who are present shall also sign a register evidencing their presence.

8.5 Confidentiality

The evaluation process is confidential. After suppliers, contractors and consultants have submitted their bids to the procuring entity by the required deadline, the bid evaluation process begins on the date indicated in the bidding documents for bid opening. It is important for procurement staff to note that after the deadline for receipt of bids for goods or works, confidentiality is imposed and is maintained throughout the evaluation process until announcement of the award of contract.

The bid evaluation process is carried out by the procuring entity (tender committee and officials related to the procurement) and, while the process is on-going, information relating to the examination, clarification and evaluation of bids and recommendations concerning award should not be disclosed to any person not officially concerned with the process.

Any response, beyond a simple acknowledgment to questions concerning the propriety of an award, whatever the source of the query, should be made only after the approval of the award of contract to the successful bidder and the contract has been signed.

This restriction also applies during the prequalification process.

Accordingly, if procuring entity or tender committee member is approached by firms or individuals during the evaluation period to the date of final award of the contract, they should limit their response to acknowledging the query and the points made and advise the inquirer that the bidding process is confidential.

8.6 Bid Evaluation

Bid evaluation is carried out by the procuring entity's tender committee (established in accordance with 3.2.3.) using the evaluation criteria in the bidding documents (explained in section 5.5) specified in the bidding documents.

The basic sequence for bid evaluation is the same for all goods, works and services consists of the following key steps:

- Preliminary examination
- Detailed evaluation
- Preparation of evaluation report

8.6.1 Preliminary examination

The bid examination phase begins during the public bid opening with a preliminary examination of the bids. Except for decisions about rejecting bids received after the closing time, which is mandatory for all late bids, other decisions about whether a bid is compliant with bidding document requirements should not be made during the bid opening. Errors may be made based on an incomplete reading or wrong interpretation of a bid and a mistaken decision taken hastily in the presence of the bidders is awkward to correct later. Instead, after the bid opening has been completed, as its first step in the evaluation, the tender committee should make a thorough examination of all bids received before the deadline for submission. If the evaluation has any doubts, it may seek clarification from the bidders using the procedure set out in section 8.6.2.4 below.

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

- the bid is complete and is signed properly by an authorized party, including the power of attorney if required;
- bid securities should be in acceptable format, for suitable amount and duration or the bid securing declaration is attached in the appropriate form
- existence of discounts, if any
- bid packages contain all required documents including supporting evidence of bidder eligibility and qualifications
- any initialed amendment or change in the documents submitted is certified (initialed) by the bidder
- no financial proposal is torn or open
- the mathematical calculations should be properly computed - if not, corrections should be made
- bids are complete and quote prices for all items in the lot or package if so, stipulated in the bidding documents

The purpose of this examination is to eliminate any bids from further and more complicated consideration if they do not meet the minimum standards of acceptability as set out in the bidding documents and are therefore not substantially responsive (described below).

However, the procuring entity should exercise reasonable judgment in applying these tests 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 initialed and a bidder failed to initial one or more pages of supporting information (i.e. one which does not contain key information, such as price), 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. The preliminary examination stage of bid evaluation is aimed at making sure that the bids received are [substantially responsive](#). At this stage, non-responsive bids are those which fail to meet the examination criteria above.

Bids must also be responsive to the technical requirements and to the selection criteria set out in the bidding documents. This assessment is usually part of a more detailed because they are items which may not be easily verified simply by looking at the documents.

8.6.2 Detailed evaluation

Detailed examination consists of a number of separate steps designed to select the bidder who is properly qualified and whose bid is not only responsive to the technical requirements set out in bidding documents, but also offers the procuring entity the best value goods, works or services to be procured.

During the bid evaluation period the procuring entity and the tender committee must strictly adhere to the following principles:

- ensure that the bid evaluation process is strictly confidential
- reject any attempts or pressure to distort the outcome of the evaluation
- reject any proposed action likely to lead to fraud and corruption
- strictly apply only the evaluation and qualification criteria specified in the bidding documents

8.6.2.1 Determination of bid responsiveness

In addition to the issues examined during the preliminary examination of bids, responsiveness also applies to the qualification criteria and technical requirements established in the bidding documents.

A substantially responsive bid is one that conforms to all the terms, conditions and specifications in the bidding documents without material deviations.

A material deviation 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

Material deviations to selection criteria which justify rejection of a bid might include the following:

- failure to satisfy eligibility requirements
- failure to demonstrate the levels of financial and technical capacity required
- failure to comply with minimum experience criteria specified in the bidding documents
- failure to submit major supporting documents required by the bidding documents to establish professional licences, where required, payment of dues, absence of grounds for disqualification

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:

- 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
- failure to quote for a major item in the package (i.e. one that is critical to the evaluation)
- 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
- presentation of unrealistic and inadequate implementation plans and schedules regarding performance, technical or service factors

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

Where a bid is not responsive to the bidding documents, it will be rejected by the procuring entity and may not subsequently be made responsive by correction or withdrawal of the deviation or reservation.

Non-material deviations may be accepted and their effect on price taken into account during evaluation. See section 8.6.3.2 below.

8.6.2.2 Correction of Arithmetic Errors

Bids should be checked carefully by the tender committee for arithmetic errors in the bid form to ensure that stated quantities and prices are consistent. The quantities should be the same as stated in the bidding document.

The total bid price for each item should be the product of the quantity and the quoted unit price. If there is a discrepancy, the quoted unit price governs in the recalculation. Prices spelled out in words take precedence over numeric quotations in case of differences. The procuring entity should correct all arithmetic errors and notify each bidder of the detailed changes. If the correction leads to a higher total bid price, it will be automatically rejected. If the correction leads to a lower total bid price, the procuring entity shall notify the bidders and if the bidder does not accept such arithmetic corrections its bid will be rejected.

8.6.2.3 Conversion to Common Currency

In order to minimize the foreign exchange risk for bidders when international bidding is permitted, the best practice is to allow every bidder to express its bid price in the currency or currencies of their choice (up to a maximum of three currencies in most cases). This provision effectively causes the procuring entity to carry the exchange risk rather than bidders and eliminates disadvantages some bidders would otherwise experience because of differences in the strength of bidders' currencies. However, it results in bids being presented in a wide variety of currencies which must be converted to a single common currency before they can be compared.

In order to compare bids for goods contracts, the most common practice is to convert all bid prices into Lao Kip or any other currency specified in the bidding documents at the selling rate established for similar transactions by the Bank of Lao PDR or an identified commercial bank in Laos. The procuring entity may also convert the bid prices into a currency widely used in international trade such as the US dollar, at the selling rate of exchange established by the Bank of Lao PDR or a commercial bank in Laos. For works contracts, procuring entities often specify that the entire bid must be priced in Lao Kip, even though specified percentages of the total payment may be made in several other foreign currencies. In those cases, it will be more convenient to convert everything into Kip for comparison purposes. The process and results are the same in either case.

Where international advertising has been adopted, the Bid Data Sheet in the bidding documents will specify a calendar date which may be anywhere from 30 days before bid submission until the final date of the bid submission deadline as the reference date for currency conversions. This is normally the exchange rate on the bid opening date for works contracts. It will also indicate the source to be used for obtaining exchange rate information for that date, usually the Bank of Lao PDR official rates. These published rates for each currency of bid are applied to the quoted prices of each bidder to calculate the equivalent common currency figures for bid comparison purposes.

8.6.2.4 Clarifications

The tender committee may seek clarifications of bids from bidders regarding unclear information provided during the evaluation process, such as in respect of

- personnel,
- facilities and equipment,
- contract experience

Clarifications provided by bidders must not bring modifications to the contents of bids, for example, on:

- bid prices or financial proposal except for the correction on arithmetical errors
- major elements of bids
- causing major deviations to bid evaluation

8.6.3 Application of evaluation criteria

Procuring entities will apply the evaluation criteria set out in the bidding documents and explained in 5.4 above. Evaluation may be based on:

- lowest price
- lowest price in conjunction with other price factors
- Life Cycle Cost (LCC)
- lowest price in conjunction with non-price factors

8.6.3.1 Price comparisons

As explained in 8.6.2.3 above, for purposes of comparing local and foreign bids for goods contracts, different prices are taken into account.

Where bidders offer goods procured from abroad, the price for their bids would normally be quoted based on Delivered Duty Paid (DDP). The DDP price includes the shipping costs, export and import duties, [insurance](#), and any other expenses incurred during shipping to an agreed-upon location in the Lao PDR.

In the case of local bids or domestic goods:

- bidders offering goods manufactured or assembled within Laos are quoted EXW (ex-factory, ex-works, ex-showroom, or of-the-shelf, as applicable). The EXW price should include all costs, taxes, duties, custom duties and other levies incurred in the acquisition of components and raw materials, domestic and foreign which go into the manufacture of the goods.
- If there is a sales tax or similar tax which is payable only if the sale of the finished goods offered in the bid takes place, such sales tax and other similar taxes are excluded from the ex-factory price and quoted separately.

- Where local bidders offer goods which are imported, the ex-warehouse price or off-the-shelf price shall include the customs duties paid on the imported goods by the importer, stockiest or agent. The price will thus represent the total price payable by the purchaser except for any sales tax.
- Where there is no provision for the application of domestic preference margins, the procuring entity should evaluate bids offering goods manufactured abroad on a CIF or CIP basis. However, if the Procuring Entity wishes to use national shipping lines for transportation, these goods will be evaluated on an FOB basis. On the other hand bids offering goods manufactured in the procuring entity's own country are evaluated on an EXW basis.

8.6.3.2 Pricing deviations from the requirements of bidding documents

If bids contain material deviations, they will be rejected as explained in section 8.6.2.1. Non-material deviations may be accepted and priced accordingly.

Bidding documents generally outline numerous procedures, conditions and requirements some of which are mandatory and some which are not. In some instances, bidders submit bids that deviate from the specifications required by the procuring entity. Deviations include exceptions, exclusions, qualifications, conditions, stated assumptions, alternative proposals and changes to stated requirements. Deviations may either be material or non-material. As explained in section 8.6.2.1, material deviations are:

- those which affect the scope and quality or performance of a contract;
- limits the procuring entity's rights or bidders' obligations; and
- 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 on 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 as it contains material deviations or reservations to the terms, conditions and specifications in the bidding documents should not be considered further. In determining whether a bid is substantially responsive the procuring entity, apart from taking into consideration the general procedural issues, also considers the bidder's compliance with the required technical specifications and the commercial aspects of the bid.

Deviations may be clarified by bidders but not withdrawn.

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

a) Commercial Aspects

- a bid offering delivery at a date slightly different from that indicated in the bidding documents, unless the date is later than any absolute final date that is clearly stated as such in the bidding documents;
- a bid containing a fixed price in response to bidding documents calling for bidders to submit prices that are subject to price adjustment (on the other hand, if the bidding documents requests a fixed price, a bidder is not permitted to quote a price that is adjustable);
- where a price adjustment formula is specified in the bidding document, bids seeking to change that formula or seeking to establish a ceiling for the price adjustment;
- a bid having minor deviations in payment terms;

b) Technical Aspects

- a bid offering alternative goods that are equal or superior in specifications and performance, unless the bid documents explicitly prohibit consideration of any alternatives;
- a bid which meets all performance criteria of a works plant, but not dimensional provisions that do not affect performance or the utility for the purpose intended;
- 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, e.g. an agricultural tractor with a diesel engine developing 80 hp at 2600 rpm in response to bid specifications for agricultural tractors developing 80 hp at 3000 rpm, (deviations which affect the efficiency or performance should be evaluated for purposes of comparison); and
- a bid which offers the equipment specified but has omitted minor attachments and components, e.g. a tool kit in motor vehicle. However, the procuring entity must quantify this deviation in monetary terms during the detailed evaluation process prior to comparing such bid with the other bids.

8.6.3.3 Quantification of Omissions and Deviations

The procedures described above for correcting arithmetic errors and converting to a single currency are simply mechanical calculations and are not related to the substance of the bids. 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 monetary terms whenever possible, to permit direct 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 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., for amounts of advance payments, changes in payment schedules, etc. and for changes in the schedule of delivery of goods or completed 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. As already indicated, no advantage should be given to a bid offering an earlier delivery date than is specified in the bid document unless there is a real benefit to the Procuring Entity. Any bid offering a delivery date that goes beyond a final acceptable cutoff date specified in the bidding document should be rejected as a non-responsive bid, irrespective of the offered price.

Another form of bid deviation is to offer a higher capacity or standard of performance than is required by the bidding document: a larger engine size, greater carrying capacity, etc. No additional bonus or advantage should be given to such offers unless the bid document specifically provides for this and sets out how the differences will be evaluated. In the case of power generating equipment, medical equipment, process plants, etc., bid documents should always include evaluation criteria and procedures which take into consideration the value of additional capacity, higher efficiency, lower production costs, etc.

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. Specifications and Bid Data Sheets should indicate if technical deviations are acceptable and, if so, what criteria and procedures should be used for their evaluation.

8.6.3.4 Deviations in the case of works contracts

Bidders for works contracts often qualify or condition their bids in some way, creating problems for procuring entity 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 procuring entity result in fewer qualifications by bidders. Pre-bid conferences during the bidding period should also be convened to clarify any serious ambiguities and discrepancies in the 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 following deviations (or some combination thereof) may result in rejection of bids:

- bid submission by a legal entity or joint venture different from that which was prequalified (excepting when all members of the new joint venture were prequalified initially);
- the submission of a base bid subject to price adjustment when fixed price bids were called for;
- the submission of a bid based on an entirely different alternative design where such had not been requested nor expressly permitted;
- an inflexible time phasing of contract construction or performance not conforming to prescribed critical key dates or "milestones" in a broader construction program; and
- sub-contracting in a substantially different amount and manner than specified.

Deviations from the bidding requirements which do not appear at first sight so serious as to provide immediate grounds for bid rejection maybe considered further in the evaluation process. The following are examples of such deviations:

- an amount of advance payment and other payment terms (including retention money, guarantees, the details of price adjustment provision) differing from the prescribed conditions;
- non-compliance with local regulations relating to labor, imports taxes, duties, notarization, etc.;
- changes in specified methods of construction or execution (temporary works, shift work by labor, etc.);
- subcontractors not meeting pre-specified requirements;
- omission (deliberate or unintentional) of minor works or items included in the scope of work;
- non-acceptance of full liabilities (e.g. risks to third parties, nearby structures, etc.);
- modification of, or a limit to the amount specified for liquidated damages; and
- proposed changes in standards or codes relating to materials, workmanship or design.

The details and implications of any deviations which are not explicit should be clarified by the procuring entity in discussion 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 procuring entity's engineer and expressed in its expected monetary cost to the procuring entity. In this respect, the submissions by bidders during clarification and pricing of similar items from the next lowest (and other) responsive bidders may prove useful. The current monetary costs of deviations with timing implications (e.g., modification payment terms, amortization of advances, limits on liquidated damages, varied construction or delivery periods, etc.) should be discounted to present values for evaluation purposes. To facilitate evaluation (and partly to discourage bidders from making frivolous or ambiguous deviations), it is recommended that bidding documents include a requirement that any deviation must be presented as an alternative offer and carry a price tag with breakdown if it is to be considered in the evaluation process; otherwise the bid may be rejected as non-responsive.

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 procuring entity and included in the evaluation if specifically solicited in the bidding documents.

Deviations which are minor or non-quantifiable (e.g. changes in subcontractors, 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.

The ranking order of bids should be determined using the most probable monetary costs (or benefits) to the procuring entity of all quantifiable deviations. The contract should be proposed for award to the bidder submitting the lowest ranked evaluated bid.

After selecting the lowest ranked evaluated bidder in the manner described above, the procuring entity may accept the qualified bid or negotiate with the bidder for the complete or partial withdrawal of individual deviations. Non-quantifiable deviations may be accepted or rejected according to their reasonableness. The procuring entity must consider the outcome of the negotiations and of any consequent changes in bid price prior to award of contract.

8.6.3.5 Bid price exceeding allocated budget

In the event that the proposed bid price exceeds the allocated budget, the procuring entity will need to review the criteria (conditions), technical specifications and requirements as indicated in the bidding documents or request for proposals in order to

- (i) modify them appropriately,
- (ii) remove unnecessary items or quantities or tasks, or
- (iii) cancel a procurement through rejection of all bids and conduct a new bid as per criteria, technical specifications and requirements needed ensuring the sufficiency of time.

8.6.4 Verification of abnormally low bids

An abnormally low bid is one where the bid price appears so unreasonably low that it raises concerns in respect of the bidder's ability to perform the contract successfully.

This should normally not be done on the basis of a percentage deviation from any arbitrary figure (e.g. estimated price or median bid price). Ideally, the procuring entity should be able to rely on the experience and professional assessment of the staff used to make the evaluation. Where tender committees do not have staff of adequate procurement competence, then it may be advisable to use a percentage indicator (e.g. 25% below estimated price or below the average of all bid prices offered) but it must be recognized that this can be no more than a general indication. Where percentages are used, it is even more important than usual not to reject the bids that appear abnormally low without seeking and considering the explanations for the prices offered.

When such a bid is identified, the procuring entity should not reject the bid but must seek written explanations of the proposed price or costs from the bidder, including a detailed analysis of its bid prices by reference to the scope, proposed methodology, schedule, and allocation of risks and responsibilities of the bid price.

In providing explanations, this may also include information regarding the economy of the manufacturing process, cost saving production process, methodology for works and/or maintenance and supply of goods and/or services, techniques on remedy of execution, favourable conditions of bidder, supplier or service provider to propose this bid price for execution of such works and/or maintenance and supply of goods and/or services, and actual survey price. The details shall be followed in accordance with the Instruction on Implementation of Law on Public Procurement No. 0477, dated 13 February 2019 as follows:

An abnormally low bid is one where the bid price is considered as unreasonably low appearance leading to unreliability as to the capacity of bidder or consultant to perform the contract for the offered price.

In the event of identification of a potentially abnormally low bid, the requirement is seek to written clarifications from the bidder or consultant, including detailed price analyses of its bid price in relation to the subject matter of the scope of work, proposed methodology, schedule, allocation of risks and responsibilities of the bid price.

The clarifications to low bid price is considered in relation to cost saving production process, methodology for works and/or maintenance and supply of goods and/or services, techniques on remedy of execution, favourable conditions of bidder, supplier or service provider to propose this bid price for execution of such works and/or maintenance and supply of goods and/or services, and actual survey price.

After the bidder's clarifications are considered, the project owner or procuring entity may carry out as the following:

- Acceptance of bid.
- If an abnormally low bid is a result of proposed bid price which appears the significant difference to the project owner or procuring entity' forecasted estimated cost, bidder shall bear the actual additional cost (if any) during the contract execution, and this issue shall be included in the conditions of contract as additional provision.
- Rejection of bid if the evidence provided is unable to reasonably explain for the proposed low bid price or proposed expenses.

The explanation should be solicited in writing and the procuring entity must set a reasonable deadline for the submission of these explanations. Depending on the complexity of the procurement, this should usually be a minimum of five days from the dispatch of the letter seeking explanations. If the bidder fails to respond to the letter by the deadline, the procuring entity may decide to reject the bid.

After examining the explanation given and the detailed price analyses presented by the bidder, the project owner or procuring entity may

- accept the bid,
- where the abnormally low price appears to differ significantly from the estimated price, include in the special conditions of contract a condition that any failure to complete the contract at the price offered shall be at the expense of the bidder, or
- reject the bid where the evidence supplied does not satisfactorily account for the low level of price or costs proposed

8.6.5 Application of domestic preference

Where open bidding is conducted allowing international bidders to participate, procuring entities may apply a domestic preference in favour of Lao goods or Lao labour. Whether a domestic preference will be applied must be indicated in the bidding documents (it may not

be added later) and the method of applying the preference must also be explained in the bidding documents. The information required to demonstrate eligibility for the preference must also be listed in the bidding documents.

Domestic preferences are applied in two ways:

8.6.5.1 Preference for domestic goods

Broadly, a domestic preference margin is applied by first classifying bids according to whether the goods offered are locally manufactured or imported. After a determination of the lowest priced bid in all the classes of bids is made, an amount of 15% is then added to the CIF or CIP prices of bids offering imported goods. The procuring entity should be guided by the following general principles when applying domestic preference margins in the evaluation for goods:

- The application of a preference margin is permissible only as specified in the Instruction and the bidding documents specifically outline the procedure for its application.
- The goods being procured are “manufactured goods” involving assembly, fabrication, processing etc., where a commercially recognized final product is substantially different in basic characteristics of its components and raw materials.
- The goods offered by foreign and domestic bidders are identical or compatible in respect of quality, size, capacity and performance.
- There is a qualified domestic bid which, irrespective of the nationality of the bidder, has offered goods assembled or manufactured in the country of the procuring entity, which has domestic value in the manufacturing cost not less than 30 percent (30%) of the ex-factory price of the product offered.
- The margin of preference is added to the CIF price of foreign bids and not subtracted from the domestic bid.

The preference is applicable even when the goods are imported by the government or a public authority exempt from paying import duties on imported raw materials or components used in the manufacture of the offered finished product.

The nationality of the bidder is immaterial, but the domestic manufactured goods offered in the bid must meet the minimum domestic value-added criterion. Domestic value added comprises domestic labour, the domestic content of material, domestic overheads and profits, from mining until final assembly.

The method for applying the preference is as follows:

1. For comparison purposes, responsive bids are classified into one of the three groups:
 - Group A: bids offering goods manufactured locally, if the bidder satisfactorily establishes that
 - (i) local labour, raw material and components will account for more than 30% of EXW price to the product offered, and

- (ii) 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.
- Group B: all other bids offering, local goods.
 - Group C: bids offering the goods from abroad and to be directly imported.
2. 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 domestic 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 must be quoted CIP (place of destination), which is exclusive of customs duties and other import taxes already paid or to be paid.
 3. All evaluated bids in each group will be compared to determine the lowest price in each group. These lowest evaluated prices are compared with each other and if, as a result of this comparison, a bid from Group A or Group B is the lowest price, it shall be selected for the award (all other criteria being equal).
 4. If as a result of the comparison under paragraph three above, the lowest evaluated price is in a bid from Group C, the lowest evaluated price from Group C will be further compared with the lowest evaluated price 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 15 percent of the CIP bid price. The lowest evaluated price determined from this last comparison will be selected.

The winning bidder

When the award criterion is lowest price, the contract will be awarded to the bidder offering the lowest price after the domestic preference has been applied.

When price is used with other non-price factors in the evaluation, the domestic preference will be applied to the prices before the final ranking is made. The contract is awarded to the bidder with the best overall score.

8.6.5.2 Preference for domestic labor

In this case, the preference is applied to domestic contractors at a rate of 7.5% in open bidding when international participation is allowed.

Local bidders must provide information on their qualifications which contain detailed requirements to determine the contractors' eligibility or a group of eligible contractors to receive the preference. This might include:

- proof of registration of bidder in Laos (note that bidders registered in Laos are eligible even if there is foreign ownership, provided they can demonstrate that they use national labour as to at least 50% of the workforce);
- proof that the national contractor meets the selection criteria set out in the bidding documents (if they are not responsive, they are rejected and no preference applies)

- proof of the existence of a joint venture between national bidders (with a maximum of 10% subcontracting to foreign firms)

Joint ventures between foreign and domestic firms do not qualify for the application of preference.

The procuring entity may apply preference margins in the procurement of works such as civil engineering and building construction, land clearing and leveling, field drainage, well exploratory drilling, site clearing for urban projects and similar activities. The applicable formulae for application of the margins are contained in **Article 9**. The preference is applied by adding 7.5% to the price quoted by a foreign bidder for comparison with a qualified domestic bid.

The method for applying the preference is as follows:

1. The bidding documents must clearly indicate any preference to be granted and method of evaluation based on the principles and grouping as below:
 - Group A: bids eligible for preference.
 - Group B: bids ineligible for preference.
2. The ratio of seven point five (7.5) percent of the bid price will apply and be added to the bids from Group B for evaluation and price comparison purpose.

8.6.6 Rejection of all bids

The procuring entity is entitled to reject all bids and thus cancel the procurement in a number of circumstances. These are where:

- the lowest evaluated bid price exceeds the allocated budget which was approved by the procuring entity under a fixed budget and is not amenable to revision
- none of the bids meet the requirements as indicated in the bidding documents (i.e. all are non-responsive)
- the procuring entity reasonably concludes that there is lack of competition or that there is substantial evidence of collusion between the bidders

The procuring entity should then:

- review the conditions, technical specifications and requirements set out in the bidding documents and make any appropriate modifications
- consider removing any unnecessary items, quantities or tasks, and
- conduct a new open bidding procedure based on the revised conditions, technical specifications and requirements (to the extent that there is sufficient time)

8.7 Extension of Bid Validity

In competitive bidding, bidders are required to keep their offers valid for a specified period to allow the procuring entity time to examine and evaluate offers, select the successful bid and obtain the necessary approvals from the competent authorities for the proposed award of the contract. Bids should thus remain valid for the period stated in bidding documents (which takes the time necessary into account), usually until the final award of the contract is made. A bid that is valid for a shorter period than required by the bidding documents should be rejected by the procuring entity as non-responsive.

The procuring entity should normally complete the evaluation and award procedure within this bid validity period. If, however, the procuring entity can justify the existence of exceptional circumstances which mean that the procedure cannot be completed within the expressed bid validity period, then it may extend the bid validity period. In doing so:

- the procuring entity must send a request in writing to extend the bid validity period to all bidders before the expiration date of the existing bid validity
- the extension may be only for the minimum period required to complete the evaluation, obtain the necessary approvals, and award the contract
- bidders may not be requested or permitted to change the quoted price or other conditions of the bid
- bidders have the right to refuse to grant such as extension without forfeiting their bid security
- bidders who are willing to extend the validity of their bid shall be required to provide a suitable extension of bid security

In the case of fixed price contracts, if the costs of the bidders are likely to change during the period of the extension, requests by the procuring entity for more extensions will be permissible only if the procuring entity includes in its request for extension an appropriate adjustment mechanism of the quoted price to reflect changes in the cost of inputs for the contract over the period of extension.

The adjustment provision is aimed at protecting bidders from the risk of change (usually increases) in the price of the goods offered if the procuring entity takes longer than the original bid validity period to award the contract. In the case of fixed-price bids, bidders will thus have to choose between:

- refusing to grant any extension of validity of their bids; and
- absorbing any cost increases that might occur during such extensions (bidders are not allowed to increase their prices as a condition of extending the validity of their bids).

8.8 Award of Contract

The contract will be awarded to the responsive bid from a qualified bidder best meeting the award criteria established in the bidding documents.

8.8.1 Recommendation for Award

After the completion of the evaluation process, the tender committee will prepare a bid evaluation report in accordance with Standard Bid Evaluation Report (BER) format prepared by the MOF/PPMD and request its approval. The responsibility of approval depends on each Ministry and it will be based on the thresholds of procurement. Normally, the Project Director/Manager or Minister could approve the BER in Vientiane Capital; and in the provinces, Project Director/Manager or the Governor/ vice-Governor are responsible for the approval of the BER.

This report covers among other things:

- key dates and steps in the bidding process;
- examination and preliminary evaluation of the submitted bids;
- evaluation of responsiveness
- evaluation of bidder qualifications and experience;
- detailed evaluation;
- bid prices, corrections, discounts and currency conversions;
- additions, adjustments and price deviations;
- application of any non-price factors
- domestic preference if any;
- names of bidders rejected and reasons for rejection of bids; and
- the proposed contract award.

8.8.2 Notification

Following approval, the procuring entity will, before the end of the bid validity period:

(1) send notification of the proposed award to the successful bidder, enclosing

- the contract form which may be negotiated, if necessary,
- the deadline (not less than 14 days from the date of notification) for the signature of the contract (on the basis that no complaint is made in the interim) and
- a performance security form (indicating the amount of security);

(2) notify unsuccessful bidders of

- the identity of the successful bidder together with an indication of the price of the successful bid and
- setting out the reasons for their failure to win the contract.

8.8.3 Failure to proceed

If the successful bidder fails to return the signed contract or provide the required performance security, the procuring entity may:

- require forfeiture of the bidder's bid Security or apply the bid securing declaration; and
- proceed to offer the contract to the second ranked responsive and qualified bidder.

8.8.4 Debriefing

A procuring entity will, upon a written request, communicate promptly to a bidder the reason for the rejection of its application to pre-qualify, or of its bid.

Any debriefing will be provided in writing, within the period provided for contract signature. The contract with the successful bidder may not be signed if the procuring entity has failed to provide reasons following a debriefing request made within this period.

Generally, the debriefing should state at which stage of the evaluation the bid was rejected, provide brief details of any material deviation, reservation or omission leading to rejection of the bid or state that a bid was substantially responsive, but failed to offer the lowest evaluated price or highest score, as required.

The debriefing should not provide details of any other bids, other than information that is publicly available from bid openings or published notices.

8.8.5 Negotiations

Negotiations may be conducted with the selected supplier/contractor to finalize payment terms, special terms and conditions, delivery etc. It is of the utmost importance that the negotiations should result in the clear understanding of both parties on their responsibilities under contract. However, the negotiations may not:

- change the offered price
- alter in any substantial way the scope, quality, or performance of the goods works or services specified in the draft contract submitted with the bidding documents

8.8.6 Contract signature

The successful bidder will sign the written contract within the period indicated in the notification which must be not less than 14 days from the notification (the standstill period). Exceptionally, this period may be delayed if there are requests to provide reasons for rejection of bids (debriefing) properly made by unsuccessful bidders.

The contract will be signed by the procuring entity or authorized person and the winning bidder or a person authorized by the bidder.

Where the contract may not be signed by both parties simultaneously:

- the procuring entity will send the agreed contract document to the contractor or supplier in two original copies with a letter of acceptance, each copy to be signed by its duly authorized representative together with the date of signature;

- the letter of acceptance should indicate the deadline for acceptance which would normally not be more than 30 days from the date of receipt of letter of acceptance by the contractor/suppliers;
- the contractor or supplier signs and dates the original copies of the contract and the letter of acceptance and return one copy of each to the procuring entity;
- the date the contract was signed by the procuring entity will be treated as the effective date of contract signing.

8.8.7 Contract registration

The signed contract must be registered by the contractor or supplier and /or service provider in accordance with contract regulations of the President's Statute on Levies and Service Fees No. 03/President, dated 26 December 2012. The said contract registration holder above shall bear the contract registration fee.

Flowchart 1

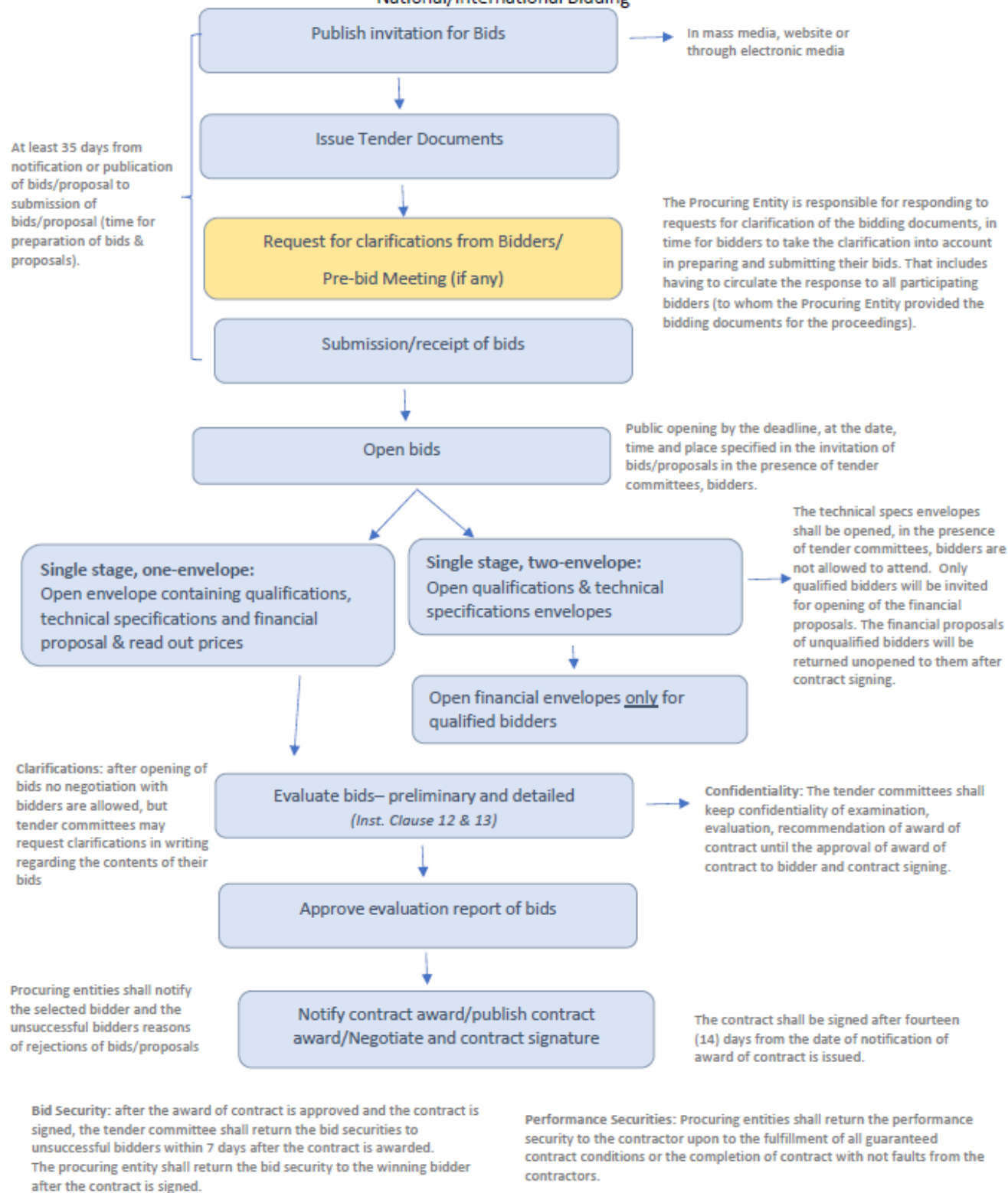
OPEN BIDDING FOR GOODS AND WORKS

Threshold Value

= or > than five hundred million Lao Kip works/maintenance and services

= or > than two hundred million Lao Kip Goods/services

National/International Bidding

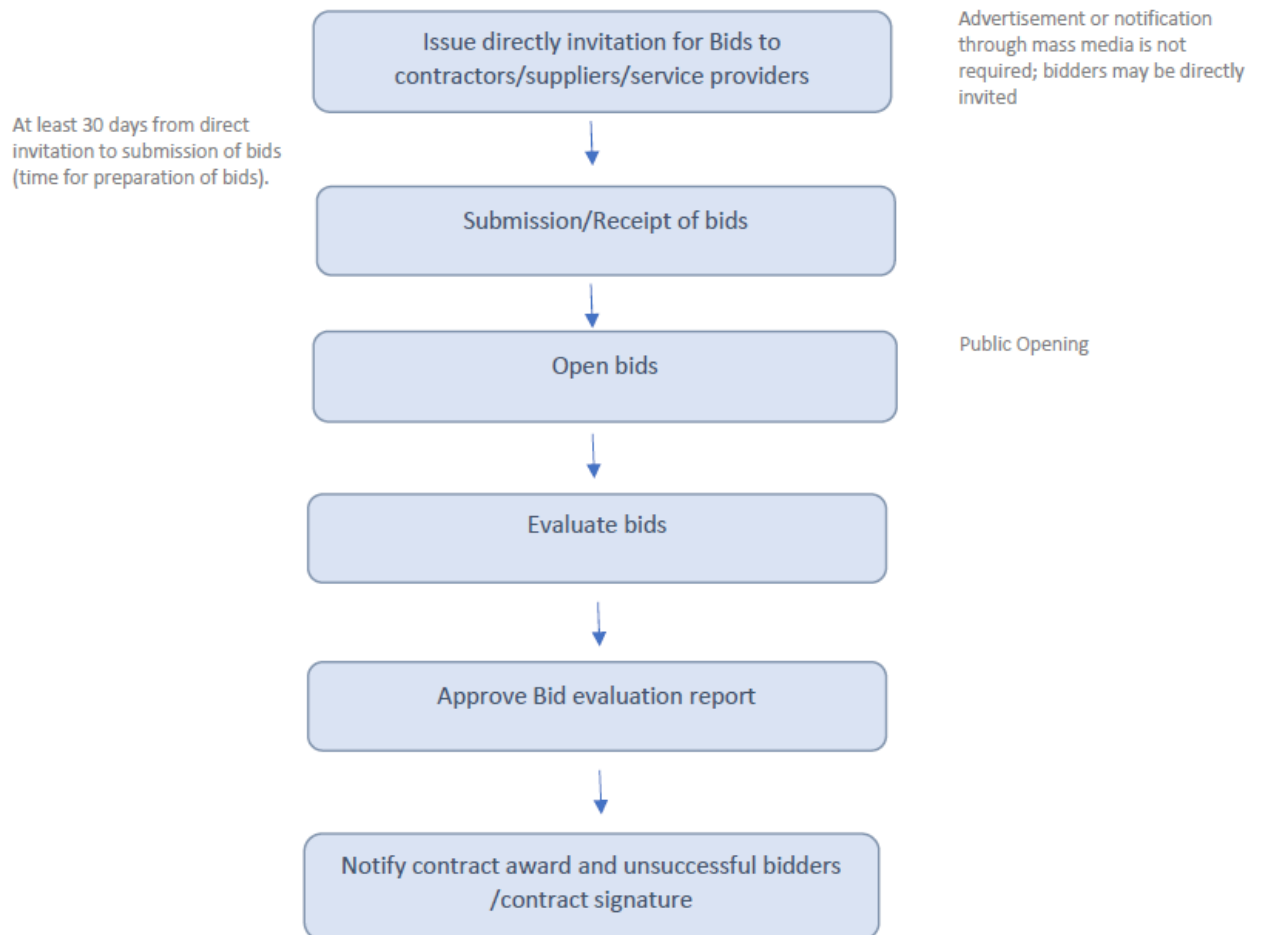


Flowchart 2

LIMITED BIDDING

For particular technical specifications, high expertise required where there are limited number of contractors/suppliers/service providers

2



Section 2. Price Comparison

The request for quotations (price comparison) is used for small scale works and/or maintenance, routine maintenance, office supplies and other services under the specified threshold values (Article 17 of the Law and section 3.1 of the Instruction), namely:

- less than 500,000,000 kip in the case of works and
- 200,000,000 kip in the case of goods and services

It is operated by way of a request for quotations (RFQ) which must be sent to at least 3 potential bidders. Procuring entities are not restricted in how they identify and select these bidders. This may be done looking at historical data of previous bidders or on the basis of known suppliers located close to the procuring entity.

The Procuring Entity will invite written quotations from at least 3 potential bidders to supply goods, works, maintenance and/or services. The request may be sent either in writing by direct invitation or, when the conditions for use of such a system have been established by the PPMD, by electronic means.

Bidders may submit only one quotation.

The quotations may be opened only when the procuring entity receives 3 qualified bidders. In the evaluation process, if there are less than 3 qualified quotations, the bidding opening process should not proceed. Therefore, the invitations should be sent out to more than 3 qualified bidders.

In case of public advertising such as: newspaper, website and other media, the bidders submitted only one or two quotations, the opening process can be done.

The request for quotations consists of:

- a letter of invitation (the request for quotations)
- description of goods, works, maintenance and/or services required
- any technical specifications
- the date of expected completion/delivery and
- a quotation form

Standard RFQ documents are provided by the PPMD.

The evaluation, comparison and awarding of the contract is based on the lowest evaluated price. No non-price factors are applied.

Flowchart 3

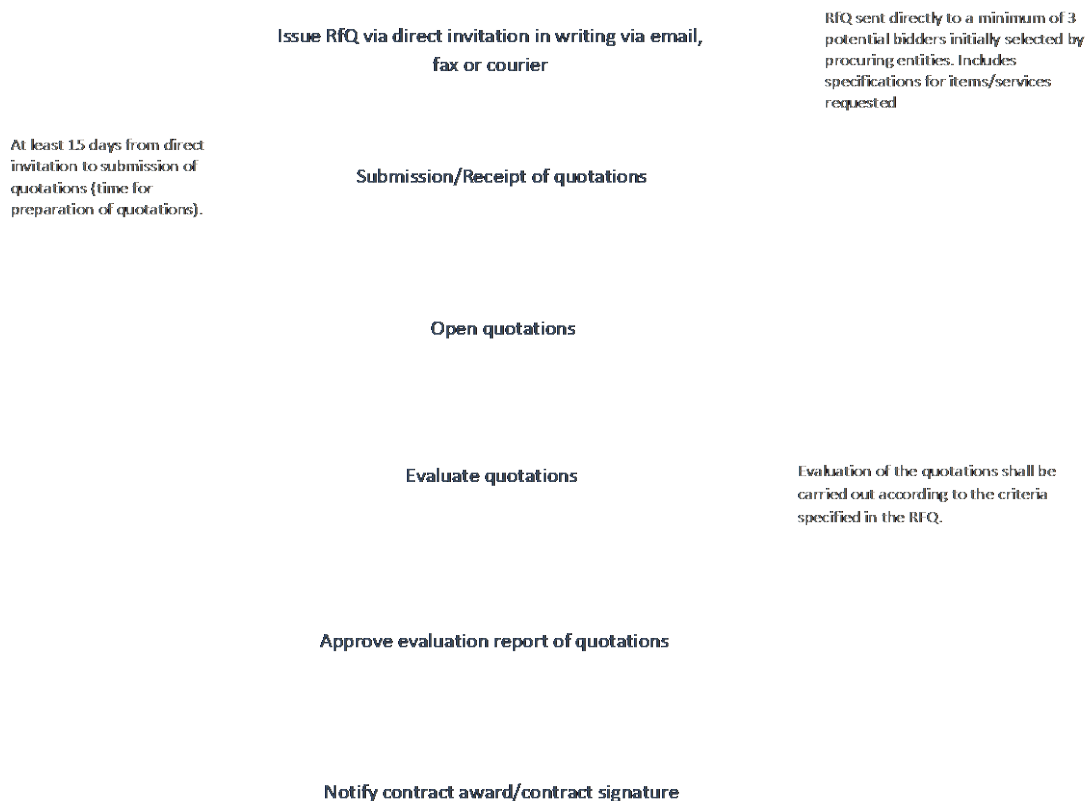
PRICE COMPARISON (Request for Quotation – RfQ)

Threshold Value

< than five hundred million Lao Kip for works

< than two hundred million Lao Kip for goods and services

3



Section 3. Direct Contracting

This is the most flexible procurement method and the one which is most open to abuse. It must be used therefore only properly justified grounds, as indicated in section 6.5.1. above and only when approved in accordance with the provisions explained in section 6.5.2 above.

Under this procedure, the procuring entity will

- prepare a written description of requirements including quality, quantity, terms and time of delivery
- directly invite bids in writing from one, or whenever possible more, candidates
- include a deadline for submission of bids
- evaluate the bid(s) for compliance with the technical specifications, terms and conditions
- negotiate the price bid if the price considered excessive or substantially in excess of the prevailing market rates

The final contract will be agreed between the parties but the procuring entity is advised to use an appropriate SBD provided by the **PPMD** as the starting point. A draft contract may be sent together with the direct invitation.

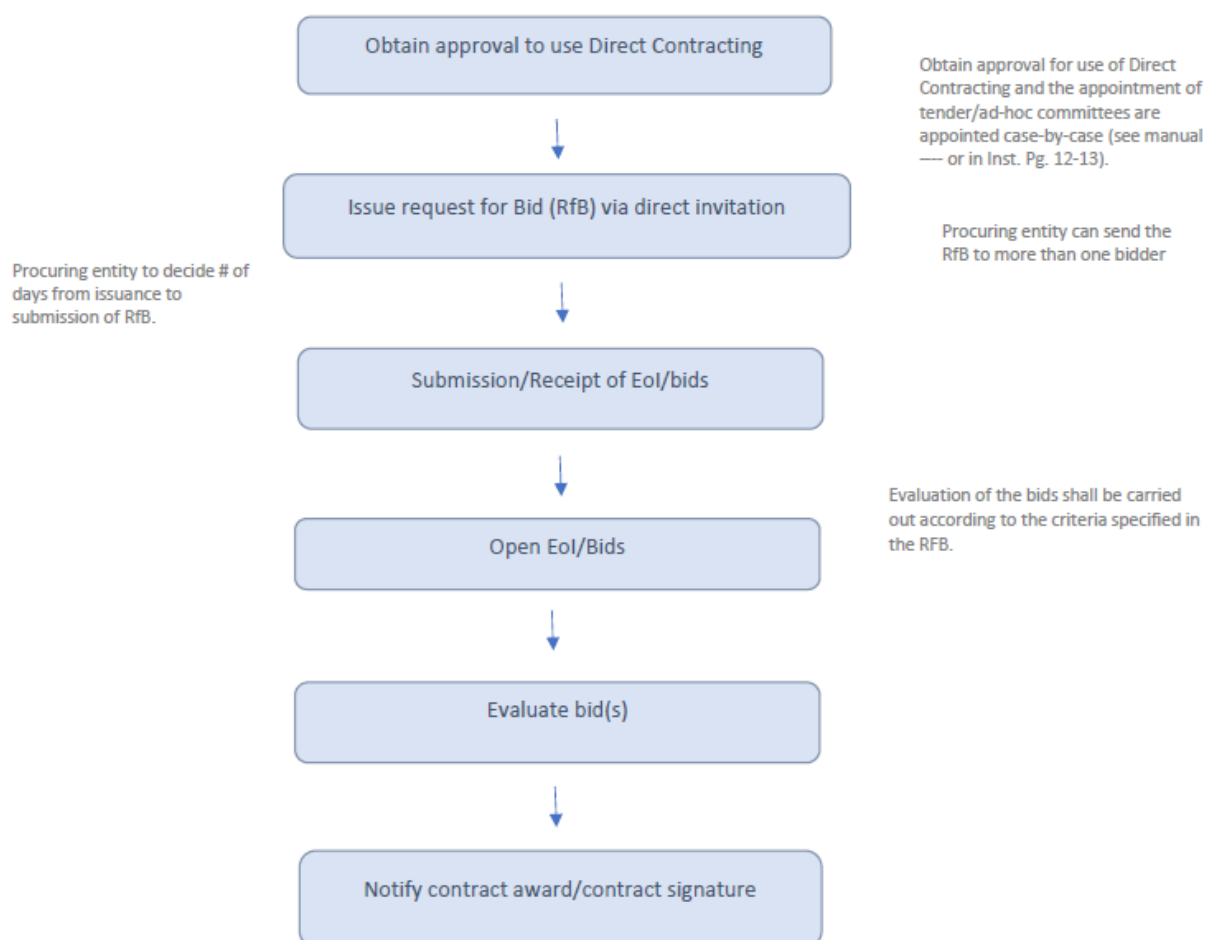
Flowchart 4

DIRECT CONTRACTING

Threshold Value = or < than five million Lao Kip

1. Patent or copy right or intellectual property right goods;
 2. maintenance or replacement services/goods;
 3. additional works and continuation of previous works not exceeding 20% of the original contract amount;
 4. activities implemented in remote areas with poor infrastructure facilities or without interested bidders;
 5. Force majeure or emergency matters
- List above is not exhaustive please see - (Inst. Pg. 11-12)

4



PART V: Consultant Services

Section 1: What are consulting services?

9.1 Background

The expression “consulting services” defines services of an intellectual and advisory nature provided by consultants using their professional skills to study, design, and organize specific projects, advise clients, conduct training, and transfer knowledge. Procuring entities usually engage consultants principally for the following reasons:

- Consultants offer procuring entities a more efficient allocation of resources by providing specialized services for limited amounts of time without any obligation of permanent employment on the part of the procuring entity.
- Consultants, engaged for their superior knowledge, transfer skills and upgrade the knowledge base of their client while executing the assignment. Knowledge transfer from consultants to the procuring entity often forms an important part of the assignment.
- Consultants can offer independent advice to their client on the most suitable approaches, methodologies, and solutions for their projects.

Consulting services in government projects encompass multiple activities and disciplines, including the drafting of sector policies; institutional reform, management, and financial advisory services; and the provision of engineering and architectural design services. Consultants also provide project supervision, social and environmental studies, technical assistance, and training. Consulting services may vary from routine tasks to highly specialized and complex assignments. Consulting services in government-funded projects should satisfy the following requirements:

- meet the highest standards of quality and efficiency;
- be unbiased, that is, delivered by a consultant acting independently from any affiliation, economic or otherwise, which may cause conflicts between the consultant’s interests and those of the client; and
- be proposed, awarded, and executed according to the ethical principles of the consulting professions.

Independence may be the most important asset offered by consultants. It allows consultants to choose technologies and products from a range of contractors and suppliers to satisfy the needs of the procuring entity and to protect its interests.

In this Manual the term “consultant” or “consultants” refers to any organization or person that provides consulting services to a procuring entity (the client) under a contract in government-financed projects. This chapter describes the main characteristics of the most common types of consultants engaged in government projects.

When hiring consultants competitively, the procuring entity should be aware of the distinction between organizations whose core business is exclusively the provision of consulting services, that is, consulting firms, and those organizations with a different mission and cost structure that only occasionally provide consulting services and may enjoy subsidies and other privileges. This distinction can affect the fairness of competition, especially when price is a factor of selection. These “other organizations” may include financial intermediaries, universities, research institutions, United Nations (U.N.) agencies, and nongovernmental organizations (NGOs). Only the same category of organisation should ideally compete in a procurement so that fairness is maintained.

9.2 Types of Consulting Services

The most common consulting services used by government may be grouped as follows:

Project services		
Preparation services	Implementation services	Advisory services
Sector studies Master plans Feasibility studies Design studies	Bidding documents Procurement assistance Construction supervision Project management Quality management Commissioning	Policy and strategy Reorganization/privatization Institution building Training/knowledge transfer Management advice Technical/operating advice

For the purposes of this Manual, it is important to distinguish between consulting services and other types of services in which the physical component of the activity is crucial, although the boundary between them is becoming more and more blurred. 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.

9.3 Preparatory Steps

9.3.1 Developing the Terms of Reference

The Terms of Reference (TOR) is the key document in the RFP. It explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the procuring entity and the consultant, and expected results and deliverables of the assignment. Adequate and clear TOR are important for the understanding of the assignment and its correct execution. They help reduce the risk of unnecessary extra work, delays, and additional expenses for the procuring entity. In addition, they help reduce the risk of ambiguities during the preparation of consultant proposals, contract negotiation, and execution of services.

Drafting the TOR requires expertise with the type of assignment and the needed resources as well as familiarity with the project background. If the needed qualifications to produce the TOR are not available in-house, the procuring entity should hire a specialized independent consultant. TOR have to be written by experts who have only the interest of the client in mind.

Guidance on drafting the TOR is contained in 5.2.3.3 above.

9.3.2 Estimating Cost and Budget

The cost estimate of an assignment is prepared by adding the remuneration of consultant staff and the direct expenses to be incurred by consultants during the execution of their duties. Those figures are based on an estimate of the staff time (expert per unit of time, hour, month) required to carry out the services and an estimate of each of the related cost components. Since the estimate of the needed staff time is derived from the TOR, the more exhaustive and detailed the TOR, the more precise the estimate.

A mismatch between the cost estimate and the TOR is likely to mislead consultants on the desired scope and detail of the proposed assignment. Preparing an accurate cost estimate ensures that the assignment will be carried out in a manner compatible with the project objectives and the resources available. The preparation of the cost estimate can lead to the revision of the TOR. In general, a cost estimate includes expenses relating to

- consultant staff remuneration;

The cost estimate is based on an estimate of the personnel (expert per month) required for carrying out the services, taking into account the time required by each expert needed, and then making estimates for each of the related cost components. It is important to define these inputs as accurately as possible.

Remuneration rates for staff vary according to sector and depend on the experience, qualifications, and nationality of the consultants (if international staffing is included). Adopting realistic rates for estimation purposes is difficult when proposals from different nationalities are expected. The estimated staff months should not be priced on the basis of the highest international rates, but rather using rates that allow for quality work at reasonable prices.

In general, staff remuneration rates include different proportions of the following components, depending on company- and industry-specific factors and country laws: basic salary; social charges; overhead; fees or profit; and allowances.

- travel and transport;

Local travel and transport costs should be based on local tariffs. Number and type of vehicles and their operation and maintenance costs should also be estimated. To estimate travel and transportation expenses where international consultants are envisaged, assume that all foreign personnel will originate from the farthest eligible country.

- mobilization and demobilization;

Each staff member is allowed reasonable travel time, a medical checkup, hotel costs, local transportation, and miscellaneous items.

- staff allowances;

If staff have to relocate in order to carry out their services, they will normally receive subsistence allowances. The subsistence allowance is paid separately to cover out-of-pocket expenses such as hotel and living expenses.

- communications;

Reasonable monthly allocations for international and local telecommunications should be included. Modern telecommunications such as teleconferencing and the Internet may represent a cost-effective substitute for travel.

- office rent, supplies, equipment and insurance;

Depending on the assignment, costs for office rent and supply of equipment (including hardware) should be estimated separately according to applicable rates.

- surveys and training programs;

The cost of surveys (such as topography, cartography, subsurface investigations, and satellite imaging) and training programs related to the assignment, and any other services to be subcontracted, should be estimated.

- report translation and printing;

The cost of printing or translating reports is substantial and should be included in the cost estimate.

- taxes and duties; and

When preparing cost estimates, it is important to be aware of the taxes (value-added tax or sales tax), levies, and duties on the contract that foreign and domestic consultants may have to pay and be reimbursed (or not reimbursed) for by the procuring entity. Tax items are transfers that are not to be taken into account in the evaluation of financial proposals.

- contingencies.

The contingency amount, which completes the cost estimate, should cover physical and price items. Physical contingencies provide for unforeseen work that is needed, while price contingencies account for monetary inflation.

Physical contingencies usually consist of 10 to 15 percent of the estimated cost of the assignment. A higher percentage may be appropriate for assignments in which the amount of work required is highly uncertain, such as technical assistance assignments in which the procuring entity's actual needs are not fully identified from the beginning. Price contingencies should be considered only when the impact of inflation is expected to be substantial. These contingencies should apply not only to the period of the assignment, but also to the period between the time of the estimate and the start of the assignment.

9.3.3 Determining Evaluation Criteria

The contract objectives and the underlying TOR determine the qualifications and experience required from the consultants who will carry out the assignment. In adopting evaluation criteria, the procuring entity seeks to ensure that the proposal selected will offer the best quality for the services required. The following criteria should be used as a basis for evaluation of technical proposals:

- specific experience of the consultants relevant to the assignment;
- adequacy of the proposed methodology and work plan in responding to the TOR; and
- key staff's qualifications and competence for the assignment.

Depending on the particular objectives of the assignment, an additional criterion may be required relating to the suitability of the transfer of knowledge program (training). When the transfer of knowledge is important and the nature of the assignment allows, the desired characteristics of the transfer should be specified in the TOR.

Table X provides an example of a range of points that may be allocated to each criterion on a scale of 1 to 100.

Table X Point Distribution of Evaluation Criteria for Technical Proposals

	Evaluation criteria	Points (weights)
1	Specific experience of the consultants	5 to 10
2	Adequacy of the proposed methodology and work plan	20 to 50
3	Qualifications and competence of key staff	30 to 60
4	Suitability of the transfer of knowledge program (training) - optional	Normally not to exceed 10
	Total	100

As explained above, the nationality of the staff should be identified for the purposes of preparing a cost estimate. This may include a proportion of national consultants among the proposed key staff.

The weights may be adjusted for specific circumstances. The actual distribution should depend on the type of assignment and the relative importance of each criterion for the success of the assignment. A good practice is to have those who prepared the TOR advise in the selection of subcriteria and relative weights.

Each of the criteria may be divided into subcriteria although excessive detail should be avoided.

For example, 'qualifications and competence of key staff' could have three subcriteria such as

- general qualifications;

-
- adequacy for the assignment; and
 - relevant experience.

In the case of the proposed methodology and work plan, subcriteria for evaluating this component of the proposal might include:

- technical approach and methodology;
- work plan; and
- organization and staffing.

Since subcriteria and their weighting determine the outcome of the evaluation and should be chosen considering the aspects that are critical to the success of the assignment. All adopted subcriteria and the points allocated to them should be specified in the RFP.

When cost is a factor of selection, the RFP has to indicate the relative weight assigned to the technical and financial proposals. For standard assignments, the weight for quality is normally 80 percent with 20 percent given to cost. More than 20 percent weight to the cost of the services is justified only in relatively routine and straightforward assignments (such as design of very simple structures), whereas in no cases should it exceed 30 percent. For assignments in which quality considerations are relatively important, a minimum weight of 10 percent should be given to cost, and when considerations of quality are of primary importance, QBS is preferable to QCBS.

It is not mandatory to apply a pass or fail threshold when evaluating technical proposals. However, if cost is a factor of selection, a minimum technical qualifying mark may be provided in the RFP to minimize the risk of accepting low-quality proposals at a very low cost. A qualifying mark in the range of 70 and 80 percent is typical. Any technical proposal with a score below this threshold is rejected, and the financial envelope is returned unopened. Setting the threshold too high increases the risk of rejection of a majority of proposals. A nonresponsive technical proposal shall be rejected regardless of whether there is a pass or fail threshold.

Section 2: Recruitment Process and Selection Methods

In this section we consider the general recruitment process which may be applied differently depending on the section method chosen. The general recruitment process described is based on the QCBS selection method.

10.1 Recruitment Process

There are a number of standardised steps in process with some modification in the case of some of the selection methods, discussed in 10.2. The key steps are as follows.

10.1.1 Notification of selection of consultants

The procuring entity must post an invitation for the selection of consultants to mass media, website or through electronic media. The relevant media are set out in section 8.2.1.

The purpose of this notification is to solicit expressions of interest from potential consultants so that the procuring entity may compile a shortlist of consultants from whom it will request proposals (the name given to bids in the case of consultancy contracts).

The notification must include the following information:

- Name of procuring entity
- Brief explanation in of the consulting services
- Conditions and qualifications required for consulting services
- Contact address for additional information enquiries
- Deadline and address for submission of expressions of interest

In terms of the deadline for the submission of expressions of interest, the procuring entity shall give consultants not less than 15 days for their preparation and submission. This is a minimum time frame and the actual length of time given will depend on the nature and complexity of the assignment.

In the case of selection based on consultants' qualification, the minimum period is not less than 20 days.

At this stage, consultants are required to demonstrate and provide evidence of their professional qualifications, experience and performance as well as a staff organization chart in respect of the services being procured. Other information may be required depending on the nature of the services. The required information and evidence must be set out in the notification.

Since the procuring entity may impose a fee for the purchase of the requests for proposals, the price should also be indicated in the notice. The selling price of requests for proposals must reflect the actual cost of provision such as the cost of printing, delivery, advertisement, notification etc.

10.1.2 Shortlisting

The procuring entity is responsible for preparation of a short list based on the expressions of interest received by the deadline.

Short lists shall comprise between three and six consultants. These will be the consultants who best meet the criteria established by the procuring entity and set out in the notification.

The short-listed consultants will be invited to submit technical and financial proposals in accordance with the selected method of procurement.

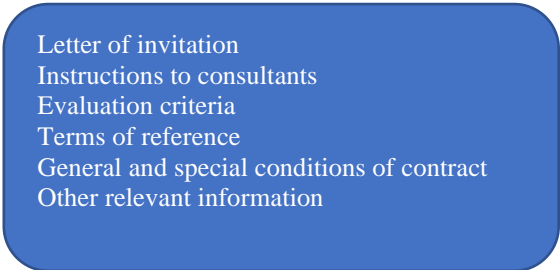
The results of the shortlisting procedure must be communicated promptly to those who expressed interest.

10.1.3 Requests for Proposals

Procuring entities shall send a request for proposals to all shortlisted consultants. These will clearly define the necessary information to facilitate consultants in the preparation of proposals in proper and complete manner. The request for proposals must be accurate, simply understandable.

Procuring entities are required to use the standard request for proposals template issued by the Ministry of Finance.

The request for proposals will contain the following information:



- Letter of invitation
- Instructions to consultants
- Evaluation criteria
- Terms of reference
- General and special conditions of contract
- Other relevant information

- Letter of Invitation (LOI)

This is the standard form letter sent to the shortlisted consultants inviting them to submit proposals.

- Instructions to Consultants (ITC)

The ITC contain all necessary information that would help consultants prepare responsive proposals and bring as much transparency as possible to the selection procedure by providing information on the evaluation process and by indicating the evaluation criteria and factors and their respective weights and the minimum passing quality score.

Except in the case of fixed budget selection, the ITC must not indicate the budget (since cost is a selection criterion) but should indicate the expected input of key professionals (staff time). Consultants, however, must be free to prepare their own estimates of staff time necessary to carry out the assignment. The ITC will also specify the proposal validity period.

The ITC must include adequate information on the following aspects of the assignment:

- a very brief description of the assignment (the TOR is also included in any event);

-
- standard formats for the technical and financial proposals;
 - the names and contact information of officials to whom clarifications shall be addressed and with whom the consultants' representative shall meet, if necessary

The instructions must include details of the selection method chosen, including the procedure to be followed (explained below in the case of each selection method) and any other relevant information. This might include:

- a description of the selection method and procedure adopted;
- a listing of the technical evaluation criteria and weights given to each criterion;
- the details of the financial evaluation;
- the relative weights for quality and cost in the case of QCBS;
- the minimum pass score for quality, if any;
- the details on the public opening of financial proposals;
- information on negotiations;
- financial and other information that shall be required of the selected firm during negotiation of the contract;
- the deadline for submission of proposals (which must be not less than 30 days from the issue of the RFP);
- currency(ies) in which the costs of services shall be expressed, compared, and paid;
- reference to any laws of Lao PDR that may be particularly relevant to the proposed consultants' contract;
- the method in which the proposal shall be submitted, including the requirement that the technical proposals and price proposals be sealed and submitted separately in a manner that shall ensure that the technical evaluation is not influenced by price;
- a request that the invited firm acknowledges receipt of the RFP and informs the procuring entity whether or not it will be submitting a proposal;
- the short list of consultants being invited to submit proposals, and whether or not associations between short-listed consultants are acceptable;
- the period for which the consultants' proposals shall be held valid will be 30-60 days normally (during this time the consultants shall undertake to maintain, without change, the proposed key staff, and shall hold to both the rates and total price proposed);
- in case of extension of the proposal validity period, the right of the consultants not to maintain their proposal;
- the anticipated date on which the selected Consultant shall be expected to commence the assignment;
- if not included in the TOR or in the draft contract, details of the services, facilities, equipment, and staff to be provided by the procuring entity;
- phasing of the assignment, if appropriate; and likelihood of follow-up assignments;
- the procedure to handle clarifications about the information given in the RFP; and
- any conditions for subcontracting part of the assignment.

Note: the procuring entity must allow enough time for the consultants to prepare their proposals. The time given depends on the assignment, but must not be less than 30 days

10.1.4 Submission of Proposals

When consultants receive the RFP, and if they can meet the requirements of the TOR, and the commercial and contractual conditions, they should make the arrangements necessary to prepare a responsive proposal (for example, visiting the site, seeking associations, collecting documentation, setting up the preparation team).

If the consultants find in the RFP documents (especially in the selection procedure and evaluation criteria) any ambiguity, omission or internal contradiction, or any feature that is unclear or that appears discriminatory or restrictive, they should seek clarification from the procuring entity, in writing, within the period specified in the RFP for seeking clarifications.

Consultants should ensure that they submit a fully responsive proposal including all the supporting documents requested in the RFP. Noncompliance with important requirements will result in rejection of the proposal.

Consultants must ensure that their proposals are delivered and received by the procuring entity at the location set out in the RFP before the closing date and time of delivery as indicated in the Instructions to consultants.

The proposals may be directly delivered by hand or by courier (post office). They must be in sealed envelope and marked on outer envelope as indicated in the RFP.

The procuring entity will prepare a record of the date and time of the proposals received. Any late proposal received after the deadline for submission of proposals will be rejected, and immediately returned unopened to the consultant.

The technical and financial proposals sealed in the separate envelopes must be submitted at the same time. No amendments to the technical or financial proposal shall be accepted after the deadline.

Subject to the selection method chosen, the technical envelopes will be opened immediately after the closing time for submission of proposals. The financial proposals will remain sealed and kept safe until they are opened publicly.

10.1.5 Evaluation of Proposals

The evaluation shall be carried out in full conformity with the provisions of the RFP and the legal framework. The evaluation of the proposals will (again subject to the selection method chosen) be carried out in two stages: first the quality, and then the cost. Evaluators of technical proposals must not have access to the financial proposals until the technical evaluation is concluded.

- **Technical evaluation**

This takes place in accordance with the evaluation criteria chosen (see 9.3.3) above.

The procuring entity evaluates each technical proposal taking into account following criteria:

-
- the consultant's relevant experience for the assignment,
 - the quality of the methodology proposed,
 - the qualifications of the key staff proposed,
 - transfer of knowledge

Each criterion will be marked on a scale of 1 to 100 weighted to provide the scores.

The procuring entity will evaluate each proposal on the basis of its responsiveness to the TOR. A proposal shall be considered unsuitable and will be rejected at this stage if it does not respond to important aspects of the TOR or it fails to achieve a minimum technical score specified in the RFP.

At the end of the process, the procuring entity prepares an evaluation report of the "quality" of the proposals. The report substantiates the results of the evaluation and describes the relative strengths and weaknesses of the proposals. All records relating to the evaluation, such as individual mark sheets must be retained.

- **The financial (cost) evaluation**

After the evaluation of quality is completed, the procuring entity will notify those consultants whose proposals did not meet the minimum qualifying mark or were considered non-responsive to the RFP and TOR, indicating that their financial proposals will be returned unopened after completing the selection process.

The procuring entity will simultaneously notify the consultants that have secured the minimum qualifying mark, and indicate the date and time set for opening the financial proposals.

The opening date should not be sooner than 14 days after the notification date.

The financial proposals will be opened publicly in the presence of representatives of the consultants who choose to attend. The name of the consultant, the quality scores, and the proposed prices shall be read aloud and recorded when the financial proposals are opened. The procuring entity will prepare the minutes of the public opening.

After the opening, the procuring entity will review the financial proposals. If there are any arithmetical errors, they will be corrected. For the purpose of comparing proposals, the costs are converted to a single currency as stated in the RFP and in accordance with the Instructions. The conversion will be made by using the exchange rate as posted by the Central Bank of Lao PDR on the RFP sending date.

For the purpose of evaluation, "cost" excludes local taxes, but will include other reimbursable expenses, such as travel, translation, report printing, or secretarial expenses.

The proposal with the lowest cost may be given a financial score of 100 and other proposals given financial scores that are inversely proportional to their prices. Alternatively, a directly proportional or other methodology may be used in allocating the marks for the cost. The methodology to be used must be described in the RFP.

- **Final evaluation** (combined technical and financial scores)

The total score shall be obtained by weighting the technical and financial scores and adding them together.

The weight for the “cost” will be chosen by taking into account the complexity of the assignment and the relative importance of quality. The weight for cost is normally in the range of 10 to 20 points, but must not exceed 30 points out of a total score of 100. The proposed weightings for quality and cost must be specified in the RFP. The firm obtaining the highest total score will be invited for negotiations.

10.1.6 Negotiations and Award of Contract

Negotiations may include discussions of the TOR, the methodology, staffing, the procuring entity's inputs and special conditions of the contract. These discussions must not substantially alter the original TOR or the terms of the contract, so as not to affect the quality of the final product, its cost, and the relevance of the initial evaluation. Major reductions in work inputs should not be made solely to meet the budget. The final TOR and the agreed methodology will be incorporated into the “Description of Services,” which forms part of the contract.

The selected firm should not be allowed to substitute key staff, unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff were offered in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm.

Financial negotiations will include clarification of how the tax and other concerned issues would be reflected in the contract. Proposed unit rates for staff-months and reimbursable must not be negotiated, since these have already been a factor of selection in the cost of the proposal.

If the negotiations fail to result in an acceptable contract, the procuring entity shall terminate the negotiations and invite the next ranked firm for negotiations. The consultant will be informed of the reasons for termination of the negotiations. Once negotiations are commenced with the next ranked firm, the procuring entity may not reopen the earlier negotiations.

After negotiations are successfully completed, the procuring entity shall promptly notify other firms on the short list that they were unsuccessful.

10.1.7 Rejection of all proposals

The procuring entity may reject all proposals only if all proposals are non-responsive and unsuitable either because they present major deficiencies in complying with the TOR, or because they involve costs substantially higher than the original estimate. In the latter case, the feasibility of increasing the budget, or scaling down the scope of services with the firm should be investigated.

10.1.8 Confidentiality

Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the consultants who submitted the proposals or to other persons not officially concerned with the process, until the signing of contract is notified to the successful firm.

10.2 Selection Methods

Six methods for the selection of consultants are provided under the legal framework. They include the following:

- Quality and Cost Based Selection (QCBS);
- Quality Based Selection (QBS);
- Selection under a Fixed Budget (FBS);
- Least Cost Selection (LCS);
- Selection Based on Consultant's Qualifications (CQS); and
- Single Source Selection (SSS)

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

Flowchart 5 provides a graphic illustration of when these might be appropriate.

PROCESS

Quality and Cost-Based Selection (QCBS)

- Service is common not too complex
- Scope of work can be precisely defined & TOR is clear & well specified
- Staff time & other inputs can be estimated with reasonable precision
- The risk of undesired downstream impact is quantifiable and manageable (e.g. capacity building program).

Quality Based Selection (QBS)

- Complex, high downstream impact
- emphasis is on securing the most competent candidate.
- Selection is thus based on the quality of the proposals submitted, which tends to be limited to the technical proposals only.

Least Cost Selection (LCS)

- Standard /routine assignment
- Well established practices/standards

Selection based on Consultant Qualification (CQS)

- Small assignment or emergency situations
- No need for issuing a Request for Proposal (RFP) and competitive proposals are not justified

Single Source Selection (SSS)

- Natural continuation of previous work
- Emergency
- Very small assignment
- Only one firm has experience of exceptional worth

SELECTION BASIS

QCBS – both technical and financial are used to determine the winning submission

QBS

- Award to firm with the highest technical score
- Cost is not a factor of selection
- Negotiations of technical & Financial proposals

LCS

- Reject technical proposals scored <min. technical score required
- Award to the firm with the least cost & a technical score > min. technical score required

CQS -

- Award to best qualified consultant
- Based on negotiated technical and financial proposal

SSS -

- Ensure SSS is well justified and proven
- Ensure price is reasonable
- Ensure contract is well balanced

PROCESS

Prepare & publish the RFP

Submission and Receipt of technical and financial proposals from bidders

Evaluate the technical proposals

QCBS/ Based on weight and criteria in the RFP -{90%/10%, 80%/20% or 30%/70%}

Then evaluate the financial proposals

QCBS/ The lowest financial proposal is awarded the full weighted score. Using the above weights. The weighted score of the other financial scores are calculated as a fraction of the highest scoring

Negotiation with the winning bidder and sign contract

QCBS/ Once the weighted technical scores and weighted financial scores are determined for each set of submission, they are summed to determine the final scores and the winning submission.

10.2.1 Quality and Cost Based Selection (QCBS)

QCBS is a method based on the quality of the proposals and the cost of the services to be provided. It is the method most frequently used to select consultants under government-funded assignments. Since under QCBS the cost of the proposed services is a factor of selection, this method is appropriate when

- the scope of work of the assignment can be precisely defined and the TOR are well specified and clear, and
- the procuring entity and the consultants can estimate with reasonable precision the staff time as well as the other inputs and costs required of the consultants.

QCBS is appropriate for assignments such as:

- feasibility studies and designs where the nature of the investment is clear and well defined, known technical solutions are being considered, and the evaluation of the impacts from the project are not uncertain or too difficult to estimate;
- preparation of bidding documents and detailed designs;
- supervision of construction of works and installation of equipment;
- technical assistance services and institutional development of procuring entity agencies; and
- procurement and inspection services.

To increase the likelihood of receiving responsive proposals, the Request for Proposals (RFP) under QCBS indicates the expected staff time estimated by the procuring entity to carry out the assignment. However, this estimate does not bind the consultants, and they should propose the level of inputs that they consider appropriate.

Under QCBS the technical and financial proposals are submitted simultaneously in separate sealed envelopes (two-envelope system). Proposals received after the submission deadline should be rejected. Evaluation of the proposals is carried out in two stages: (1) quality and (2) cost. The technical envelopes are opened immediately after the closing time for submission of proposals; the financial proposals remain sealed until the technical evaluation and the evaluation report are completed and the technical scores are disclosed publicly.

The financial envelopes of those consultants who submitted responsive technical proposals meeting the minimum qualifying mark are opened in the presence of the consultants or their representatives. The proposals are then evaluated. Once the financial proposals are evaluated, a combined evaluation of the technical and financial proposals is carried out by weighting and adding the quality and the cost scores, and the consultant obtaining the highest combined score is invited for negotiations. Since price is a factor of selection, staff rates and other unit rates shall not be negotiated.

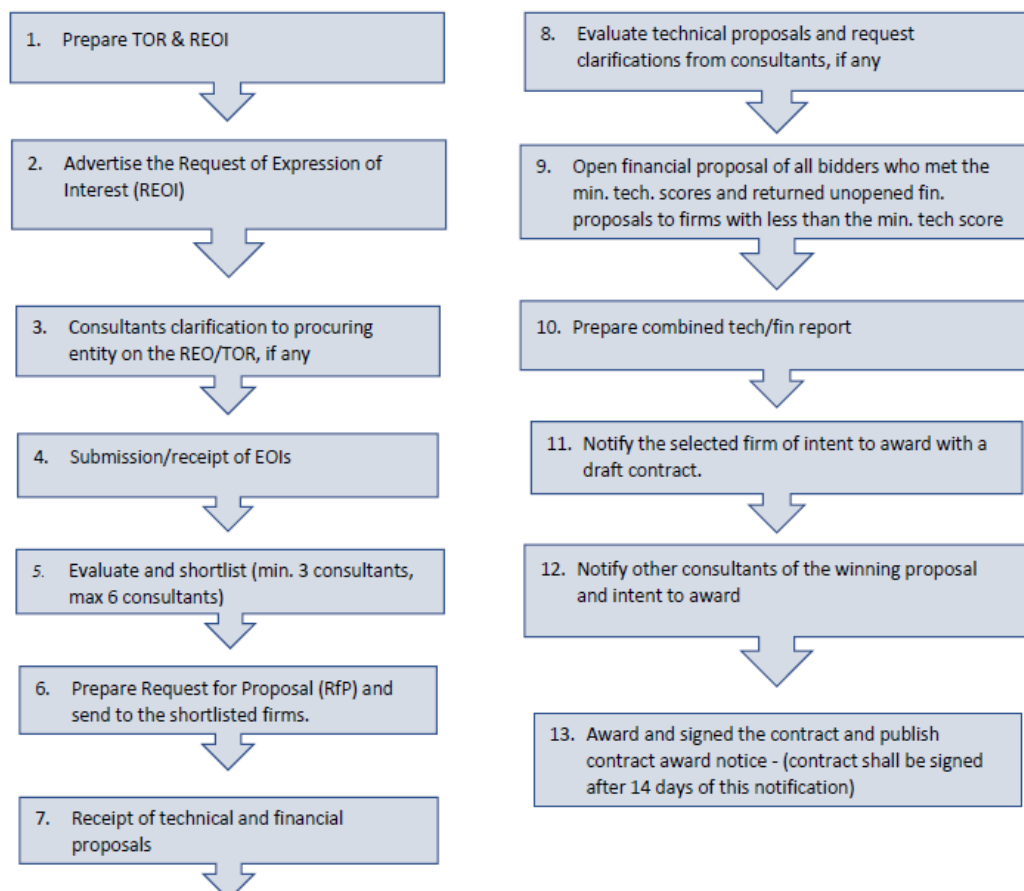
QCBS permits the procuring entity to select a preferred trade-off between cost and quality and to benefit from price competition, even if only to a limited extent. Transparency is increased under QCBS with public opening of the financial proposals. Another advantage is the possibility that contract negotiations will be easier because of the limited scope for financial negotiations.

QCBS may be inappropriate for complex or specialized assignments in which the scope of work is not precisely defined and staff months are difficult to estimate. Since price is a factor of selection under QCBS, when this occurs competitors will tend to propose more conventional approaches and tested methodologies to keep the cost of services low, rather than making full use of their capabilities to propose the most effective or innovative way to carry out the assignment. This may ultimately affect the quality of the project, especially where the downstream impacts are complex, large, or unknown.

Flowchart

Quality and Cost-Based Selection (QCBS)

- Quality and Cost-Based Selection (QCBS)
- Service is common not too complex
- Scope of work can be precisely defined & TOR is clear & well specified
- Staff time & other inputs can be estimated with reasonable precision
- The risk of undesired downstream impact is quantifiable and manageable (e.g. capacity building program).
- both technical and financial are used to determine the winning submission



10.2.2 Quality Based Selection (QBS)

QBS is based on an evaluation of the quality of the proposals and the subsequent negotiation of the financial proposal and the contract with the consultant who submitted the highest ranked technical proposal. QBS is appropriate if:

- the downstream impact of the assignment is so large that the quality of the services becomes of overriding importance for the outcome of the project;
- the scope of work of the assignment and TOR are difficult to define because of the novelty or complexity of the assignment, or the need to select among innovative solutions, or due to particular physical, social, or political conditions;
- the assignment can be carried out in substantially different ways such that cost proposals may not easily be comparable; and
- the introduction of cost as a factor of selection renders competition unfair.

QBS should be adopted for assignments such as:

- complex multidisciplinary investment studies;
- strategic studies in new fields of policy and reforms;
- master plans, complex prefeasibility and feasibility studies, and design of complex projects; and
- assignments in which traditional consultants, nongovernmental organizations (NGOs), and/or U.N. agencies compete.

In some cases the choice between QBS and QCBS may be difficult. In situations of strong uncertainty and/or risk for the project, QBS should be adopted because quality is the key element.

The technical and financial proposals are submitted simultaneously in separate sealed envelopes (two-envelope system). The technical envelopes are opened immediately after the closing time for submission of proposals; the financial proposals remain sealed until the technical evaluation and the evaluation report are completed. The consultant with the highest-ranking technical proposal is invited to present its financial proposal.

Only the financial proposal of the winning consultant is opened; the others are returned unopened after negotiations with the winning firm are successfully concluded. The RFP generally provides the staff months only as an estimate by the procuring entity. The staff effort indicated by the consultants may differ considerably from such estimate, depending on the particular methodology adopted by the consultant.

Since the TOR of assignments under QBS are generally less defined and relatively more complex than under QCBS, contract negotiations with the winning consultants may be lengthy and complicated. In this case, the procuring entity with no experience may decide to hire individual advisers to assist in the most critical aspects of the technical evaluation, for instance, discussion of the plan of work, staff rates and reimbursable expenses, and the definition of the consultants' staff months.

Flowchart 6

Quality Based Selection (QBS)

Quality Based Selection (QBS)

- Complex, high downstream impact
- emphasis is on securing the most competent candidate.
- Selection is thus based on the quality of the proposals submitted, which tends to be limited to the technical proposals only.

QBS – 2 separate envelopes for tech/fin
- Award to firm with the highest technical score
- Cost is not a factor of selection
- Negotiations of tech & fin. proposals with the winner
- Return financial proposals of other bidders

1. Prepare TOR & REOI
2. Advertise the Request of Expression of Interest (REOI)
3. Consultants clarification to procuring entity on the REO/TOR, if any
4. Submission/receipt of EOI
5. Evaluate and shortlist (min. 3 consultants, max 6 consultants)
6. Prepare Request for Proposal (RFP) and send to the shortlisted firms.
7. Receipt of technical and financial proposals
8. Evaluate technical proposals and request clarifications from consultants, if any
9. Open financial proposal of the highest ranked consultant and returned unopened fin. proposals to firms with less than the min. tech score
10. Negotiate technical/financial proposals with the selected firm.
11. Notify the selected firm of intent to award with a draft contract.
12. Notify other consultants of the winning proposal and intent to award
13. Award and signed the contract and publish contract award notice (contract shall be signed after 14 days of this notification)

Box 5: In step 5, the evaluation committee establishes the ability of the firms to meet the established criteria, scope, and the requirements based on the TOR.

Box 8: In step 8, the evaluation committee assesses the thorough, in-depth responses submitted technical proposals.

Box 10: In step 10, discuss the statement of work, methodology, staffing, acceptance criteria for work products, work schedule, cost control measures, and/or budget limitations to achieve the intended objective.

10.2.3 Fixed Budget Selection (FBS)

FBS is based on disclosing the available budget to invited consultants in the RFP and selecting the consultant with the highest-ranking technical proposal within the budget. Because consultants are subject to a cost constraint, they will adapt the scope and quality of their services to that budget. The procuring entity must therefore ensure that the budget is compatible with the TOR and that consultants will be able to perform the tasks within the budget. FBS is appropriate only when

- the budget is fixed and cannot be exceeded,
- the TOR are precisely defined, and
- the time and staff-month effort required from the consultants can be assessed with precision.

To reduce the financial risk for consultants and avoid receiving unacceptable technical proposals or no technical proposals at all, FBS must only be used for well-defined and simple assignments with a low financial risk for the consultants. FBS is frequently used by procuring entities when there is lack of flexibility in funds allocation. Typical assignments awarded under FBS are:

- sector studies, market studies, and surveys of limited scope;
- simple prefeasibility studies and review of existing feasibility studies;
- review of existing technical designs and bidding documents; and
- project identification for which the level of detail can be matched with the available funds.

Under FBS, consultants are requested to submit their technical and financial proposals in separate envelopes (two-envelope system). Technical proposals are evaluated first, using the same procedure followed for QCBS and QBS, then the financial envelopes are opened in public. In case a proposal does not cover minor technical aspects included in the TOR, the procuring entity calculates the evaluated price of that proposal by adding to the offered price the estimated cost of the missing activities or items. Proposals that exceed the indicated budget after adjustments and corrections are discarded. The consultant who has submitted the highest ranked technical proposal among the remaining proposals is selected.

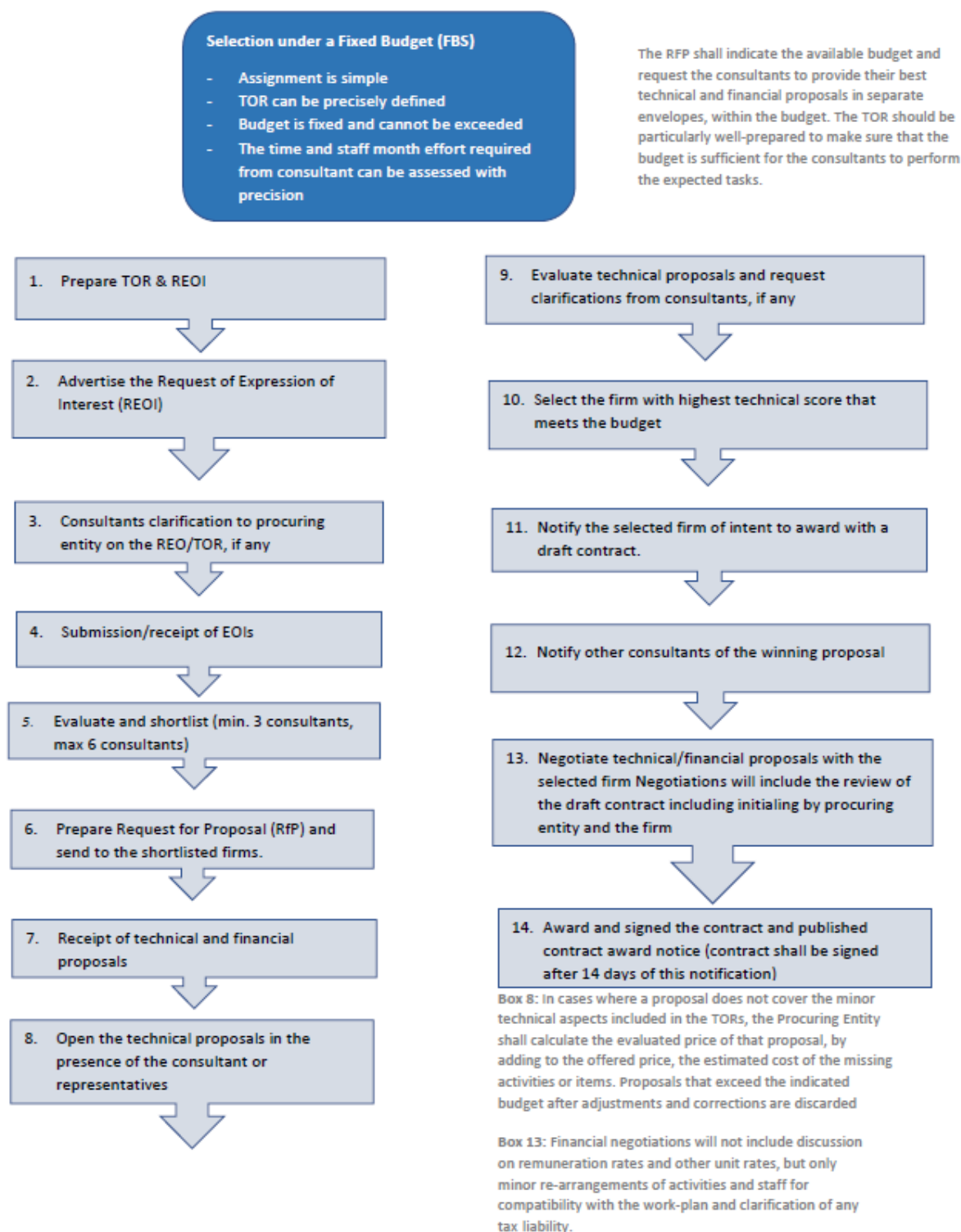
Since the budget is predetermined, the consultant's TOR cannot change substantially, and technical negotiations shall cover minor aspects. Financial negotiations will not include discussion of remuneration rates and of other unit rates, but only minor rearrangements of activities and staff for compatibility with the plan of work and clarification of any tax liability.

FBS allows a procuring entity to plan a budget early on rather than waiting for the uncertain outcome of negotiations. Furthermore, it allows a procuring entity to receive better quality proposals than under QCBS because it is easier for consultants to maximize quality under a fixed budget. FBS also requires a shorter time for negotiations than QBS. FBS is also convenient for consultants because the pre-established budget allows them to determine in advance whether they are interested in competing for the proposed assignment, and to develop the best proposal consistent with that budget.

More than with QBS and QCBS, the FBS method requires the TOR to be consistent with the established budget and to contain a well-specified scope of work in order for consultants to present clear and responsive proposals. One risk of using the FBS is underbudgeting the TOR and by doing so discourage good consultants from participating, and receive poor performances from the awarded consultants.

Flowchart 7

Fixed Budget Selection (FBS)



10.2.4 Least Cost Selection (LCS)

Under LCS, a minimum qualifying mark for quality is established and indicated in the RFP. Shortlisted consultants have to submit their proposals in two envelopes. The technical proposals are opened first and evaluated. Proposals scoring less than the minimum technical qualifying mark are rejected, and the financial envelopes of the rest are opened in public. The consultant with the lowest evaluated price is selected.

The LCS method is more appropriate for small assignments of a standard or routine nature where well-established practices and standards exist and from which a specific and well-defined outcome is expected, which can be executed at different costs, for example

- standard accounting audits,
- engineering designs and/or supervision of simple projects,
- repetitive operations and maintenance work and routine inspections, and
- simple surveys.

A procuring entity may adopt this selection method when they wish to capture cost benefits from mature technologies or new methods for which quality risks for the final output are considered negligible. For example, modern broadband telecommunications and the Internet allow accountants, at geographically remote locations, to compete for standard accounting audits to be produced at low cost.

Since quality is set as the minimum qualifying mark, the procuring entity should set such a mark higher than is usual (say at 75 or 80 percent) to ensure quality and avoid the risk of selecting low-cost proposals of poor or marginally acceptable quality. This method may be abused by tampering with the technical evaluation to select a specific consultant by pushing all proposals above the minimum mark and by actually selecting on the basis of cost only.

Flowchart 8

Least Cost Selection (LCS)

Least Cost Selection (LCS)

- Standard /routine assignment
- Well established practices/standards

LCS – 2 separate envelopes for tech/fin. proposal
- First tech proposals are evaluated, reject technical proposals scored < than the min. technical score required
- Award to the firm with the least cost & a technical score > min.
NB: although the financial proposal will be the basis upon which the winning submission is determined, the quality of the technical proposal is still a crucial consideration

1. Prepare TOR & REOI
2. Advertise the Request of Expression of Interest (REOI)
3. Consultants clarification to procuring entity on the REO/TOR, if any
4. Submission/receipt of EOIs
5. Evaluate and shortlist (min. 3 consultants, max 6 consultants)
6. Prepare Request for Proposal (RFP) and send to the shortlisted firms.
7. Receipt of technical and financial proposals
8. Evaluate technical proposals and request clarifications from consultants if any
9. Open financial proposal of the consultants that meet or exceed the min. technical score and return unopened fin. proposals to firms with less than the min. tech score
10. The lowest priced financial proposal is awarded the contract
13. Award and sign the contract and published contract award notice (contract shall be signed after 14 days of notification)

Box 1: the strongest technical proposal is not automatically selected

10.2.5 Selection Based on Consultant's Qualifications (CQS)

The CQS method applies to very small assignments for which the cost of a fully-fledged selection process would not be justified. The procuring entity selects the firm with the best qualifications and references from the shortlist. The selected firm is asked to submit a combined technical and financial proposal and is then invited to negotiate the contract if the technical proposal proves acceptable.

The CQS method aims at reducing the cost and time needed to hire a consultant. This approach does not, however, disregard quality, since some very small assignments are very important (highly specialized advisory services with a limited scope and duration or assignments that, although small, require consultants with the best possible qualifications). CQS may be considered for assignments such as:

- brief evaluation studies at critical decision points of projects (review of alternative solutions with large downstream effects);
- executive assessment of strategic plans;
- high level, short-term, legal expertise; and
- participation in project review expert panels.

Flowchart 9

Selection Based on Consultant Qualification (SBCQ)

Selection based on Consultant Qualification (SBCQ)

- Small assignment or emergency situations in which preparing and evaluating competitive proposal is not justified.

1. Prepare TOR & REOI
2. Advertise the Request of Expression of Interest (REOI)
3. Consultants clarification to procuring entity on the REO/TOR, if any
4. Submission/receipt of EOIs and CV of key staff
5. Evaluate and shortlist (3 consultants)
6. Select consultant with the best qualifications and relevant experience
7. Invite the selected consultant to submit combined technical and financial proposals for negotiation
8. Evaluate technical and financial proposals and request clarifications from consultants, if any
9. Notify the selected firm of intent to award with a draft contract.
10. Negotiate technical/financial proposals.
11. Notify other consultants of the winning proposal
12. Award and signed the contract and published contract award notice (contract shall be signed after 14 days of this notification)

10.2.6 Single Source Selection (SSS)

Under SSS, the procuring entity asks a specific consultant to prepare technical and financial proposals, which are then negotiated. Since there is no competition, this method is acceptable only in exceptional cases and made on the basis of strong and convincing justifications where it offers clear advantages over the competition. This may be because

- the assignment represents a natural or direct continuation of a previous one awarded competitively, and the performance of the incumbent consultant has been satisfactory; or
- a quick selection of the consultant is essential, for instance, in emergency operations such as natural disasters and financial crisis; or
- the contract is very small in value; or
- only one consulting organization has the qualifications or experience of exceptional worth to carry out the assignment.

If continuity of downstream work by retaining an incumbent consultant for a downstream assignment is essential to the project and is in the interest of the procuring entity, the RFP for the original assignment should indicate this likelihood. Satisfactory performance in the first assignment has to be a precondition for continuation. In these cases, the procuring entity should balance the importance of continuing with the same technical approach, the experience acquired, and the continued professional liability of the incumbent against the benefits of renewed competition such as fresh technical approaches and competitive remuneration rates.

The procuring entity should ask the consultant to prepare technical and financial proposals on the basis of the TOR prepared by the procuring entity, or by an independent adviser with no relation to the incumbent. This is the basis for negotiating a continuation contract. A continuation contract should not normally be awarded on a SSS basis if the initial assignment was not awarded competitively, or was awarded under tied financing or reserved procurement, or the downstream assignment is substantially larger in value. In these cases, a competitive process should be adopted, and normally the incumbent should not be excluded from consideration if he or she expresses interest.

Single Source Selection (SSS)

Single Source Selection (SSS)

- Natural continuation of previous work
- Emergency
- Very small assignment
- Only one firm has experience of exceptional worth

1. Prepare TOR & REOI



2. Invite directly consultant with EOI (RfP if needed)



3. Consultants clarification to procuring entity on the REO/TOR, if any



4. Submission/receipt of technical and financial proposals



5. Review technical and financial proposals and request clarifications from consultants



6. Negotiate technical/financial proposals. Negotiations will include the review of the draft contract including initialing by procuring entity and the firm.



7. Award and sign the contract and publish contract award notice

10.3 Selection of Individual Consultants

The process by which a procuring entity selects individuals does not follow strictly the normal selection methods used for firms. It is worth describing here the main steps that procuring entity are required to take into account.

10.3.1 Terms of Reference

The procuring entity should first prepare a TOR for the consultant assignment, including the scope of work and its estimated budget.

10.3.2 Advertising

For individual assignments of a long duration (say, six months) it is recommended that the procuring entity publish a call for submission of qualifications in the media. The procuring entity may decide to proceed in the same way for shorter assignments if potential suitable candidates are unknown. The call should include a short description of the task or job description and the criteria for selection. They may also create a shortlist from consultants that are already known to them, e.g. from previous assignments or from assignments performed for other procuring entities.

10.3.3 Selection

Individual consultants are selected based on their qualifications for the assignment. They are selected through comparison of qualifications of at least three candidates among those who have expressed interest in the assignment or have been approached directly by the procuring entity.

Individuals engaged by the procuring entity must meet all relevant qualifications and be fully capable of carrying out the assignment. Capability is judged on the basis of academic background, experience, and, as appropriate, knowledge of local conditions.

Individual consultants may be selected on a sole-source basis with due justification, in exceptional cases such as: (a) tasks that are a continuation of previous work that the consultant has carried out and for which the consultant was selected competitively; (b) assignments lasting less than six months; (c) emergency situations resulting from natural disasters; and (d) when the individual is the only consultant qualified for the assignment. For key assignments, interviews may be set up.

Suitability of the candidates should be evaluated on the basis of their academic background and experience. Contracts normally take the form of a simple letter of appointment with TOR and contract conditions covering remuneration and direct expenses, including medical, travel, insurance, housing, and so forth.

10.4 Negotiations in consultancy procurement

Negotiations may generally include discussions of the TOR, the methodology, the procuring entity's inputs and the special conditions of the contract. At the same time, these discussions must not substantially alter the original scope of services under the TOR or the terms of the contract making sure that the quality of the final product, its price, and the relevance of the initial evaluation is not affected. Major reductions in work inputs should not be made only to meet the estimated cost or available budget. The final TOR and the agreed methodology will be incorporated in the "Description of Services" which forms part of the contract.

The selected firm should not be allowed to substitute key experts, unless both parties agree that undue delays in the selection process make such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key experts were included in the proposal without confirming their availability, the firm may be disqualified and the process continued with the next ranked firm. The key experts proposed for substitution must have qualifications equal to or better than the key experts initially proposed

Any financial negotiations may include clarification of the consultants' tax liability in the and how this tax liability has been or would be reflected in the contract. In lump-sum contracts, the offered price must not be negotiated. In the case of time-based contracts, when the selection method includes cost as a factor in evaluation, negotiations of experts' rates must also not take place, except in special circumstances, like for example, experts' rates offered are much higher than typically charged rates by consultants for similar contracts.

The procuring entity is entitled to ask for clarifications, and, if the fees are very high, to ask for their change. Reimbursable are to be paid on actual expenses incurred at cost upon presentation of receipts and therefore are not subject to negotiations. However, if the procuring entity wants to define ceilings for unit prices of certain reimbursable (like travel or hotel rates), they should indicate the maximum levels of those rates in the RFP or define a per diem in the RFP.

If the negotiations with the highest ranked consultant fail, the procuring entity should inform the concerned consultant in writing of all pending issues and disagreements, and provide them a final opportunity to respond in writing. Contract negotiations should not be terminated only for budget considerations. If there is still disagreement, the procuring entity should inform the consultant in writing of its intention to terminate negotiations. Negotiations may then be terminated and the next ranked consultant invited for negotiations. The procuring entity must prepare minutes of negotiations and all relevant communications, as well as the reasons for such termination should be recorded.

Once negotiations have commenced with the next ranked firm, the procuring g entity may not reopen the earlier negotiations. After negotiations are successfully completed the procuring entity should promptly notify other firms on the short list that they were unsuccessful.

Part VI Complaints Mechanism

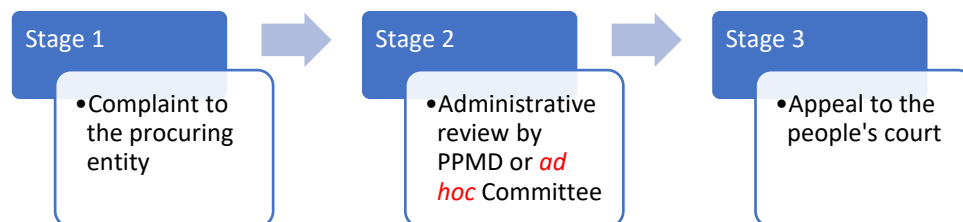
11.1 The right to complain

Many things can go wrong during the procurement process which can affect the chances of success of a bidder. These refer to possible breaches of the Law or Instruction before the award of the contract. If there is a problem with the implementation of the contract, that is a different matter. Disputes involving contracts are subject to the provisions of the Bidding Documents (see 5.5).

Note: this refers to a problem with the procurement process before the award of the contract.

Some of these pre-contract issues are mistakes and can easily be corrected without disturbing the procurement process. Some of them are deliberate actions of the procuring entity which might be against the law. These are more difficult to deal with but if the procuring entity or one of its officers takes action which contravenes the Law or the Instruction, then a bidder has a right to complain.

The complaint procedure consists of three stages.



The problem can be resolved at any one of these stages. For example, in the case of a mistake, the procuring entity may just recognize that it has made a mistake in stage 1 and revise its actions so that there is no need to proceed to stage 2. Similarly, the explanation given by the procuring entity may show the bidder that it has made a mistake so that it does not need to pursue the complaint further. These are usually the best outcomes.

If, however, either party does not accept that there has been a simple mistake, then stages 2 or 3 are open to bidder to pursue the matter.

The complaints procedure is regulated by Articles 46 and 67 of the Law and section 15 of the Instruction.

11.2 Complaint to the procuring entity

A bidder may complain to the procuring entity where:

- it believes that the procuring entity or its employees have acted in violation of the Law or Instruction leading to, for example, unfairness, a lack of transparency or partiality by tender committees; and

- it claims to have suffered, or that is likely to suffer, loss or injury due to those actions.

A complaint must be made:

- in writing and
- generally, no later than 14 days from the date of the notification of proposed award of the contract*, in other words, before the contract is signed.

* *14 days is the minimum period between the date of the notification of proposed award and contract signature. If the procuring entity fixes a date for signature which is later than 14 days from the date of notification, the time for the filing of the complaint will be extended to the date set for signature.*

PPMD has created a template for making complaints which may be retrieved from the PPMD website.

It is important that the bidder presents a written complaint that identifies the specific act or omission alleged to contravene the Law of Instruction. If it does not, the procuring entity will not be able to address the problem and is entitled to reject the complaint, although it must explain that this is the reason for rejection.

The procuring entity is given **15 days** to respond from the date it received the complaint.

During this time, it is advisable that the procuring entity considers the complaint seriously and looks at the alleged violations. If there has been a mistake in the printed material, e.g. in the bidding documents, technical requirements or even the notification, then the procuring entity should try to correct these and then re-issue them. This may require providing some additional time for the submission of bids (if the complaint comes early enough). If the complaint relates to an action of a procurement officer or tender committee (e.g. in rejecting a bidder or in making a recommendation for award), the procuring entity should investigate the circumstances and the facts to see if a mistake has been made. If that is the case, then the procuring entity should try to correct that mistake and, for example, re-admit a rejected bidder or revise the recommendation for award. This will resolve the problem and allow the procurement to proceed.

If the procuring entity identifies a mistake but does not correct it, then the bidder may take the complaint to the second stage. This damages the reputation of the procuring entity (the procedure is public) but will also delay the procurement and is, therefore, damaging to the country.

If, after having considered the allegations, the procuring entity is satisfied that it has not made a mistake and that its documents and decisions are lawful, then it may proceed to reject the complaint.

In all cases, the procuring entity should give its reasons to the complainant.

11.3 Administrative Review to the PPMD

Following the review by the procuring entity, the complainant is then permitted to refer the matter to the PPMD where:

- the procuring entity did not provide a response within 15 days from the date of the complaint or
- the complainant is not satisfied with the response of the procuring entity.

The complaint form is available on the PPMD website

The matter must be promptly referred to the PPMD, normal practice would be to do this within 5 days from notification of the decision to award. The procuring entity is not prevented from signing the contract with the selected bidder and no complaint can be processed after the signature of a contract, so speed is of the essence.

Failure of the complainant to act quickly may result in its inability to progress further with its challenge.

Once the matter is referred to the PPMD, a number of things may happen:

- (i) the Director General of State Assets may decide to recommend a solution within [15 days](#) of receiving the complaint; or
- (ii) he may decide to establish an *ad hoc* committee composed of sector specialists to decide on the challenge and that *ad hoc* committee will also have [15 days](#) from the date it was appointed to recommend a resolution;

and, in either case,

- (iii) the PPMD may suspend the procurement or selection process until the complaint is resolved.

It will not order this suspension if it is not in the public interest to do so. This will usually be the case if the damage likely to occur to the public in delaying the procurement outweighs the interest in ensuring full compliance with the legal framework. This may be the case where:

- the initial complaint does not appear to be strong and
- there is a strong degree of urgency in completing the procurement.

This does not mean that the complaint will not be heard; only that there will be no suspension. If the procuring entity proceeds with the procurement and the final decision of the PPMD or the *ad hoc* Committee, as the case may be, is that there has been a breach of the legal framework, then the consequences of that decision will be applied.

11.3.1 Resolution by the PPMD

If the facts of the complaint are clear and the solution is obvious from the face of the documents submitted by the complainant and the defendant

- without the need to hear additional evidence or argument of the parties, or
- to undertake any further investigation of the matters in dispute,

it is likely that the Director General of State Assets will be able to make a decision on the most appropriate solution without reference to the *ad hoc* Committee.

Furthermore, if substantially the same facts have already been considered by the *ad hoc* Committee *and provided its decision has been published on the PPMD website*, the Director General of State Assets will be able to apply the reasoning of that decision to any new complaint that is submitted based on those similar facts. It will not need to refer the matter again to the *ad hoc* Committee.

Before submitting a complaint to the PPMD, the bidder should check the PPMD website for previous decisions of the *ad hoc* Committee to make sure that the solution to the problem has not already been provided. If a decision on substantially the same facts has already been provided by the *ad hoc* Committee, the PPMD will simply

In these cases, the PPMD will issue the written response of Director General of State Assets within 15 days of receiving the complaint containing detailed reasons for the solution it proposes.

In all other cases, it is likely that the Director General of State Assets will refer the complaint to the *ad hoc* Committee in order to maintain the highest degree of independence and impartiality.

11.3.2 Resolution by the *ad hoc* Committee

The PPMD maintains a list of potential committee members who may be appointed to an *ad hoc* Committee whenever it proposes to refer a complaint it has received to the *ad hoc* Committee. The Director General of State Assets will make this reference in the circumstances indicated in section 11.3.1 above.

An *ad hoc* Committee is appointed to hear a specific complaint only.

The list of potential committee members contains government officials identified by the Director General of State Assets from a range of Ministries with the grade of Director General or Deputy Director General. They are selected based on their knowledge and experience of finance, law or procurement within government and will benefit from specialised training provided by the PPMD.

The appointment of the *ad hoc* Committee shall be made in respect of a particular complaint by the **Director General of State Assets** based on the experience necessary in light of the facts of the case. For example, if the complaint concerns a works contract, it is likely that at least one of the *ad hoc* Committee members will be from the Ministry of Public Works and Transport; if the case involves complex interpretation of the law, it is likely that at least one of the *ad hoc* Committee members will be from the Ministry of Justice; if there are complex financial issues involved, it is likely that at least one of the *ad hoc* Committee members will be from the Ministry of Finance.

The Director General of State Assets will appoint three members from the list to the *ad hoc* Committee. One of these shall have the rank of Director General and shall be the Chair of the *ad hoc* Committee. The Chair has the casting vote.

The *ad hoc* Committee may issue directions to:

- require additional documentary evidence to be submitted;
- convene a hearing of the parties at which the complainant and defendant may present oral argument or adduce oral (including expert) evidence;
- call independent technical experts to provide any expert evidence it deems necessary for the resolution of the matter.

The PPMD acts as the Secretariat of the *ad hoc* Committee. All correspondence in respect of a complaint heard by the *ad hoc* Committee shall be channelled through the PPMD and the directions and decisions of the *ad hoc* Committee shall be communicated to the parties by the PPMD. In no case, shall the parties seek to communicate directly with the members of the *ad hoc* Committee.

The written response of the *ad hoc* Committee containing detailed reasons for the solution it proposes will be issued by the PPMD (acting as Secretariat to the *ad hoc* Committee) within 15 days of its appointment.

The full process of a complaint to the *ad hoc* Committee is described in the

MANUAL OF PROCEDURES OF THE AD HOC COMMITTEE

This is attached to this Procurement Manual as Annex [...] and a copy may be found on the PPMD

11.3.3 The consequences of a breach of the legal framework

If the Director General of State Assets or the *ad hoc* Committee find that there has been a breach of the legal framework in respect of the complaint brought by the bidder, they may make an order:

- declaring a breach of the legal framework; and
- annulling a specific action or decision and ordering its correction in conformity with the legal framework, provided the complaint has been brought within sufficient time to allow the correction to be made; or

this may be used, for example, to amend an unlawful technical specification or re-admit a bidder that has been unlawfully rejected where there is still time to do so before the evaluation takes place;

- before contract signature, annulling the procurement procedure in question and ordering a re-tender in conformity with the legal framework; or
- after contract signature, declaring the contract in question void and ordering a re-tender in conformity with the legal framework; and/or

this may only be used, however, where there has been no substantial performance of the contract unlawfully awarded; in any event, the procuring entity must pay for any performance completed up to the point at which the contract is declared void;

- imposing disciplinary measures on the government officials having been found in breach of the legal framework; and/or
- requiring the procuring entity to compensate the complainant for the cost of preparing its tender.

11.4 Appeal to the people's court

If the complainant is not satisfied, it may file an appeal to the people's court. The procedures of the people's court apply.

Part VII Contract Management

In drafting the bidding documents or requests for proposals, the procuring entity will have given careful consideration to the contractual obligations and activities. Effective management is essential to ensure efficient and timely performance of the contract by all parties.

Procuring entities must adopt a routine monitoring procedure of all contracts to allow for swift remedial action to be taken when problems arise, or preventative action taken when problems are foreseen. This is separate from the responsibilities of monitoring the broader performance of suppliers.

The procuring entity may appoint individuals or a contract management committee that is responsible for contract management (depending on complexity and size of the contract), although they may consult with technical advisors as appropriate. This is also addressed in 3.2.4. The contract management committee will authorize any payments due under the contract, but these would be passed to the finance team for payment. Payment must be made promptly and at a minimum in accordance with the time or times specified in the contract or earlier.

It is recommended the procuring entity should prepare a contract implementation plan. This will be the same as the individual procurement plan described in 4.3 above which allows for the tracking of any specific procurement. The contents will vary based on the category of procurement but should include key milestones, such as dates for mobilization, deliveries or completion of certain deliverables or sections of work, and the procuring entity's obligations, such as providing access to a works site, payment or approval of reports.

The contract management committee should monitor progress and performance against the contract implementation plan. Action should be taken as appropriate for any variations.

Section 1. Contract administration

Administration procedures will be largely determined by the terms and conditions of each individual contract and the description of requirements for the goods, works, consultancy services or general services. The procuring entity is advised to appoint an administrator with appropriate skills for the contract. This may also be the contract management committee. This person may be outside of the team and tender committee that undertook the procurement, for example in the case of goods it may be a stores supervisor or an engineer for works contracts. However, they must follow the procedures in the PM. At all times administrators must make use of the procuring entity's existing systems for making payments or seeking legal advice, whilst following the approvals of the procuring entity's normal finance and accounting procedures.

In the case of large and complex contracts these functions should be carried out by a contract management committee.

It is important that the administrator or committee has clear reporting lines to raise any issues which may arise from the contract implementation plan. Where external administrators are appointed, issues relating to contractual disputes or a supplier's failure to perform and any requirement for amendment of the contract must be referred within one day to the procuring entity.

12.1 Goods contracts

Contract administration for goods focuses on ensuring that goods are delivered on time, that the goods are acceptable to the procuring entity, in terms of quantity, quality and supporting documentation, and that the procuring entity meets its obligations to pay for the goods delivered.

For goods contracts, the contract administrator is typically responsible for:

- ensuring that the actual dates when deliveries are due are agreed with the supplier, based on the date of contract effectiveness;
- expediting during the delivery period, to ensure that manufacturing, freight forwarding and deliveries are proceeding on schedule;
- witnessing tests or approving samples, where required;
- arranging collection, freight-forwarding, customs clearance or delivery, where the procuring entity is responsible for any of these tasks;
- arranging for receipt and inspection of the goods;
- checking all documentation relating to the goods, such as delivery notes, and ensuring that documentation is correct before signing;
- recording any missing, damaged or incorrect items and initiating claims against insurance policies or the supplier;
- issuing goods acceptance certificates for the goods received if this is a documentary requirement under the contract;
- reporting any contractual problems or requests for contract amendments to the procurement officer;
- checking invoices and supporting documentation for payment are correct and arranging payment;
- managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required and releasing them promptly, when all obligations have been fulfilled;
- ensuring all documentation and information relating to warranties and warranty claims are in good order;
- ensuring all user guides, manuals, licenses etc. are kept with the goods or in an appropriate place.

Goods should be recorded in the procuring entity's asset records and issued to the end user in accordance with applicable stores and supply management procedures.

12.2 Works contracts

Contract administration for works is often complex and time-consuming, as it involves supervision of the progress of the works, ordering variations where unforeseen conditions are encountered and measuring the work completed for payment purposes. For major contracts, the procuring entity will normally use a full-time supervising engineer or project manager, who will exercise control and supervision of the contract on behalf of the procuring entity. Where a project manager is used, the procuring entity must:

- ensure that the role of the project manager is clearly defined, in particular their powers to issue contract variations, which result in changes to the overall cost, completion date, quality and design of the works and to settle disputes;
- establish arrangements for keeping the procuring entity informed of contract progress, variations issued and any disputes;
- approve interim payment certificates; and
- designate a contract administrator within the procuring entity, who will be the contact point for the project manager.

This contract administrator is typically responsible for:

- ensuring that the actual mobilization and completion dates are agreed with the contractor, based on the date of contract effectiveness;
- monitoring the overall progress of the works and the performance of the project manager;
- referring any requests for contract variations, which are outside the authority of the project manager, to the procuring entity, or other designated authority, for approval;
- reporting any contractual problems or requests for contract amendments to the procuring entity;
- checking interim payment certificates and supporting documentation for payment are correct, authorized and arranging payment;
- managing any securities, such as mobilization or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required and releasing them promptly, when all obligations have been fulfilled;
- ensuring all final acceptance and hand-over arrangements are completed and documented satisfactorily; and
- ensuring all final drawings, manuals etc. are received and kept in an appropriate place.

12.3 Consultancy services contracts

Contract administration for consultancy services focuses on ensuring that consultancy services are delivered on time and to an acceptable quality. This can be difficult, as the quality of consultancy services, particularly consultancy services, can be subjective and difficult to measure. A good working relationship with the service provider and ongoing monitoring of consultancy services is therefore important, to ensure successful contract performance.

The procuring entity must also ensure that it meets its obligations, particularly where the performance of consultancy services is dependent on certain inputs or information from the procuring entity or where staff must be made available to benefit from capacity building initiatives.

For consultancy services contracts, the contract administrator is typically responsible for:

- ensuring that the actual dates for mobilization, key milestones or deliverables and completion are agreed with the supplier, based on the date of contract effectiveness;
- monitoring contract performance to ensure that levels of service are maintained and that deliverables are submitted or completed on time;
- ensuring that all required reports are submitted on time;
- ensuring that, where required, the procuring entity provides written comments or approvals to deliverables or reports in a timely manner;
- ensuring that any resources, assistance or counterpart staff to be provided by the procuring entity are made available at the appropriate time;
- checking invoices and supporting documentation for payment are correct and arranging payment;
- issuance of any acceptance certificates;
- managing any securities, such as performance or payment securities, by ensuring that they are kept securely, ensuring that extensions to their validity are obtained in good time, when required, reducing their value, when required and releasing them promptly, when all obligations have been fulfilled;
- notifying the consultant in writing of any failings in performance or failure to meet targets;
- ensuring all reports or deliverables are circulated for comment; and
- ensuring that final deliverables are kept in an appropriate place and circulated or implemented as required.

12.4 Services contracts

General services contracts have the potential to be the most complex of the four types of procurement. It may be a simple output-based contract which would be relatively simple to monitor or it may include elements of goods, works and services. Therefore, it is recommended that a checklist is created for each contract which pulls together the various advice above for contract administration of goods, works and services.

Depending on the size of any works component it may be appropriate to appoint a supervising engineer or project manager.

Section 2. Mobilization

The main responsibility for mobilizing resources will fall to the supplier/contractor or consultant. However, the contract management committee needs to be aware of any resources that the procuring entity may have committed during the bidding process. These generally relate to visas, office facilities, vehicles, counterpart staff etc.

It is important that the procuring entities' duties are comprehensively captured and all actions initiated at an early stage as the supplier/contractor/consultant will rely on that support and the possible cost saving in their bid price. Whilst performing these actions may be beyond the scope

of the contract management committee, they are responsible for advising and expediting the actions of the appropriate team within the procuring entity.

Section 3. Contract amendments and variations

Any issue requiring an amendment or variation to a contract must be referred within one day to the procuring entity. The administrator/contract management committee must assess the effect and impact on the performance and delivery of the contract. This may require consultation with other members of the procuring entity who supported the technical management of the contract.

The administrator/contract management committee (subject to any internal approvals) will:

- identify and agree with the supplier, contractor or consultant the specific clauses in the contract which need to be changed, and the new values or terms and conditions which are to apply, which may be more than the single specific change which may have initiated the amendment, for example, a change in delivery terms from air to sea would also require a change in the delivery date;
- prepare a draft contract amendment document for approval by the head of the procuring entity;
- if the new contract value exceeds the original contract tier threshold approval, obtain further approvals;
- record any other contractual/value changes;
- the procuring entity must follow the procedures detailed in the specific contract for any amendment or variation;
- obtain from the supplier/contractor/consultant any necessary addition or extensions to the performance and advance payment security;
- arrange for signature of the contract amendment in two copies;
- distribute copies in the same way as the original contract.

Section 4. Dispute Resolution

Any dispute raised by either party must be managed in the line with the specific conditions of the contract. It is essential that any dispute is raised immediately with the head of the procuring entity and the procuring entities' legal team.

Section 5. Termination

Every effort should be made to resolve an issue under a contract. Termination of the contract is the last resort, however, sometimes it is necessary:

- to avoid or minimize further loss to the procuring entity or poor performance by the supplier;

- where contract performance has become impossible; or
- where a supplier is no longer qualified or has engaged in corrupt practices.

The procuring entity must always seek legal advice before initiating any action in respect of termination. The head of the procuring entity must be copied into all correspondence.

The grounds under which the procuring entity may normally terminate a contract are defined in the bidding documents. There is a variance between the different forms of SBDs so the procuring entity must check each time the final terms in the specific contract. The conditions of contract need to be reviewed carefully and any penalties relating to termination carefully calculated.

The procuring entity should note that a contract will also give the supplier grounds for termination, which normally include failure by the procuring entity to make payments which are overdue by a specified period of time, force majeure or failure of the procuring entity to comply with an agreement reached through arbitration or other dispute resolution mechanism.

13.1 Goods contracts

Terms include:

Termination for Default

If following legal advice the decision is taken to proceed with termination of the contract the procuring entity must follow these steps:

1. Identify the need and contractual basis to terminate the contract.
 2. Ensure that the procuring entity has sufficient justification for using the selected grounds.
 3. Estimate the amount of money, if any, which will be due to the supplier following termination.
 4. Prepare a formal notice, terminating the contract and stating the grounds for termination.
 5. Issue the termination notice and ensure that it is received by the supplier.
 6. Take any follow-up action required, including returning any securities, making any payments due to the supplier under the contract and referring any default or corrupt practices by the supplier to the PPMD.
- If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract plus the maximum period allowed for liquidated damages or within any

extension that may have been granted provided that the delay was not caused by force majeure;

- If the supplier fails to perform any other obligation(s) under the contract such as commissioning of equipment and training if so, required in the contract; or
- If the supplier has engaged in fraudulent or corrupt practices in competing for or in executing the contract.

When terminating for default the procuring entity may not terminate the whole contract, in which case the supplier remains responsible for the performance of the rest of the contract.

In order to complete the procurement, the procuring entity may procure the goods, works, consultancy services or general services which shall be at the cost of the supplier.

Termination for Insolvency

The procuring entity may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent.

In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the procuring entity.

Termination for Convenience

If the procuring entity decides to terminate for convenience the following steps must be taken:

- The procuring entity, by written notice sent to the supplier, may terminate the contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the procuring entity's convenience, the extent to which performance of the supplier under the contract is terminated, and the date upon which such termination becomes effective.
- The goods that are complete and ready for shipment within twenty-eight (28) days after the supplier's receipt of notice of termination shall be accepted by the procuring entity at the contract terms and prices. For the remaining goods, the procuring entity may elect:
 - to have any portion completed and delivered at the contract terms and prices; and/or
 - to cancel the remainder and pay to the supplier an agreed amount for partially completed goods and related services and for materials and parts previously procured by the supplier.

13.2 Works contracts

The principles for termination are similar to goods contract but the format is different. The procuring entity shall be entitled to terminate the contract if the contractor:

- abandons the works, refuses or fails to comply with a valid instruction of the Project Manager/ Supervising Engineer or fails to proceed expeditiously and without delay or is,

despite a written complaint, in breach of the contract, the procuring entity may give notice referring to the clause in the contract document, stating the default.

- abandons the works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the contract, has not taken all practicable steps to remedy the default within 28 days after the contractor's receipt of the Project Manager's notice, the Project Manager may, by a second notice given within a further 21 days, terminate the contract. The contractor shall then demobilize from the Site leaving behind Materials and Plant and any contractor's Equipment which, as the Project Manager instructs in the second notice, which the procuring entity will retain until the completion of the Works.
- subcontracts the whole of the works or assigns the contract without the required agreement of the procuring entity,
- is declared insolvent under any applicable law, the other procuring entity may by notice terminate the contract immediately. The contractor shall then demobilize from the Site leaving behind any contractor's Equipment which the procuring entity instructs in the notice is to be used until the completion of the Works.
- gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - for doing or forbearing to do any action in relation to the contract, or
 - for showing or forbearing to show favour or disfavour to any person in relation to the contract,
 - or if any of the contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (e). However, lawful inducements and rewards to contractor's Personnel shall not entitle termination.

The procuring entity must be aware though that the contractor also has rights to terminate if:

- the contractor may suspend the execution of all or parts of the Works. If the payment certificate is not issued, payment is not made, or the reason for non-payment established and not within the contractual rights of the Project to withhold, within after the Project's receipt of the contractor's notice
- the procuring entity substantially fails to perform his obligations under the contract in such manner as to materially and adversely affect the ability of the contractor to perform the contract,
- a prolonged suspension affects the whole of the works, or
- the procuring entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

If either the procuring entity or the contractor is or will be prevented from performing any of its obligations by Force Majeure, the party affected shall notify the other party immediately. If necessary, the contractor shall suspend the execution of the works and, to the extent agreed with the procuring entity, demobilize the contractor's equipment. Further action must be in accordance with the contract terms.

13.3 Consultancy services contracts

The procuring entity may terminate this contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence, the procuring entity shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- (a) If the Consultant has been issued with a notice of suspension and fails to remedy a failure in its performance;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the consultancy services for a period of not less than sixty (60) calendar days;
- (e) If the procuring entity, in its sole discretion and for any reason whatsoever, decides to terminate this contract;
- (f) If the Consultant fails to confirm availability of Key Experts.

Furthermore, if it is determined that the Consultant under the Applicable Law has engaged in fraud and corruption in competing for or in executing the contract, then the procuring entity may, after giving fourteen (14) calendar days written notice to the Consultant, terminate the Consultant's employment under the contract.

The Consultant may terminate this contract, by not less than thirty (30) calendar days' written notice to the procuring entity, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.

- (a) If the procuring entity fails to pay any money due to the Consultant pursuant to this contract and not subject to dispute within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the consultancy services for a period of not less than sixty (60) calendar days.
- (c) If the procuring entity fails to comply with any final decision reached as a result of arbitration;

- (d) If the procuring entity is in material breach of its obligations pursuant to this contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the notice specifying such breach.

13.4 Services contracts

The principles for termination are similar to goods and works contract but the format is different. The procuring entity shall be entitled to terminate the contract if the service provider:

- (a) if the service provider does not remedy a failure in the performance of its obligations under the contract, within thirty (30) days after being notified or within any further period as the procuring entity may have subsequently approved in writing;
- (b) if the service provider become insolvent or bankrupt;
- (c) if, as the result of Force Majeure, the service provider is unable to perform a material portion of the Services for a period of not less than sixty (60) days; or
- (d) if the service provider, in the judgment of the procuring entity has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

The procuring entity must be aware though that the contractor also has rights to terminate if:

- (a) if the procuring entity fails to pay any monies due to the service provider pursuant to this contract and not subject to dispute pursuant to Clause 7 within forty-five (45) days after receiving written notice from the service provider that such payment is overdue; or
- (b) if, as the result of Force Majeure, the service provider is unable to perform a material portion of the services for a period of not less than sixty (60) days.

Section 6. Audit

The Government has the right to audit the procurement and financial records of the procuring entity. Any audit may be undertaken by internal staff or external consultants appointed by them.

All personnel must fully cooperate with any auditor in the performance of their duties. Suppliers, contractors and consultants shall also be required to cooperate in accordance with the terms of their contract.

Section 7. Completion

On completion the procuring entity must make final checks to ensure the following

- all payments have been made to the supplier/contractor/consultant

- the final payment schedule is consistent with the contract and any amendments or variations
- all deliverables have been received including any hard and soft copies of reports
- there are no outstanding claims for missing goods with the supplier or an insurance company
- warranties have been provided and filed securely
- taking over certificate have been provided
- any guarantees and securities have been returned
- all records are correctly filed
- any reporting is completed
- any performance reporting captured

The file should be closed with a destroy date seven years from the date of closing.

Section 8. Records

It is essential that the procuring entity maintains proper records at all times. These records are a matter of public record and shall be available to the MOF. The records may be the subject of audit at any stage during and after the procurement process and must be retained by the procuring entity for a minimum seven years after the contract's completion in line with Government standards.

The entire process must be documented from beginning to end and as such proper minutes must be recorded and maintained for each meeting relative to the procurement.

It is recommended that the procuring entities adopt a pre-contract and post-contract file system.

The pre-contract file would include all notices, documents and approvals up to publication of the contract award notice. It must include copies of all amendments issued to the Instructions to Bidders, the minutes of bid opening and the evaluation report complete with all the clarification requests issued and received, minutes from tender committee's review and all approvals. Attached to the file should be a copy of all of the bids received including the winning bid with copies of bid securities when required. The originals should have been returned to the bidders following contract effectiveness.

Copies of any complaints or applications for reconsideration received and their response must also be included in the pre-contract file. Access to all records must be given to any authority reviewing bidders' complaints.

The post contract file must include a copy of the contract and copies of all contractual correspondence including supplier/contractor/consultants' reports, letters of credit issued, shipping documents, invoices, contract amendments, insurance certificates, taking over and warranty certificates, and any post-contract approvals. The original contract must be stored in a locked fireproof safe and only a working copy maintained on the file. A summary page should be maintained on the front of this file and include as a minimum:

- a) a brief description of the goods, works, consultancy services or general services procured;
- b) names and addresses of all bidders;
- c) the procurement method used and authorization reference;
- d) name of successful supplier, contractor or consultant;
- e) date of approval;
- f) contract price and actual completion cost;
- g) contract duration;
- h) reason for choice of procurement if not open bidding or price comparison;
- i) information relative to the qualifications of suppliers, contractors or consultants;
- j) summary of the evaluation and comparison of bids;
- k) any domestic margin of preference applied and any corresponding authorization reference;
- l) reason(s) for rejection of any or all bids;
- m) summary of requests for clarification of instructions to bidders and any amendments made;
- n) information relative to the successful supplier, contractor or consultant's performance on the contract; and
- o) information relative to any complaint or review.

A complete list of documents and records that the procuring entity must maintain is include as Annex A.

ANNEX A

PROCUREMENT FILING SYSTEM AND CHECKLIST

Introduction

1. This Guidance presents a filing system for use by Procuring Agencies. The experience is that lack of an efficient filing system causes long and costly delays in the search for documents at critical moments when procurement issues arise or when procurement and project audits are required.
2. Procurement filing has specific characteristics. Files must be based on the four procurement categories (works, goods, consultant services/training and individual consultants). Filing shall span the entire procurement process for each contract in each category in a sequential and easily accessible manner (from advertising to contract signature and contract management.). This system should be maintained professionally in order to remain useful.

Clear Printed labels should be used on all filing boxes for easy retrieval

Filing Structure

A. Create a File box for Procurement Plans and Budget (labeled as **PP&B**)

Documents and communication related to establishing the overall procurement need for the Ministry/Procuring Entity for current budget year as such:

1. Any analysis conducted;
2. The initial procurement plan accompanying the annual budget plan
3. The detailed annual procurements plan for implementation.

B. Create a General Box

For each procurement/package a large solid box, labelled **“PG”** (Procurement General) is created to file the following:

1. Individual procurement plan
2. Government notice on composition of procurement Committee
3. Other general communications on procurement

C. Create File Boxes according to the procurement categories

Boxes for:

1. Works carry a large “W”;
2. Goods a large “G”
3. Consultant services a large “CS”;
4. Individual Consultant a large “IC”.

Within procurement **category Boxes**, create in the corresponding procurement category **individual folders** (they should be large folders) **per contract/package** contains. Label the spine and the front of the folder with the name of the contract/package. Within the folder create the following sections:

1. each procurement step (see in table under III);
2. a folder for procurement reviews or technical audits;

Filing Folders for each Procurement/Package

I. General folders

- Approved Procurement Plan
- Government's notice on composition and start of procurement Committee

II. Folder each procurement step in each Contract Folders (labels could be prepared as detailed in the table)

Works W	Good G	Consultant Services CS	Individual Consultant IC
Bid Launch	Bid Launch	Proposal Launch	REoI Launch
Bid Opening	Bid Opening	Proposal Opening	EoI Opening
Bid Evaluation	Bid Evaluation	Proposal Evaluation	EoI Evaluation
Complaints	Complaints	Complaints	Complaints
Bid Award	Bid Award	Proposal Award	EoI Award
Contract Management	Contract Management	Contract Management	Contract Management

III. Folder for Procurement Reviews/ Technical Audits for each contract/package

Ensure that documents are filed in chronological order. The documents of the most current procurement step should be on top.

WORKS

Bidding Folders

- Bid Launch
 - Approval of the specific procurement notice
 - Copy of Specific Procurement Notice with publication date and a copy of the notice in a media (Newspaper, website etc..) showing the date.
 - Approval (letter, email) of the draft Bidding Document and final Bidding Document
 - Registration of sending/selling bidding document to bidders
 - Clarifications request by bidders and written replies from the Procurement Entity
 - Minutes of Pre-bid meeting (if applicable)
 - Modifications/addenda to bidding documents (if any) and communication to the Bidders following modification/addenda.
- Bid Opening
 - Bid submission registration
 - Registry of procurement committee members participating in bid opening
 - Registry of bidders or bidder's representatives present in bid opening (this is not necessary if the bidder's reps. sign the minutes of bid opening)
 - Minutes of bid opening
- Bid Evaluation
 - Invitation to Tender/Procurement Committee Members
 - Registry of procurement committee members participating in bid evaluation
 - Clarifications requested to bidder(s), if any and written replies from bidders
 - Responses to clarifications by bidder(s)
 - Bid Evaluation Report (with reference number to bidding documents received)
- Complaints
 - Complaint
 - Acknowledgement
 - Response
 - Bidder response (resolve)
 - Not resolve, further communications
- Bid Award

- Invitation to Procurement Committee Members and/or technical staff delegated to review the bids to attend the decision meeting
- Registry of tender/procurement committee members
- Minutes of decision meeting
- Copy of notification of award to the successful bidder
- Initialed draft contract (both successful bidder and the procuring entity)
- Copy of signed contract
- Copy of contract registration

■ Contract Management

- Contract amendments (if applicable)
- Contract supervision reports
- Payment Certificates
- Completion certificates (“provisional” and “final” acceptance)
- Copies of guarantees
- Claims and Disputes (liquidated damages)

GOODS

Bidding Folders

▪ Bid Launch

- Approval of the specific procurement notice
- Copy of Specific Procurement Notice with publication date and a copy of the notice in a media (Newspaper, website etc..) showing the date.
- Approval (letter, email) of the draft Bidding Document and final Bidding Document
- Registration of sending/selling bidding document to bidders
- Clarifications request by bidders and written replies from the Procurement Entity
- Minutes of Pre-bid meeting (if applicable)
- Modifications/addenda to bidding documents (if any) and communication to the Bidders following modification/addenda.

▪ Bid Opening

- Bid submission registration
- Registry of procurement committee members participating in bid opening
- Registry of bidders or bidder's representatives present in bid opening (this is not necessary if the bidder's reps. sign the minutes of bid opening)
- Minutes of bid opening

▪ Bid Evaluation

- Invitation to Tender/Procurement Committee Members
- Registry of procurement committee members participating in bid evaluation
- Clarifications requested to bidder(s), if any and written replies from bidders
- Responses to clarifications by bidder(s)
- Bid Evaluation Report (with reference number to bidding documents received)

▪ Complaints

- Complaint
- Acknowledgement
- Response
- Bidder response (resolve)
- Not resolve, further communications

- Bid Award Folder
 - Invitation to Procurement Committee Members and/or Technical Staff delegated to review the bids to attend the decision meeting
 - Registry of Procurement Committee Members/Technical Staff
 - Minutes of decision meeting
 - Copy of notification of award to the successful bidder
 - Initialed draft contract (both successful bidder and the procuring entity)
 - Copy of signed contract
 - Copy of contract registration

- Contract Management Folder
 - Contract amendments (if applicable)
 - Inspection certificates
 - Payment Certificates
 - Completion certificates (“provisional” and “final” acceptance)
 - Copies of guarantees
 - Claims and Disputes

CONSULTANTS SERVICES AND TRAINING (FIRMS)

Quality and Cost-Based Selection (QCBS)

General Folder

- Approved Terms of Reference and request of Expression of Interest (REOI)

Expression of Interest (EoI) Folders

- EoI Launch
 - Copy of advertisement notice with publication date from all media (newspaper, website etc....)
 - Submitted Expression of Interest (EoI)
 - Evaluation of EoI and shortlisting of consultants
 - Draft Request for Proposal (RfP)
 - Notice to all firms on the result of shortlisting

Proposal Folders

- Request for Proposal (RfP) Launch
 - Approval of the RfP /approved RFP document
 - Notice of RfP sent to short listed firms
 - Receipts of proposals
- Proposal Evaluation
 - Invitation to Tender/Procurement Committee Members members participating in proposal evaluation
 - Registry of procurement committee members participating in proposal evaluation
 - Notice of proposals received and opening of technical proposals
 - Minutes of opening of technical proposals
 - Scoring sheet
 - Technical evaluation report
 - Notice to firms that submitted proposals on the result of technical evaluation
 - Communication from firm on technical evaluation¹
 - Opening of financial proposals²
 - Minutes of opening of financial proposals.
 - Financial Evaluation report.

¹ Firms have two (2) weeks to request clarifications on the technical evaluation from the procuring entity

² Opening of financial proposals of all firms

- Combined Technical and Financial Evaluation report
- Approval of the recommendation for selected consultant and authorization to negotiate
- Complaints
 - Complaint
 - Acknowledgement
 - Response
 - Bidder response (resolve)
 - Not resolve another response
- Proposal Award
 - Minutes of negotiation and initialed draft contract)
 - Approval of initialed draft contract
 - Copy of signed contract
 - Copy of contract registration
- Contract Management Folder
 - Contract Amendments
 - Consultant Reports
 - Technical Assistance Reports
 - Claims and Disputes

Quality Based Selection (QBS)

General Folder

- Approved Terms of Reference and request of Expression of Interest (REOI)

Expression of Interest (EoI) Folders

- EoI Launch
 - Copy of advertisement notice with publication date from all media (newspaper, website etc....)
 - Submitted Expression of Interest (EoI)
 - Evaluation of EoI and shortlisting of consultants
 - Draft Request for Proposal (RfP)
 - Notice to all firms on the result of shortlisting

Proposal Folders

- Request for Proposal (RfP) Launch
 - Approval of the RfP /approved RFP document
 - Notice of RfP sent to short listed firms
 - Receipts of proposals

- Proposal Evaluation
 - Invitation to Tender/Procurement Committee Members members participating in proposal evaluation
 - Registry of procurement committee members participating in proposal evaluation
 - Notice of proposals received and opening of technical proposals
 - Minutes of opening of technical proposals
 - Scoring sheet
 - Technical evaluation report
 - Notice to firms that submitted proposals on the result of technical evaluation
 - Communication from firm on technical evaluation³
 - Opening of financial proposals⁴
 - Minutes of opening of financial proposals.
 - Financial Evaluation report.
 - Combined Technical and Financial Evaluation report
 - Approval of the recommendation for selected consultant and authorization to negotiate

- Complaints
 - Complaint
 - Acknowledgement
 - Response
 - Bidder response (resolve)
 - Not resolve another response

- Proposal Award
 - Minutes of negotiation and initialed draft contract)
 - Approval of initialed draft contract
 - Copy of signed contract
 - Copy of contract registration

- Contract Management
 - Contract Amendments
 - Consultant Reports

³ Firms have two (2) weeks to request clarifications on the technical evaluation from the procuring entity

⁴ Financial opening of only the highest scored firm

- Technical Assistance Reports
- Claims and Disputes

INDIVIDUAL CONSULTANTS

Individual Consultant (IC)

General Folder

- Approved of Request of Expression of Interest (REOI) and Terms of Reference (TOR)

Expression of Interest (EoI) Folders

- EoI Launch
 - Copy of advertisement notice with publication date from all media (newspaper, website etc....)
 - Received EOIs
- EoI Evaluation
 - Invitation to Tender/Procurement Committee Members
 - Registry of procurement committee members participating in bid evaluation
 - Long listed consultant
 - Comparison of CVs
 - Evaluation report and shortlisted consultant
- Complaints
 - Complaint
 - Acknowledgement
 - Response
 - Bidder response (resolve)
 - Not resolve another response
- EoI Award
 - Invitation of selected consultant
 - Minutes of negotiation
 - Copy of signed contract
 - Copy of contract registration
- Contract Management

- Contract Amendments
- Consultant Reports
- Technical Assistance Reports (if applicable)
- Claims and Disputes